

The Treasury
Langdon Crescent
PARKES ACT 2600

Email: ExternalConductStandards@treasury.gov.au

20 September 2018

Dear Sirs

Australian Charities External Conduct Standards

We refer 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.

Saward Dawson is a multi-discipline Chartered Accounting firm committed to serving the Not-for-profit sector and in particular Charities. We work with hundreds of these entities each year providing accounting, assurance, taxation and other advisory services. We actively represent the sector through various channels including involvement and input into the Chartered Accountants Australia and New Zealand (CA ANZ), Australian Audit Standard Board, the Australian Accounting Standards Board and the Australian Charities and Not-For-profits Commission (ACNC) through the Professional User Group.

Our comments and recommendations regarding the legislative review are provided in this submission.

Please do not hesitate to contact us should you wish to discuss further any matters arising from this submission.

Yours Sincerely



P Shields
Partner



J Tulk
Partner

Specific Comments

Application

We understand that all charities that operate outside Australia, or work with third parties that operate outside Australia, must comply with the external conduct standards (ECS) in order to be registered (and remain registered) as a charity.

We are concerned that no threshold has been included in the provisions. We believe the draft requirements are overly onerous for many organisations where small amounts are provided to overseas activities and will likely discourage the continuation of support for these activities as the compliance cost will outweigh the support provided.

We believe there should be either a threshold based on material or significant operations or activities (principals based) or a clear deemed significant threshold, for example aligned to AUSTRAC thresholds, where only amounts of \$10,000 or more to a particular overseas entity or country must comply with the detailed requirements. We believe the 'incidental' examples set the threshold at an unrealistically low level and will result in a substantial increase in red tape to a number of organisations.

Scope

During the roundtable discussion held in Melbourne, a number of concerns were raised in relation to what extent the provisions would apply. In particular it appears the regulations apply where funding is provided via another Australian Charity, via an overseas parent entity or affiliate or through a partner organisation who then utilises other partners or suppliers.

We believe that the Standards should:

- Specifically exclude any requirement where funding is provided through another Australian Charity as this will result in duplication of requirements.
- Limit the requirements to organisations where direct funding is provided, as imposing requirements through multiple layers of a supply chain is excessively onerous, and in many cases not achievable.
- Exclude purchase of goods into Australia (per example 2) as imposing such regulation on Australian Charities is disproportionate when compared to the requirement of other not-for-profit organisations, for profit trading entities and individuals.

Principles based

Although the proposed conduct standards are described as principles based, the interpretation of 'reasonable steps' and the level of documentation required annually on a country by country basis appears to contradict the requirement for a risk based approach. For example a rotating review over 3 years may be considered appropriate by some organisations for lower risk activities or countries but the standards require an annual review.

We are concerned that many organisations who seek to work with local staff in a community lead or grass roots way will have great difficulty obtaining or developing and implementing the documentation being prescribed. Often such documentation would not be in English and would not be of the standard anticipated under the standards which are based on Australian Laws.

We believe specific examples should be provided on how the principles can be proportionately applied to for organisations such as:

- i. A basic religious charity supporting a missionary effort based on long personal relationships with those individuals.
- ii. Small scale activities (e.g. micro loans) to illiterate local women who cannot read or speak English through a local small scale partnership model.
- iii. Organisation supporting small scale start up social ventures and organisations that are in the early stages of development.
- iv. Organisations operating in countries where 'facilitation payments' are common and standard practice in that economy but would be considered 'bribes' or 'kick backs' in the Australian context.

It is our experience that the level of information requested by the ACNC for applications for new charities to be onerous and requires significant resources to satisfy the ACNC. Refer to the attached "ACNC supplementary registration questionnaire". We are concerned the proposed standards will significantly increase red tape and compliance costs for many thousands of Charities.

Reporting

We are aware of many organisations that operate in parts of the world where conflict, corruption and discrimination occur. Public disclosure of the countries in which these organisations operate could result in significant issues for such organisations.

Accordingly we believe that all reporting under these conduct standards other than generic statements of application and compliance should by default not be available on the public record.

ACNC supplementary registration questionnaire

Overseas operations

You indicated in the application that the organisation is operating, or intends to operate, overseas. Operating overseas can expose charities to significant risks. For this reason, we need to ask for more details of the organisation's overseas activities and related governance. Please complete this questionnaire and return it to us at registration@acnc.gov.au.

Applicant organisation name:

Applicant organisation ABN:

Question 1: Does the organisation undertake, or intend to undertake within the next two years, any of the following:

Important: Check the 'Yes' box for each of the applicable activities below and then complete the corresponding questions in the rest of the questionnaire.

Activity	Yes (check)	Instruction
a) Sending money overseas	<input type="checkbox"/>	If 'yes', please complete question 2
b) Sending other assets overseas (e.g. supplies, equipment)	<input type="checkbox"/>	If 'yes', please complete question 3
c) Conducting activities overseas (e.g. providing medical assistance, building housing, running education programmes)	<input type="checkbox"/>	If 'yes', please complete question 4
d) Other projects overseas (e.g. sponsoring a child overseas, supporting another Australia-based charity's project overseas)	<input type="checkbox"/>	If 'yes', please provide details in the text field below <input type="text" value="Click or tap here to enter text."/>





- e) Working with a local partner overseas If 'yes', please complete question 5
- f) Working with vulnerable beneficiaries (e.g. children or other individuals who may be unable to take care of themselves, or may be unable to protect themselves against harm or exploitation because of age, illness, language, culture or disability) If 'yes', please complete question 6
- g) No activities of any kind overseas If 'yes', you do not need to complete the rest of this questionnaire. Please return it to us at registration@acnc.gov.au and include the organisation's ABN and the phrase 'overseas activities' in the email.

Question 2: Sending money overseas

- (a) How much money do you estimate that the organisation will send overseas in the next two financial years?

Click or tap here to enter text.

- (b) How does or will the organisation send money overseas?

Choose an item.

If your answer was 'Other', please describe how the money is transferred:


Click or tap here to enter text.

- (c) To whom is the money sent?

Choose an item.

If your answer was 'Another person or organisation', please provide further details.

Click or tap here to enter text.

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- (d) Describe how the organisation checks that the funds sent overseas are used only for charitable purposes.

Click or tap here to enter text.

Question 3: Sending other assets overseas

- (a) What is the approximate value of other assets (e.g. tools and equipment, educational resources, medical supplies) that the organisation estimates it will send overseas in the next two financial years?

Click or tap here to enter text.

- (b) Please describe the assets being sent.

Click or tap here to enter text.

- (c) Please describe how the organisation checks that the assets sent overseas are used only for charitable purposes.

Click or tap here to enter text.

Question 4: Overseas activities

- (a) Please describe the current or proposed overseas activities.

Click or tap here to enter text.

- (b) Please describe how the organisation ensures that its Responsible Persons appropriately identify, plan and approve the overseas activities.

Click or tap here to enter text.

- (c) Please describe how the organisation ensures that its Responsible Persons monitor the progress and outcomes of the overseas activities.

Click or tap here to enter text.

- (d) What permissions, if any, have been sought from relevant government bodies in each country to undertake the projects and activities (e.g. approvals to build a school or operate an orphanage)?



Click or tap here to enter text.

- (e) Certain overseas countries are subject to [sanctions](#). If applicable, has the organisation gained the necessary permits from the Department of Foreign Affairs and Trade (DFAT) to operate in these countries? For more information please visit the DFAT website.

Yes

No

- (f) You may attach other relevant supporting documents that will assist us understand the way the organisation governs its overseas activities (e.g. strategic plans, risk assessments, annual reports). This is optional.

Question 5: Knowing partners

- (a) Please provide details of how the organisation ensures its Responsible Persons:
- i. choose appropriate partners to work with overseas, and
 - ii. verify the proposed partners' reputations and capabilities.

Click or tap here to enter text.

- (b) Please provide the names of the main overseas partners that the organisation intends to work with overseas.

Click or tap here to enter text.

- (c) Please attach copies of any documents that set out the partners' agreed roles and responsibilities (e.g. contracts, memorandums of understanding, partnership agreements or exchange of letters).

Question 6: Vulnerable beneficiaries

If the organisation's activities relate to children or vulnerable adults, please describe the procedures it has in place to promote their protection and safe practices (e.g. police checks, processes for staff and volunteers to identify, report and respond to abuse).

Click or tap here to enter text.

This request for information is made under section 30-15(1) of the ACNC Act. In providing information to the ACNC, please be aware that providing false or misleading information is a serious offence. Penalties may be imposed.