



Grant Thornton

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Dear Sir/Madam,

PROPOSED EXTERNAL CONDUCT STANDARDS FOR ACNC-REGISTERED CHARITIES

We welcome this opportunity to provide our view on the proposed External Conduct Standards (ECS) for charities registered with the Australian Charities and Not-for-profits Commission. Grant Thornton's global network maintains an open and constructive relationship with national governments, standard-setters and regulators, consistent with our policy of embracing external oversight.

Grant Thornton's response reflects our position as auditors and advisers to the Australian not-for-profit (NFP) sector. This submission has benefited from discussions with our clients and key constituents in the sector.

We acknowledge the importance of the ECS given the stated goal of enhanced transparency of NFP activities outside Australia. We look forward to clear guidance from Treasury and the ACNC in due course on the application of the ECS once they are finalised.

Further comments on the proposed ECS are in the attached appendix. Please contact me should you have any queries regarding our submission.

Yours faithfully
GRANT THORNTON AUSTRALIA LIMITED

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Grant Thornton Australia commentary on proposed External Conduct Standards For ACNC-Registered Charities

In this section, Grant Thornton Australia offers its commentary on the text and explanatory material of the proposed External Conduct Standards (ECS) for charities registered with the Australian Charities and Not-for-profits Commission (ACNC).

Overall commentary

Grant Thornton Australia welcomes the introduction of the ECS given the Government's stated intention of promoting transparency and greater confidence in the not-for-profit (NFP) sector.

We appreciate that the ECS is principles-based and the objects of the ACNC Act include promoting the reduction of unnecessary regulatory obligations on the Australian NFP sector. At the same time, we would welcome clear guidance from Treasury and the ACNC in due course on the application of the ECS once they are finalised. We note the preference of the NFP sector for consistency and clarity in regulations to minimise confusion and red tape with the industry.

We would also welcome guidance on the increased expectations anticipated over larger registered entities and the expected level of assurance required in response to the enhanced record-keeping and reporting requirements of the ECS for auditors.

Whilst keeping in mind the examples of 'reasonable steps' in the explanatory material, we have concerns with the seeming 'one-size-fits-all' nature of some aspects of the ECS in their current form – it appears that larger organisations with reporting obligations to other arms of government will have a significant head start to smaller entities with what could be classed as 'more than incidental' activities overseas.

General feedback from the sector

From discussions we have had with our clients, the major issues that individual registered entities will see in meeting the requirements of the new standards will depend largely on their size and sophistication.

We are aware that many larger entities in the sector are already collecting information applicable to the ECS but are not reporting these benchmarks publicly. Speaking more broadly, it would be reasonable to assume that larger entities preparing information to comply with the Australian Council for International Development (ACFID) and Department of Foreign Affairs and Trade's (DFAT) accreditation requirements will comply relatively easily with the proposed ECS.

On the other hand, smaller registered entities, particularly those with limited record-keeping and reporting requirements to date, will require a greater degree of guidance from the ACNC in terms of their obligations, especially smaller religious charities sending non-financial resources overseas (for instance, containers of canned food or second-hand clothing following a natural disaster).

We acknowledge that in the frequently asked questions (FAQ) documents for these proposed Standards, Treasury notes that 'the ACNC's approach to implementing the standards will be based around education to support charities trying to do the right thing'. Welcoming that the ACNC will continue to work with the sector to ensure compliance within the bounds of reasonableness, the continued understanding of the ACNC for the sector in terms of inadvertent non-compliance with the reporting aspects of the ECS, especially with smaller charities sending resources overseas, will be highly appreciated moving forward.

We would recommend a definition be established on the term 'reasonable' for the purposes of the ECS, based on Subdivision 45-C of the existing *ACNC Regulations*. This would help avoid instances of the term 'reasonable' being interpreted subjectively, influenced by the reader's own background and experience.

Third Party definition

The definition of 'third party' in the Standard seems to capture a broad range of relationships, in that 'arrangements' (as defined in the *Income Tax Assessment Act 1997*) may include those with the Australian or other governments, or with public ancillary funds. The requirements around third parties in this instance may need revision to clarify instances where there are arrangements with public sector entities based in Australia and/or overseas.

We will also appreciate guidance on the extent to which of the ECS will apply to domestic activities and whether other registered entities in Australia are considered 'third parties'.

Incidental operations

We welcome the examples in the explanatory memorandum on incidental overseas activity. However, we will welcome examples in guidance and/or explanatory material regarding cases where activities are considered 'other than incidental'.

One theoretical example that surfaced during our discussions with organisations in the sector was of a small suburban parish with annual revenue of \$100,000 with its sole overseas interaction being the raising of \$5,000 for the construction of a well in a developing country. In cases like this, clear guidance would be welcomed regarding whether the sending of \$5,000 would be considered a non-incidental overseas activity, and the level of reasonable steps required for compliance with all aspects of the ECS.

Comments on each Standard

Standard 1

We acknowledge that the activities and control of resources, including funds, is an essential element of good governance and transparency for NFP entities with overseas links.

Regarding the mentioning of 'reasonable steps' and 'reasonable internal control procedures' in the Standard, we will appreciate clarification in the final regulations or in future guidelines regarding the scalability of the reasonable procedures and steps required for compliance.

Our industry feedback tells us that what is reasonable for a large entity operating in multiple regions is not uniform; reasonable steps in one developing country may not apply in another, and relevant circumstances would need to play a part in any reasonableness test. As an example, a grant may stipulate the purchase of public liability insurance for the use of funds, despite the fact that in some jurisdictions in which larger NFPs operate, there is no public liability insurance regime in place. In this respect, scalability and context in terms of 'reasonable steps' would be welcomed in the final version of the Standards or in the future guidelines.

In terms of the reasonable internal control procedures related to Australian laws, we acknowledge that the extraterritorial application of these pieces of legislation demands they be mentioned in the Standard and procedures be written. Guidance will be welcomed for smaller entities addressing these issues for the first time.

Standard 2

As auditors, we acknowledge the importance of proper record-keeping by NFPs in the interests of transparency.

We note that the criteria for reporting in Standard 2 states that:

The registered entity must obtain and keep records necessary to prepare a summary of its operations and activities outside Australia on a country by country basis (an overseas activities statement) for each financial year during which it:

- (a) operated outside Australia; or

- (b) gave resources (including funds) to third parties outside Australia (**or within Australia for use outside Australia**), **other than resources provided to another registered entity** [our emphasis].

An initial reading of this section suggests that a charity that gives resources to another registered entity, would not be required to keep the records mentioned in the example section of 50.25 (3)(b).

At the same time, however, if the above-mentioned charity is transferring resources to a 'third party' with which it has an 'arrangement', that is operating outside Australia, but is also a registered entity, the charity would be required to provide an annual information statement based on records it does not appear to be required to keep, since its applicable activities are limited to transferring resources to another registered entity.

We would appreciate clarification on the Application sections of each of the Standards, in line with their intended purpose.

We would also appreciate guidance on the depth of record-keeping required for a list of third parties in example (d) of the Standard. That is, whether this would extend to contractors used by partner organisations overseas, or only the partner organisations to whom resources are transferred.

Our feedback notes that for those charities with multiple third party partners outside Australia, this may become a significant reporting issue. As an example, where a registered entity provides funding to a third party in a developing country, the requirements surrounding the screening of any subcontractors or partnering agencies of that third party is currently ambiguous. The third party may have a list of those entities, but even larger organisations in Australia would find such a task challenging.

Discussions with the sector also note that the new record-keeping requirements noted in the examples section of the Standard seem to create future scope for the mandatory public reporting of what could be information of an extremely sensitive nature. We would appreciate clarity in future guidance on reporting and confidentiality guidelines for these matters.

Standard 3

We acknowledge the importance of this Standard and its similarity to Governance Standard 5 in the existing Regulations.

Clarity of the definition of a 'material conflict of interest', would also be appreciated as to whether the definition in the ECS should be taken as that in Governance Standard 5.

The expansion of the conflict of interest provision to volunteers has been of some concern to our clients in the sector – if the definition of a 'material conflict of interest' goes beyond that of Governance Standard 5, our feedback suggests that there will be some difficulty in screening volunteers in more remote locations and disaster zones.

Standard 4

We acknowledge the importance of this Standard, especially given recent developments in Australia and overseas.

It is beyond the scope of our submission to comment on the specifics of this Standard, though our clients have expressed concern with the wide-ranging language in the text as it currently stands. Many larger organisations in the sector will have procedures including whistle-blower policies in place to report cases in breach of this Standard, though smaller charities may require more scalable criteria to fully comply.