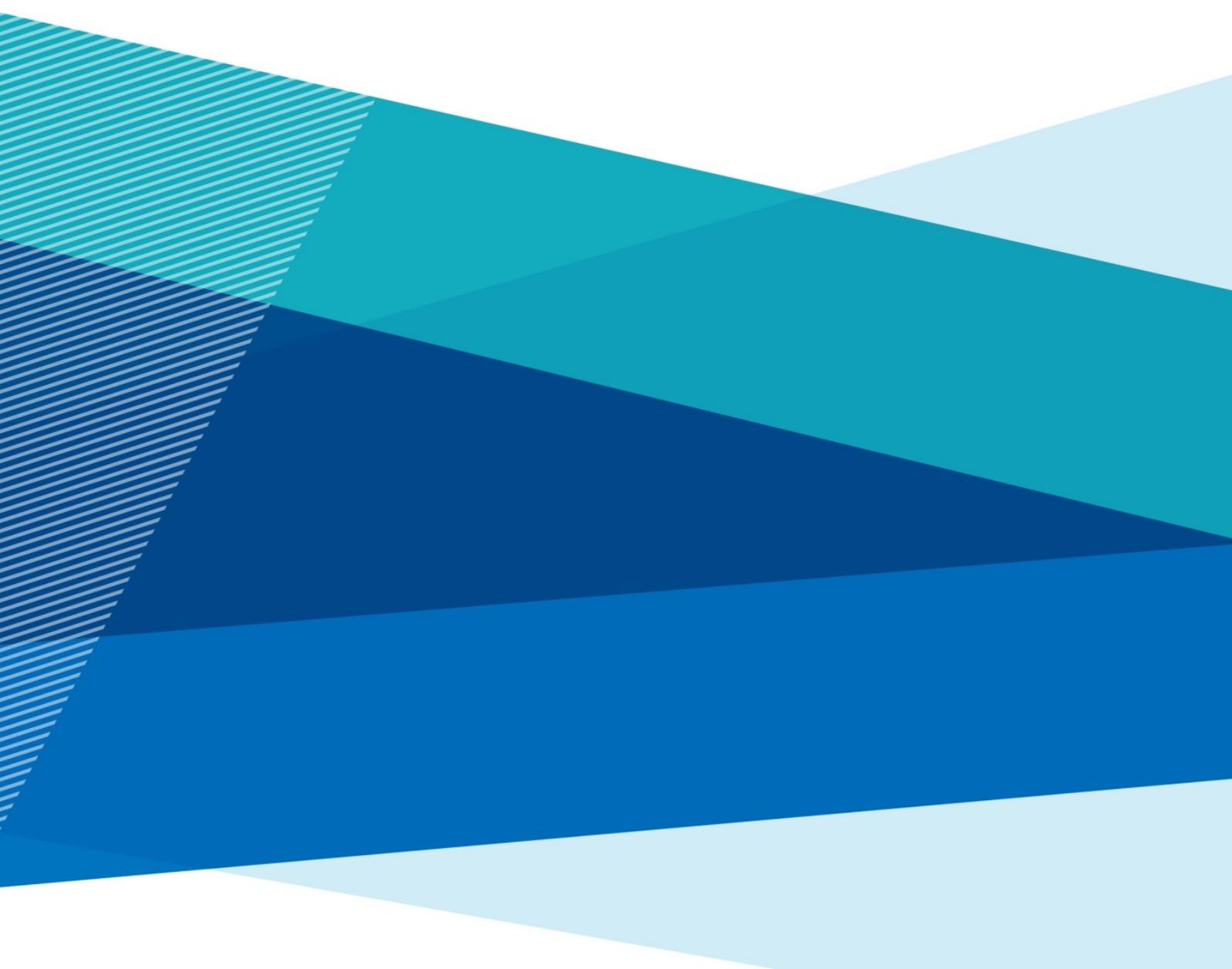




Australian Government
The Treasury

TSY/AU

External Conduct Standards FAQs



What are the external conduct standards?

To strengthen oversight of Australian charities operating overseas, the Government will make regulations under the *Australian Charities and Not-for-profits Commission Act 2012*, introducing external conduct standards. The external conduct standards will be administered by the Australian Charities and Not-for-profits Commission (ACNC), Australia's national charities regulator.

The external conduct standards set minimum standards for conduct, governance and behaviour that ACNC-registered charities must comply with when operating outside Australia or when partnering with others to operate outside Australia. They require those charities to put in place governance processes necessary to mitigate key risks.

Why is the Government doing this?

To ensure the valuable funds and resources of Australian charities, donated by everyday Australians, are being used to genuinely further their important charitable purposes, and are not being used by terrorists or supporting activities that are illegal under Australian law. It is also to ensure vulnerable individuals are protected.

The external conduct standards also give effect to a range of international obligations to which Australia is a party.

Who do the external conduct standards apply to?

All entities registered with the ACNC, including basic religious charities, that fund or have overseas activities will have to comply with the new standards.

When do the external conduct standards apply?

The Government is aiming to have the regulations introducing the standards made this year and operational by 1 July 2019.

This will give charities time to ensure their current systems comply with the new standards. The ACNC will begin to collect some additional information from charities' compliance with the new standards as part of the 2019-20 annual information statement which is due in the 2020-21 financial year. Reporting to the ACNC on overseas activities may be required for reporting periods commencing on or after 1 July 2019.

What is Treasury's role vis-à-vis the ACNC?

Treasury and the ACNC are joint stewards, delivering advice to government on policy issues affecting the regulation of Australia's not-for-profit sector and the administration of that policy. Treasury and the ACNC are committed to working collaboratively and continuously to provide the best possible advice to Government in order to maintain, protect and enhance public trust and confidence in the not-for-profit sector.

Treasury is a central policy agency and expected to anticipate and analyse policy issues with a whole-of-economy perspective, understand government and stakeholder circumstances and respond to

changing events and directions. Treasury is also responsible for developing the laws needed to give effect to Government policy.

The ACNC is the Government's national regulator for not-for-profit entities seeking access to Commonwealth exemptions, benefits and concessions. The ACNC administers the *Australian Charities and Not-for-profits Commission Act 2012* and its supporting regulations, which will include the new external conduct standards. The ACNC works closely with the Treasury as it designs new laws.

Further information on the working relationship between the Treasury and the ACNC is contained in the *Protocol between Treasury and the ACNC* which is available on the ACNC website.

What is the level of detail of the external conduct standards?

Consistent with the ACNC governance standards introduced in 2013, Treasury has developed external conduct standards that are principles-based and set the minimum acceptable standards of conduct, governance and behaviour. The Government's policy is not to set detailed or prescriptive rules, but to instead set general principles which will allow individual charities flexibility in how they should be given effect to in their particular circumstances. We do not want the standards to discourage innovation or the good work of charities. But rather to ensure that reasonable risk management and governance processes are in place in Australian charities.

The ACNC will develop guidance materials to support charities to comply with the standards. This material will assist charities in considering how to comply with the standards given their particular circumstances and should cover what the ACNC is likely to ask for as part of the annual information statement. The standards envisage that reasonableness will guide its practical application. Factors such as the size of the charity, the scale and risk of the overseas activity, and the resources that are dedicated to overseas purposes are all to be taken into account when working out what system is appropriate for a particular charity.

Will the external conduct standards replace other regulations or standards?

No. To most effectively achieve the intent of the standards and minimise any additional regulatory burden, Treasury has developed minimum standards that ACNC-registered charities must comply with when operating outside Australia.

Charities that are subject to other existing regulations which may have a higher level of oversight and therefore a higher regulatory burden will still need to satisfy the other existing regulatory criteria. However, it is expected that those charities already meeting the higher level of oversight will need to do very little extra to meet the new external conduct standards.

Are the external conduct standards identical to the ACNC's existing governance standards?

The external conduct standards are consistent with the structure and broad intent of the existing ACNC governance standards. However, the external conduct standards have been refined to reflect that their focus is on the overseas activities of all Australian based charities. For this reason, some overlap is required to ensure they have their intended effect.

Will the ACNC ask for sensitive information to be reported if it could put someone in danger if made public?

No, personal safety is of paramount importance. It is envisaged that the ACNC's current practice of withholding information from the register will apply in relevant circumstances where the entity applies for the information to be withheld.

What happens if a charity breaches one or more of the external conduct Standards?

The foundation of the ACNC's regulatory approach is an understanding of charities. Charities exist to benefit the public and they contribute to our society in vital ways, including addressing disadvantage and strengthening the fabric of our communities and environment.

The public provides significant support to charities through donations of time, skills and money. The ACNC recognises that the purposes, activities, needs and the sources of funding of charities will change over time as charities reflect and shape changes in society. The ACNC knows that charities want to spend their resources on their mission, not on regulation.

Charities enjoy, and rely upon, the trust and confidence of the public. This trust is essential in attracting and maintaining funding, volunteers, and staff. The ACNC believes that transparency and accountability promotes that trust. The ACNC also recognises that the misconduct of a few can endanger confidence in others, and will act swiftly and firmly where necessary to protect trust in the sector.

The ACNC's *Regulatory Approach Statement* is available on its website.

The ACNC's approach to implementing the standards will be based around education to support charities trying to do the right thing. The ACNC will provide guidance to charities to ensure that their systems and processes are proportionate to their risk for the management of overseas activity.

However, for those engaging in intentional misconduct that would breach, or likely to breach, the external conduct standards, the ACNC will have available to it its broader enforcement powers, including deregistering the charity, issuing directions to the charity, entering into enforceable undertakings or removing or suspending its responsible persons.

Will Treasury and the ACNC be working together to finalise the External Conduct Standards?

Yes. Treasury and the ACNC are collaborating to ensure the standards are fit-for-purpose. We encourage the public and the sector to engage with us during the public consultation period. We are intending to hold meetings over the coming weeks to hear views on the standards.

What are the next steps?

After 21 September 2018 when the public consultation period ends, Treasury will review and consider the submissions and feedback from stakeholders. After careful consideration, amendments may be made to ensure the regulations satisfy their intended purpose and minimise the regulatory burden on charities. We will endeavour to keep the sector updated on key amendments and milestones. We intend to finalise the regulations and explanatory materials by the end of the year to

give charities time to ensure their governance and risk management systems are in place ahead of the commencement date of 1 July 2019.