

September 20, 2018

Individuals and Indirect Tax Division
The Treasury
Langton Crescent
Parkes ACT 2600
By email: ExternalConductStandards@treasury.gov.au

Draft Regulations: External Conduct Standards for Charities Registered with the Australian Charities and Not-for-profits Commission

To Whom it May Concern,

Thank you for the opportunity to provide a submission to the Treasury in relation to the draft regulations and explanatory statement for the proposed external conduct standards that charities registered with the Australian Charities and Not-for-profits Commission (ACNC) will need to comply with when operating outside Australia.

In regulating the sub-sector of charities operating overseas, the Government should endeavour to maintain an appropriate balance between the objectives of mitigating the risk of these charities being misused for terrorist financing and other criminal purposes, while ensuring the most efficient use of charitable resources and facilitating legitimate cross-border charitable activities.

Many charities that operate overseas have been subject to excessive red tape caused by overlapping disclosure regulation by various governmental agencies, particularly international aid organisations and environmental organisations working abroad. The Government's recent consultation paper considering potential reforms to the Deductible Gift Recipient (DGR) tax arrangements acknowledged the need for a reduction in regulatory red tape and administrative complexity for these organisations.¹ The external conduct standards provide an opportunity to streamline reporting requirements.

The reporting requirements set out in s 50.25(4) of the draft regulations state that 'the registered entity must provide an overseas activities statement as part of its annual

¹ The Treasury, *Deductible Gift Recipient (DGR) Reforms: Consultation Paper* (August 2018) <<https://static.treasury.gov.au/uploads/sites/1/2018/08/Final-Deductible-Gift-Recipient-Reform-Consultation-Paper.pdf>>.

information statement'. The ACNC's annual information statement currently requires all registered charities to provide some general information on cross-border charitable activities including whether the charity engaged in 'international activities' as a main or general activity; whether the charity's beneficiaries included 'communities overseas'; each country where the charity conducted activities or had beneficiaries during the reporting period; and the amount of grants and donations made by the charity for use outside Australia. It is assumed that this general information will still apply to all registered charities.

It is recommended that those charities which indicate on their annual information statement that they operate overseas (in response to the general questions), complete a schedule to the annual information statement with more detailed questions comprising the overseas activities statement. This would be consistent with the annual information statement filed in the United States (Form 990).² Charities are required to provide general information on cross-border charitable activities on the Form 990 including whether the organisation had an interest in a financial account in a foreign country; maintained an office, employees, or agents outside the US; and/or had aggregate revenues or expenses of more than \$10,000 from grantmaking, fundraising, business, investment, and program service activities outside the US.³ Organisations that answer these questions in the affirmative are then required to complete a schedule to the Form 990, with detailed information on activities conducted outside the US.⁴

In Australia, the information contained in the overseas activities statement, would enable the ACNC's annual information statement to be the sole repository for information on charities operating overseas without the need for separate reporting through other government agencies. This administrative synchronisation would promote the objectives of reducing regulatory red tape for these charities and encourage the efficient use of charitable resources. For the heavily regulated international aid and development organisations, the Australian Council for International Development's code of conduct could be incorporated into the external conduct standards to further streamline reporting.

This form of disclosure regulation will also help the ACNC identify at-risk charities operating overseas and prioritise them for compliance reviews. In doing so, the external conduct standards will provide the ACNC with a targeted means of regulating the increasing number of charities operating overseas that have not been subject to appropriate regulatory scrutiny. For example, basic religious charities working abroad, which are not required to comply with the ACNC's governance standards, answer financial questions in their annual information statement, or submit annual financial reports to the ACNC.

² IRC s 6033. There are other returns that charities may need to file with the IRS such as Unrelated Business Income Tax Returns, Employment Returns, and Donee Information Returns.

³ Charities are also required to list expenditure for grants and other assistance to foreign organisations, individuals or governments and specify whether the organisation reported more than \$5,000 of grants or other assistance to or for any foreign organisations or individuals. See <<https://www.irs.gov/pub/irs-pdf/f990.pdf>>.

⁴ See <<https://www.irs.gov/pub/irs-pdf/f990sf.pdf>>.

To assist these charities in understanding how to meet their obligations under the external conduct standards, the ACNC should develop detailed guidance on issues involving cross-border charitable activities. Specific guidance relating to the draft regulations would be useful. For example, clarifying what constitutes ‘reasonable internal control procedures’ for different sized charities under s 50.20(3)(b) and s 50.20(5).

Detailed information could also be provided on the risks associated with operating overseas. The Charities Commission of England and Wales produces a compliance toolkit⁵ containing information on how to manage risks when working internationally. It recently conducted a survey of charities operating abroad to determine if the toolkit was useful.⁶ The majority of respondents found the toolkit particularly helpful in assessing the compliance and operational risks associated with international charitable activities. In response to the survey, the Charity Commission is developing further guidance to complement the toolkit in the form of regulatory alerts and model templates. This work could inform the ACNC in their development of new guidance materials for the sub-sector of charities operating overseas.

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Thank you for the opportunity to submit comments in relation to the draft regulations and explanatory statement for the proposed external conduct standards. I am happy to be contacted to discuss my comments.

Sincerely,



Dr Natalie Silver
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⁵ Charity Commission of England and Wales, *Compliance Toolkit: Protecting Charities from Harm* (September 2013) <<https://www.gov.uk/government/collections/protecting-charities-from-harm-compliance-toolkit>>.

⁶ See Krishna Soni, *Guidance for Charities Working Internationally: You Spoke, We Listened* (Charity Commission of England and Wales (5 September 2018) <https://charitycommission.blog.gov.uk/2018/09/05/guidance-for-charities-working-internationally-you-spoke-we-listened/?utm_source=Bates%20Wells%20Braithwaite&utm_medium=email&utm_campaign=9832180_Briefing%2011.09.18&dm_i=1Y95,5UQK4,LHM1FE,MVPP2,1>.