



**Submission to the Philanthropy and Exemptions Unit the Treasury
on**

Governance Reporting Consultation paper

December 2011

ACFID

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Introduction

The Australian Council for International Development (ACFID) is the peak body for the Australian not-for-profit international aid agencies working for the eradication of poverty through international development co-operation.

ACFID has over seventy member agencies that operate in over one hundred developing countries worldwide. We provide this submission in order to represent the interests of our sector and for those Australians who donate over \$850 million each year to support the work of our members

Since 1997 ACFID has had a Code of Conduct to which our members and some fifty other agencies are signatories. The Code is a voluntary, self-regulatory sector code of good practice that aims to improve international development outcomes and increase stakeholder trust by enhancing the transparency and accountability of signatory organisations.

The Code sets out standards in the three areas of accountability:

Program Principles – including Obligations for effectiveness in aid and development activities, human rights and working with partner agencies.

Public engagement – including Obligations on the signatory organisation to be ethical and transparent in marketing, fundraising and reporting.

Organisation – including Obligations for governance, management, financial controls, treatment of staff and volunteers, complaints handling processes and compliance with legal requirements.

ACFID welcomes this opportunity to provide feedback to the Government on this important initiative.

Summary

ACFID is supportive of the establishment of the ACNC and what it promises for the community sector. Having had our own voluntary Code for the last fourteen years, we have demonstrated our belief in more transparent and accountable governance by requiring our members to undertake significant additional processes and practices.

Given this, special consideration is requested for ACFID Code of Conduct signatories that will signal the benefits of self- regulation to the sector more widely, reduce duplication for our signatories and reward good practice. In instances where the ACFID Code meets or exceeds ACNC requirements ACFID requests that:

Exemption is provided for ACFID Code of Conduct signatories from some requirements in the legislation and the duplication of processes which may occur during the transition period between state and Commonwealth regulation of NFP's; and

Additional governance and reporting requirements are requested of non-Code signatories operating in the overseas aid and development space in areas of increased vulnerability for overseas aid and development organisation e.g. control of funds and resources.

Please find at **Attachment A** an excerpt from page 211 of the Independent Review of Aid Effectiveness (April 2011) which summarises the governance structure, content and compliance mechanisms of the ACFID Code of Conduct and the full Code at **Attachment B**. A detailed Implementation Guidance is provided to members to assist them to implement the Code. It is at **Attachment C**.

Response in detail

- 1 Responsible persons are charged with implementing the organisation's vision, mission and values and the responsibilities as per the requirements of their governing instrument. This mission and vision is for some type of public good.
- 2 However, the ACFID Code of Conduct (ACC) Principle B.1.1 clearly states a preference for the beneficiary. "Signatory organisations will ensure that their purpose and processes are shaped by stakeholders and their work is open to review and comment by partners and participants alike. In all instances those directly affected by aid and development activities are considered the primary stakeholders and their views accorded the highest priority".
- 3 Core duties should be set out in the governing instrument and based on either the model rules requirements or those of ASIC.
- 4 No distinction should be made or different approach taken whether the governors are "professional" or "lay" and the definitions of each are not described in the paper making this difficult to comment on. There appears to be an assumption that more educated people will make better governors than those who are not (see question 5). There is no evidence to support such a claim in fact quite the contrary. The number of corporates (e.g. Centro) who have breached the Corporations Act indicates that qualifications are not a guarantee of ethical or fiscally responsible behaviour.
- 5 See above.
- 6 See above
- 7 Standardising the duties across different entity types appears to make sense.
- 8 Most NFP Board members are voluntary. No additional considerations are required. Most are aware that their legal responsibilities are the same as if they were serving on a paid board.
- 9 All NFP are at risk of fraud, misconduct and abuse by terrorists. ACC has extensive requirements for signatories regarding all these issues (see Section D.2 Integrity and Ethics; Section D.3 Governance; Section D.4 Financial Management and Principle B.2.3 Control of funds and resources, which specifically addresses the Anti- terrorist legislation).

Organisations that deliver overseas aid that are not signatories to the ACC should be required to undertake additional requirements in this area. Existing signatories to the ACC should not be required to undertake further risk management due to their significant efforts in this area.

- 10 The Corporations Act as it is the most recently updated.
- 11 Disclosure requirements agreed on by ACFID members includes:
 - 1-11)1. Having governing instrument readily available (Obligation D.3.1.2)
 - 1-11)2. Publishing an annual report with financial and narrative requirements identified (Principle C.2.1)
 - 1-11)3. Public contact point for any fraud or complaints about the organisation – one internal and one external (Obligation D.2.3.2)
- 12 ACC states that any remuneration for governors should be agreed on by members at an AGM Obligation (D.3.4.3)
- 13 ACC defines conflict of interest as “real or perceived” (Principle D.2.4) and it covers members of the governing body as well as staff, volunteers and partners. The criteria suggested by Treasury do not refer to acceptance of gifts and this should be included. (Obligation D.2.4.1c)
- 14 Material personal interest is suggested. It would be difficult for the legislation to be more specific.
- 15 As above.
- 16 Organisations should be required to ensure that they are meeting legal obligations of jurisdictions in which they work (Principle D.2.1) by having compliance monitoring systems in place.
- 17 Many community board members are unaware of the risks they are subject to by being on a board. Having insurance requirements included as a mandatory aspect of the legislation may cause financial hardship to some organisations. However, the risks of not being adequately insured are high.
- 18 No comment
- 19 The organisation should cover all types of insurance required by the Board.
- 20 ACC requires an audited financial report from all organisations regardless of their size and their tax status. (Principle D.4.2)
- 21 The ACC requires organisations to include in their governing instrument the following Obligations contained in Principle D.3.1:
 - 1-21)1. Goals and purpose of the organisation
 - 1-21)2. Membership and its rights and obligations
 - 1-21)3. Governance structure and processes
 - 1-21)4. Frequency and process of members meetings (min one annually)

- 1-21)5. Method of appointment/election and termination of governors/basis for remuneration (if applicable)
 - 1-21)6. Number of meetings of governing body (min 2 per year)
 - 1-21)7. Powers and responsibilities of the governing body
 - 1-21)8. Strategic control (approve business plan, appoint CEO)
 - 1-21)9. Financial control
 - 1-21)10. Delegation
- 22 Rules are currently mandated by ASIC and states so role of ACNC to do similar – in the creation of model rules - is assumed.
- 23 Members enforce the rules through knowledge of them and changing their constitutions to reflect changes in their environment.
- 24 More detail is required to answer this question.
- 25 As above (22)
- 26 See 21
- 27 See 21
- 28 See 21
- 29 The aid and development sector is self- regulated via the ACC. Organisations that are providing overseas aid and development and that are not Code signatories should be required to publish an annual report with financial statements and a list of board of governors as a minimum. The signatories to the ACC should be recognised formally within the ACC as having higher standards of governance and transparency and be accorded special status as a result.
- 30 It is essential that the portal work seamlessly for NFP and that existing organisations are not required to register with the ACNC in the transition period while states relinquish their role in regulating associations. It is not clear when states will come on board with the ANCP. ACFID requests special consideration for Code signatories during this time.
- 31 No comment
- 32 This is out of our area of expertise.
- 33 No

