Code of Conduct Review Consultation Phase, Summary of Propositions

December 2022

Contents

Executive Summary

This paper summarises feedback and propositions from the Consultation Phase of the ACFID Code Review 2022-23. Based on feedback from ACFID members and stakeholders, the Review is to consider whether the Code - and its associated Quality Assurance Framework – remain relevant, coherent, useful, and credible to members and external stakeholders.

During the Consultation Phase, members strongly affirmed that the Code continues to reflect current understanding of good practice. There was not demand for substantive change.

However,

1. Members describe the legal and regulatory environment within which they operate as complex and administratively burdensome. They propose simplification within the Code, and increased alignment between the Code and other standards and regulations (most particularly with DFAT Accreditation).

2. Members identify that some of the voluntary choices made for self-regulation within the Code, can be inappropriate or infeasible to pass through to partners as currently described, and counter to sector priorities for localisation and decolonisation.

3. Members endorsed the identified 'emerging issues' as those currently most critical to the sector, as relevant to their specific organisations, and for them to be made explicit within the Code, but in varied ways.

   - Climate Change
   - Locally-led Development/Humanitarian Action
   - Anti-Racism, Racial Justice and Diversity

Summary of Propositions

These recommendations summarise key propositions emerging from the ACFID Code Review Consultation Phase.

Recommendation 1 (Section1, B): Revise the Code's drafting to clarify, simplify and reduce duplication, recognising that increased consistency on even relatively small areas assists in reducing the overall compliance burden

- Consolidate compliance indicators or verifiers that appear in multiple places within the Code (i.e. remove duplication, cross-reference where required).
- Clarify definitions and ensure consistent usage of terms

Recommendation 2 (Section 1, D): Increase alignment with external standards and regulations to reduce complexity and the administrative load:

- in line with the following principles, and
- recognising that increased consistency on even relatively small areas assists in reducing the overall compliance burden.

a. Review all Code compliance indicators or verifiers that are similarly required by external regulators of <u>all</u> ACFID members, to either:

   a. Remove the requirement for a separate indicator or verifier; or
   b. Explicitly cross-reference these requirements in the Code, accepting wherever possible that these are verified by compliance with the external standard.

b. Align the Code to external regulation where:

   a. The regulation is well-established, *and*
   b. The Code already substantially meets or aligns with the regulation.

c. Consider Code changes where increased alignment can meet multiple external regulatory requirements (e.g. DFAT Accreditation and ACNC).

d. While dependent also on the forthcoming review of DFAT Accreditation, consider Code changes where increased alignment to DFAT requirements may reduce overall compliance burden:

   i. Where DFAT may increase its recognition of ACFID Code status, seek to align with DFAT Accreditation requirements

      ii.   In areas such where DFAT is unlikely to increase its recognition of ACFID Code status, only increase alignment of the Code where not creating additional or expanded burden on members

  e. Application of this principle (d) must explicitly consider that more than half of Code signatories do not participate in ANCP.

  f. Make explicit within the Code and/or associated documents where requirements derive from or interact with external standards or regulations.

Recommendation 3 (Section 1, C): Revise the Code to explicitly integrate the contents of the Statement of Interpretation (as approved by the Code of Conduct Committee and the ACFID Board in 2021).

Recommendation 4 (Section 2): Where the Code needs to be refined to address emerging issues – e.g. climate change; locally-led development; diversity, anti-racism and racial justice – where possible, do so through existing quality principles and commitments.

Recommendation 5 (Section 2, Climate Change):

  a. Incorporate specific mention of climate change in *Commitment 3.3* on environmental stewardship and sustainability

  b. Consider mention of climate change in *Commitment 4.2* on contextual analysis as a factor impacting programming

  c. Include a good practice indictor relevant to ESG/ESCC/carbon reporting in *Commitment 8.3* on organisational reporting

Recommendation 6 (Section 2, Locally-led Development/Humanitarian Action):

  a. Significantly reframe *Quality Principle 2: Participation, Empowerment and Local Ownership* to place the focus on local actors' power and role rather than that of the member.

  b. Revise the Commitments, Indicators and Verifiers, particularly under *Quality Principles 2* and *3* to reflect this reframing, e.g., emphasis on locally-led design

  c. Review which requirements are mandatorily cascaded to implementing partners, and how

Recommendation 7 (Section 2, Anti-Racism, Racial Justice, and Diversity):

  a. Add a new commitment under *Quality Principle 1: Rights, Protection and Inclusion* which commits members to anti-racism and/or racial justice

  b. Add indicators under *Quality Principle 7: Governance* about diversity and representation on governing bodies and public reporting on diversity and representation on governing bodies.

  c. Add indicators under *Quality Principle 9: People and Culture* about diversity and representation in staffing (including executive leadership) and public reporting on diversity and representation on staffing (including executive leadership)

  d. Add a good practice indicator(s) of evidence-based interventions that can reduce racial discrimination and bias.

ACFID Code Review Consultation Phase - Background, Scope and Approach

The ACFID Code of Conduct is owned by ACFID members, and its Purpose reflects their commitment to "improve international development and humanitarian action outcomes and increase stakeholder trust by enhancing [their] transparency, accountability and effectiveness."

The Code's Objectives are:

1. To enable high standards of practice by ACFID's members.
2. To provide assurance to the stakeholders of ACFID's members.
3. To enable self-regulation and influence external regulation of the sector.
4. To champion standards of good practice for a broad range of development organisations

The Code is structured within nine high level Quality Principles. Each Quality Principle has a set of Commitments; the behaviours that apply directly to ACFID's members, and to which members commit. Each Commitment has associated Compliance Indicators. Good Practice Indicators describe a higher standard of practice than set out by the Compliant Indicators; these can be aspirational and provide a pathway for continual improvement overtime. The Compliance Indicators, Good Practice Indicators, and associated definitions and templates form a Quality Assurance Framework, that is separate from but linked to the Code. Implementation is further supported by the Good Practice Toolkit, with additional examples, tools, templates and resources.

The Code must be relevant and reflect the broad diversity of development and humanitarian organisations working in the sector.

The Code is periodically reviewed to ensure it continues to reflect good practice and the needs of ACFID and its members. The last major review was undertaken in 2015-16. Since then, new requirements have been introduced for the prevention of sexual exploitation, abuse and harassment (PSEAH), and changes to the Quality Assurance Framework came into effect in December 2019.

Based on the feedback from ACFID members and stakeholders, the 2022-23 Review has been scoped to consider whether the Code and the associated Quality Assurance Framework remain relevant, coherent, useful and credible to members and external stakeholders.

Design Principles for this Review include:

- Changes to the Code of Conduct or Quality Assurance Framework will be undertaken on the grounds of necessity, not convenience, keeping in mind the impact of changes on members' compliance requirements;
- The overall architecture and structure of the Code and Quality Assurance Framework shall be maintained; and
- The triennial compliance assessment and reporting cycle shall be maintained.

The ACFID Code Review Consultation Phase (September-October 2022) was organised around a Discussion Paper prepared by ACFID (Appendix A summarises the paper's structure and key questions). Three key mechanisms were available for input from members and other stakeholders:

1. Consultations – both online and in-person
2. Online Survey
3. Written submissions

See [Appendix B](#) for a breakdown of participation by consultation type.

ACFID engaged consulting support from The Social Economy Group for this Consultation Phase of the project.

Project Phases

The next steps of the ACFID Code Review include:

- <u>Design and Drafting Phase</u> (December 2022 – June 2023)
    - Present propositions and consult with member agencies through face to face workshops in
    - Melbourne and Sydney and on-line (end February)
    - Review all feedback in consultation with Code of Conduct review reference group and
    - prepare updated draft changes as required (March)

- <u>Decision making phase (May 2023 – November 2023)</u>
    - Discuss the proposed changes to the Code and QAF with Code of Conduct review reference group. (April)
    - Discuss and approve revised changes to the ACFID Code and QAF (CCC in May and Board in June) NB: If required, this could be shifted to Aug/Sept CCC and Board meetings.
    - Circulate proposed changes to the ACFID Code to member agencies in the AGM papers (September/October 2023)
    - Ratify any changes to ACFID Code at Council (November 2023)

- <u>Implementation phase</u> (December 2023 onwards):
    - Reflect approved changes to Code and QAF in on-line and printed versions (Dec 2023).
    - Presentations to members in February 2024
    - Any updates to the Code and QAF come into effect on 30 June 2024

It is noted that not all recommendations being made are of equivalent size or complexity. The next project phases will need to be flexible, to provide requisite opportunity for communication and sensemaking on areas of greatest significance, or where there may be greatest diversity of current or anticipated practice.

It has also been noted that where changes are made, it is important that documentation is retained to articulate the rationale for change; that this can be referenced in future Code reviews, or at times when the context the Code operates with further changes (e.g. at times when changes are made to other laws, regulations, or standards referenced by the Code).

Summary of Feedback

This Summary encompasses:
- Context and framing from the Discussion Paper
- Key findings and feedback from members
- Key recommendations

Where consultation participants have provided more granular feedback on individual commitments, indicators, verifiers, or good practice, these have been collated separately for ACFID, to be utilised in the next phase of the Code Review, where specific drafting changes will be proposed.

Section 1: General Questions

A. Responsive and reflection good practice

A key objective of the Review is to ensure the Code remains relevant in light of changing roles and practices of ANGOs.

There was strong member affirmation that the Code continues to reflect current understanding of good practice. Feedback focused more on *how* the Code establishes and assesses good practice rather than suggesting that the Code did not, overall, reflect good practice.

Suggestions for change under this section included:

- Review compliance indicators and verifiers required to be extended to partners, with some seen as:
  - Inappropriate or infeasible, and/or
  - Inhibiting of localisation and decolonisation.
- Review the Code to ensure ongoing space for organisational decision-making, flexibility, and innovation in approaches to meeting commitments. Some commitments or verifiers are seen too prescriptive, inflexible or over-stepping.
- Retain explicit 'carve outs' of sections that are not applicable to all members.
- Consider tiered or differentiated Code compliance – similar to DFAT Accreditation – to ease compliance burden on smaller members. This is linked to a more explicit explanation of, "commensurate with their size and the nature of [members] work".
- Consider expanding the Code's concept of 'systemic change' beyond implementing projects, to encompass the change needed from NGOs or in our operating context.

Members offered both caution and guidance relating to the purpose and perception of the Code.

- Ensure the Code's ambition isn't limited to a 'minimum standard' of what is feasible for the smallest members.
- The Code must not become a box-ticking exercise. The Code must continue to evolve, and be co-created rather than a form of control. It must offer a learning pathway and lead change in some spaces.

B. Coherence and useability

As a self-regulatory sector code of good practice it is important that the language and requirements in the Code are clear, accessible and meet the needs of all ACFID members.

Generally, members thought the Code was manageable and the resources and guidance were suitable. However, opportunities were identified to make the Code more coherent and useable:

- Ensure key terms are well defined and used consistently throughout the Code.
- Consolidate Code publications and resources, including: The Quick Guide, The Practitioners' Handbook, The Code Committee's Statement of Interpretation, The Quality Assurance Framework, and The Good Practice Guide (currently web-based only)
- Ensure ease of accessibility, including:
  o Ensure downloadable and online versions for all content.
  o Consider font size, colours, and accessibility for e-readers.
- Remove duplicate or overlapping verifiers within the Code while retaining the overall Code architecture.
  o This would assist in reducing work effort by consolidating/cross-referencing between verifiers.
- Reduce requests for information already provided and accessible elsewhere (e.g. ACNC and principle of 'report once, use often').
- Consider differentiating between commitments to be evidenced/self-verified at time of initial application for membership, and requirements for subsequent ongoing/periodic self-assessment.
- Adopt a risk-based approach; a degree of risk is inherent in ACFID members' activities, and a realistic appetite for risk is required rather than risk avoidance.
- Further enable sharing, accessing, and celebrating good practice

Some members noted that much of the compliance burden experienced can arise from administrative or assessment processes, rather than the principles, commitments, indicators, and verifiers within the Code itself. They suggested ongoing effort to streamline the compliance processes such as considering the appropriateness of current word counts and access to an index for the Code where a matter is dealt with across the Code (e.g., PSEAH, risk).

Across the membership, concern was frequently expressed about the impact of compliance requirements on in-country partners (whether local partners or country offices of international organisations). Concerns included constraints on members ability to innovate and be flexible with in-country partners, the inhibiting of localisation and decolonisation (see Section 2F below), and stated requirements that are inappropriate, infeasible, or unsafe in other contexts. Specific examples were cited, including from across commitments 1.4, 1.5 and 7.3.

Smaller members felt the burden of compliance was greatest on them. The language in the code of 'commensurate with their size and nature of their work' was perceived as insufficiently specific, and subjective. While there are 'carve-outs' for specific issues that may not be relevant to all members, overall, compliance indicators and verifiers are not clearly graduated based on size.

We recommend the following:

Recommendation 1 (Section1, B): Revise the Code's drafting to clarify, simplify and reduce duplication, recognising that increased consistency on even relatively small areas assists in reducing the overall compliance burden
- Consolidate compliance indicators or verifiers that appear in multiple places within the Code (i.e. remove duplication, cross-reference where required).
- Clarify definitions and ensure consistent usage of terms

C. Upholding Code signatory status

The design principles of this Review affirmed that the triennial assessment and reporting cycle shall be maintained. Other mechanisms that help ACFID members demonstrate that they are upholding the Code include: the process of application for ACFID membership; public commitment to the Code; exception reporting; spot checks, and the complaints process.

Overall members believed the current compliance mechanisms are seen to give assurance that members are upholding the Code. In addition to the specific recommendation documented here, there were only few other items of specific feedback:

- A proposition to increase transparency around overall compliance with the Code, and trends.
- A query was raised about whether all members' annual and financial reporting is fully compliant
- A request for quicker turnaround of feedback on Code Self Assessments and exceptions reports.

The Design Principles already quarantined further discussion of the current assessment and reporting cycle. This did still receive comment from members, albeit without any consensus emerging; some members proposed that the timing of ACFID Code assessment and DFAT Accreditation should be aligned for relevant members, while others proposed the exact opposite, that these coinciding represented an unreasonable workload burden.

Feedback and recommendations from Section 1D were also relevant here, with members querying why Periodic Assessment requires members' governing bodies to submit annual and financial reports to ACFID annually, now that Annual Information Statements and Financial Reporting are required to be submitted to the ACNC.

We recommend the following:

Recommendation 2 (Section 1, B&C): Revise the Code to explicitly integrate the contents of the Statement of Interpretation (as approved by the Code of Conduct Committee and the ACFID Board in 2021).

D. Relationship with other standards and regulations

The Code is both informed by and informs other global and national standards and regulations relevant to Australian development and humanitarian organisations. Where relevant and possible, the Code seeks to align with other standards to reduce inconsistencies for members. Since 2017, ACFID has conducted detailed mapping of the Code requirements in relation to the ACNC Governance Standards, ACNC External Conduct Standards and DFAT Accreditation Criteria.

Through all consultation mechanisms, member feedback focused significantly on this area for change, even when commenting on other sections of the Discussion Paper. Members currently experience the intersection between legal and regulatory compliance, voluntary self-regulation, due diligence and contractual obligations, and other good practice standards to be complex and administratively burdensome.

The dominant area of feedback and specific recommendations was for further increased alignment between the ACFID Code and DFAT Accreditation. Many noted that the Code and Accreditation are frequently very similar, yet not similar enough (noting the previous work on mapping the alignment). However, members also noted that the ACFID Code and DFAT Accreditation serve distinct purposes, and more than half of ACFID members are not DFAT Accredited, and should not need to be bound by additional DFAT-specific requirements.

The next most frequently referenced requirements were the ACNC Governance Standards, External Conduct Standards, and reporting requirements for the ACNC which now overlap with the publishing requirements of the ACFID Code.

[Appendix C](#) gives a more complete listing of other standards and regulations mentioned

Within the scope of this current consultation phase, The Social Economy Group undertook initial desk research - building on existing mapping – to identify where specific changes to the Code could bring greater alignment and improve the efficiency of regulation. Greater cross-referencing can be integrated within the Code to prompt to members of other applicable requirements, even where further alignment is not currently preferable or possible.

We recommend the following:

Recommendation 3 (Section 1, D): Increase alignment with external standards and regulations to reduce complexity and the administrative load:

- in line with the following principles, and
- recognising that increased consistency on even relatively small areas assists in reducing the overall compliance burden.

a. Review all Code compliance indicators or verifiers that are similarly required by external regulators of all ACFID members, to either:

    i. Remove the requirement for a separate indicator or verifier; or

    ii. Explicitly cross-reference these requirements in the Code, accepting wherever possible that these are verified by compliance with the external standard.

b. Align the Code to external regulation where:

    iii. The regulation is well-established, *and*

    iv. The Code already substantially meets or aligns with the regulation.

c. Consider Code changes where increased alignment can meet multiple external regulatory requirements (e.g. DFAT Accreditation and ACNC).

d. While dependent also on the forthcoming review of DFAT Accreditation, consider Code changes where increased alignment to DFAT requirements may reduce overall compliance burden:

    i. Where DFAT may increase its recognition of ACFID Code status, seek to align with DFAT Accreditation requirements

    ii. In areas such where DFAT is unlikely to increase its recognition of ACFID Code status, only increase alignment of the Code where not creating additional or expanded burden on members

Application of this principle must explicitly consider that more than half of Code signatories do not participate in ANCP.

e. Make explicit within the Code and/or associated documents where requirements derive from or interact with external standards or regulations.

Section 2: Issue-specific questions

Each of these three areas proposed by the Discussion Paper had the same proportion of respondents – over 80% – indicating them to be either 'very important' or 'somewhat important' to their strategy or impact goals over the next five years.

- Locally-led Development/Humanitarian Action had the highest proportion indicating 'very important'. This area also had the most commentary across consultations, with change being recommended across multiple areas of the Code.
  o Feedback and recommendations on Anti-racism, Racial Justice and Diversity were, in many respects, highly aligned with those for Locally Led.
- This was closely followed by climate-change.

We recommend the following:

Recommendation 4 (Section 2): Where the Code needs to be refined to address emerging issues – e.g. climate change; locally-led development; anti-racism, racial justice and diversity – where possible, do so through existing quality principles and commitments.

E. Climate Change

Overall members believe the ACFID Code currently 'somewhat' incentivises or supports climate action, and it was not seen to prevent or hinder action. Despite the majority of survey respondents being uncertain of the need for change or suggesting change was not required, several specific changes were proposed.

Some specific suggestions for change include the following:

- Explicitly reference climate to signify its priority and importance, noting currently it is somewhat implied (for example in Commitment 3).
- Ensure climate – or, earth systems and climate change (ESCC) – are addressed within NGO operations, and not only programming.
- Ensure risks assessments include climate risk assessments
- Providing good practice guidance, resources, and learning. members need to be aware of what to avoid and what to do. Measures and strategies that can be taken, for both adaptation and mitigation.
  o These may include guidance around baselining emissions, and reporting on ESCC action and climate-related disclosures (emissions and potentially climate-related financial disclosures, as this may be legislated on soon)

Some members made observations about the existing Code, including:

- Code compliance indicators currently seem more inclined towards 'adaptation' or 'risk responsive actions' than being balanced with 'climate mitigation'
- There is a need to consider the impact the requirements of the Code has on climate change (for example, consider the duplication of evidence, resources and reporting, demands on environmental services, trips to field, time online, use of technology).
- Some of the content, language and indicators, may be slightly outdated

- Currently the Code provides for a variety of levels of engagement with the issue. The design principles need to be applied, such that the Code remains relevant across organisations of different approaches, models, and focus areas, and considering the varying risk profiles and sizes of organisations.

The ACFID Council Resolution 2-2021 on climate action was noted, along with the Climate Action Framework.

Climate practice itself continues to evolve, and the Code will need to continue to evolve with it. Australia may be legislating some aspects of compliance, such as for climate-related disclosures, however this is not yet clear.

Many members saw climate change as a global priority issue, impacting all programming and operations. Fewer respondents commented to indicate that not all members work in the area of environment and climate change programming, and were uncertain of the extent of direct relevance to their work.

There was concern to ensure that any new requirements did not unreasonably impact in-country partners.

Feedback was consistent that the ANGO sector is not yet ready for this to be made a red-line issue. The Code's role at this time was proposed to be one of guidance on first steps, a pathway of learning and knowledge-sharing, rather than additional compliance indicators and verifiers at this stage (particularly in relation to NGO operations). In the area of programming there is an opportunity to make the implicit explicit without adding additional compliance indicators and verifiers.

We recommend the following:

Recommendation 5 (Section 2, Climate Change):

a. Incorporate specific mention of climate change in *Commitment 3.3* on environmental stewardship and sustainability

b. Consider mention of climate change in *Commitment 4.2* on contextual analysis as a factor impacting programming

c. Include a good practice indictor relevant to ESG/ESCC/carbon reporting in *Commitment 8.3* on organisational reporting

F. Locally-led Development/Humanitarian Action

This sub-section was the emerging issue most commented upon throughout the Consultation Phase, in relation to varied elements of the Code, and diverse sections of the Discussion Paper.

While the ACFID Code was seen to incentivise or support locally-led action it was simultaneously found to be somewhat preventing and hindering it. The focus on the participation and empowerment of primary stakeholders and the community accountability and complaints mechanism were seen as ways the Code incentivises locally-led action. Specific areas identified as inhibiting locally-led action included:

- Compliance layers impacting members' ability to innovate and be flexible with in-country partners.

- Not all specified compliance indicators and verifiers being contextually appropriate, culturally safe, or feasible for partner adherence (e.g. complex/fragile contexts).

There were several specific suggestions, including:

- Recasting need-identification, design and implementation processes so that those in greatest proximity lead, supported by members with the financial, organisational and collaborative capacities to do so.
- Change language referencing relationship with in-country partners and stakeholders.
- Strong feedback on the on the need to change language away from 'participation,' 'empowerment,' 'primary stakeholders,' and 'vulnerable people'.

The language of 'power' was prominent in conversations and the need to both recognise the power of members and the need to shift power. However, it was also acknowledged there was a diversity of understanding of the meaning of 'power'.

Generally, smaller agencies believed this is 'how they already operate', whereas this is a more challenging effort for larger INGOs with international federations/confederations. Various stakeholders believed it was important that the Code must be aspirational, to avoid agencies seeking to evidence that their existing system meets the definition of localisation, or, continuing to conform with INGOs' historical perspectives and approaches.

See Appendix C for further references provided by members that describe locally-led development, and that may inform relevant commitments, indicators and verifiers.

We recommend the following:

Recommendation 6 (Section 2, Locally-led Development/Humanitarian Action):

a. Significantly reframe *Quality Principle 2: Participation, Empowerment and Local Ownership* to place the focus on local actors' power and role rather than that of the member.

b. Revise the Commitments, Indicators and Verifiers, particularly under *Quality Principles 2* and *3* to reflect this reframing, e.g. emphasis on locally-led design

c. Review which requirements are mandatorily cascaded to implementing partners, and how

G. Anti-Racism, Racial Justice, and Diversity

Most respondents believed the Code 'somewhat' incentivises or supports diversity, anti-racism and racial justice. The majority were 'uncertain' or responded 'no' as to whether Code prevents or hinders these attributes.

Respondents recognised that human rights and inclusion implied a commitment to both avoidance of discrimination and racial justice, however, as anti-racism and racial justice are not mentioned explicitly in the Code, they could be strengthened. This could include clarifying definitions of terms such as 'diversity' and 'racial justice'.

There was a close correlation in comments and recommendations between this section and those for localisation, particularly as it related to in-country partners. Therefore, the reframing of areas such as Quality Principle 2 about locally-led action should also advance racial justice.

Respondents emphasised the need to explicitly address NGOs' own power structures, and the diversity of workforces, leadership, and governance bodies. Representation and reporting were

both identified as ways of highlighting diversity in governance and personnel. However, prescriptive elements on diversity may be burdensome or infeasible for small agencies. Good Practice Indicators were suggested as a way forward; as a first step, needing to be followed up with stronger accountability and complaints mechanisms.

The ACFID Council Resolution 1-2020 on Race, Diversity and Australian INGOs was noted, along with ACFID Council Resolution 1-2022 on Decolonisation, Anti-Racism, and Locally-Led Action (passed during the Consultation Phase).

While this aspect of the discussion paper focused on racial diversity, there were members that highlighted other aspects of diversity, and intersectionality.

We recommend the following:

Recommendation 7 (Section 2, Diversity, Anti-Racism and Racial Justice):

a. Add a new commitment under *Quality Principle 1: Rights, Protection and Inclusion* specific to anti-racism and/or racial justice

b. Add indicators under *Quality Principle 7: Governance* about diversity and representation on governing bodies and reporting publicly on diversity and representation on governing bodies.

c. Add indicators under *Quality Principle 9: People and Culture* about diversity and representation in staffing (including executive leadership) and public reporting on diversity and representation on staffing (including executive leadership)

d. Add a good practice indicator(s) of evidence-based interventions that can reduce racial discrimination and bias.

Appendix A - Overview of Discussion Paper Structure and Questions

Section 1: General Questions

1A. Responsive and reflecting good practice

1. Are there parts of the Code that do not reflect current understanding of good practice?
2. Are there parts of the Code that are unnecessary, that should be removed?
3. Are there parts of the Code that are not relevant to all ACFID members?
4. Does the Code limit or inhibit good practice in any area?

1B. Coherence and useability

5. Does the Code have requirements that seem duplicated or conflicting, or have language that requires clarification?
6. How could the Code be made more user-friendly and accessible?
7. Are there areas of the Code where you feel that the effort of meeting and implementing requirements is disproportionate to the benefits?

1C. Upholding Code signatory status

8. Does this combination of mechanisms ensure and give assurance that members are upholding the Code?
9. What improvements could be made to ACFID's existing systems, tools or resources that would help ACFID members maintain and demonstrate their Code signatory status?

1D. Relationship with other standards and regulations

10. What requirements or terminology used in the Code should be better aligned with other standards or regulations?
11. Can you identify examples of where the Code's interaction with other standards and regulation creates extra compliance effort or anomalies in your practice? How should these be addressed by the Code?
12. Is your organisation a signatory to other standards that are well-aligned? Please explain what these are and any lessons from their implementation that should be considered as part of this Review

Section 2: Issue-specific questions

E. Emerging Issues

13. Are there areas of well-established good practice – relevant to the Code's purpose and objectives – that are not yet appropriately captured by the Code?
14. What new practices or critical issues are emerging in the non-profit, development or humanitarian sectors – relevant to the Code's purpose and objectives? How should these be reflected in the Code?

F. Climate Change

15. Are there ways in which the Code:
    a. Incentivises or supports climate action?

b. Prevents or hinders climate action?

16. What changes to the Code, if any, are necessary in relation to climate action? These may relate to members' good practice in operations, programming, or policy and advocacy.

17. Are there other good practice standards related to climate action that should be considered as part of this Review?

G. Locally-led development/humanitarian action

H. Diversity, anti-racism, and racial justice

Section 3: Additional comments

I. Other

Appendix B – Consultation Participation

- Seventy-seven participants across eight **online consultation** meetings, workshops, and focus groups

  - ACFID Members Virtual Forum (13)

  - Code of Conduct Committee (10)

  - Development Practice Committee (7)

  - Climate Policy and Practice Community (9)

  - Localisation Working Group (8)

  - Racial Justice Community of Practice (5)

  - Safeguarding Community of Practice (20)

  - Department of Foreign Affairs and Trade (5)

- One **in-person consultation**

  - ACFID Board (12)

  In-person consultations were offered in Sydney and Melbourne but were cancelled due to members preferencing online consultation, through the ACFID Members Virtual Forum.

- Fourteen **survey** responses - of these, ten provided identifiable organisational details:

  - 2 large agencies (development spend $10m+ p.a.)

  - 6 medium agencies ($1-10m p.a.)

  - 2 small agencies (<$1m p.a.)

- Three **written submissions**

  - 2 large agencies

  - 1 medium agency

Provisional findings and propositions have subsequently been presented to and validated with:

- ACFID Members Virtual Forum

- ACFID Code of Conduct Committee

- ACFID Code Review Reference Group

Appendix C – External Standards and Good Practice Guidance

Participants in the Consultation process referenced the following external standards, regulations, and guidance as relevant for consideration.

Many of these were provided in the context of Section 1D of the Discussion Paper, which invited examples of the Code's relationship or potential interaction with other global and national standards, and regulations. The Paper noted that, where possible, the Code seeks to align with other standards to reduced inconsistencies for members.

Referenced standards and regulations here include both:

- Legal and regulatory standards that already apply to members: These represent existing obligations on all ACFID members, irrespective of whether or how they are reflected within the Code. The opportunity may exist to:
    - Make explicit, clarify, or align these requirements within the Code, such that it aids members in recognising and meeting their breadth of obligations; and/or
    - Ensure these are referenced within the Code, to highlight where legislation or regulations interact with the Code's voluntary standards
- Other voluntary codes, standards, or guidance: Not all ACFID members have or will necessarily commit to these, and fully incorporating them into the Code could impose additional and unnecessary obligations. However, where the Code already includes substantively similar commitments, indicators, or verifiers, alignment may enable the Code to better reflect Australian or global consensus on good practice, and reduce complexity and effort in compliance for those members already committed to or pursuing other accreditations.

- [Department of Foreign Affairs and Trade Australian NGO Accreditation](#)
  Accreditation is a front-end, risk-management and due diligence process; Australian NGOs must gain DFAT accreditation to receive funding under the Australian NGO Cooperation Program (ANCP). To gain accreditation, they must demonstrate capacity and performance against a range of indicators and may seek accreditation at either Base or Full level. One of the prerequisites for DFAT Accreditation eligibility is that applicant NGOs must be existing signatories to the ACFID Code of Conduct.
    - [Australian NGO Accreditation Guidance Manual](#)
    - [Australian NGO Cooperation Program Manual](#)

  The Code and DFAT Accreditation are developed for different purposes, have different architectures or structures, and have different compliance and verification processes. However, in many areas the two mechanisms significantly align. However, minor variations in intent, structure, definitions, and language seem have unintended and disproportionate consequences in exacerbating compliance complexity and effort.

- [Australian Charities & Not-for-profits Commission](#) (ACNC)
  The ACNC was established as the national regulator of charities in December 2012; its objects and functions are as set out in law, and ACNC obligations apply to all current ACFID members.

  Through the consultation, members requested consideration of:

i. Integration of ACNC requirements, or alignment with them, so as to reduce the cross-referencing required to ensure compliance with both ACNC and ACFID Code requirements; and/or
ii. ACFID recognition of evidence provided to the ACNC in registering as an online charity, or recorded or uploaded to the ACNC Charity Portal (e.g. governing instruments and annual financial statements).
iii. Cross-referencing the Code with the ACNC self-assessment tool for eligibility to be a registered charity and deductible gift recipient.
iv. Amend relevant indicators and verifiers to create more explicit alignment with the ACNC External Conduct Standards (beyond the current commitment-level mapping)
v. Incorporating specific reference to the ACNC Governance Standards in Quality Principle 7. Governance

- Governance Standards specify how a charity must be run (including its purposes and not-for-profit nature, its accountability to members, compliance with Australian laws, suitability of responsible people, and duties of responsible people). Compliance with the Standards is a condition of registration as a charity (other than for Basic Religious Charities), and the ACNC's application of its regulatory approach can culminate in the revocation of charitable status. The ACNC considers that if a charity complies with the ACFID Code of Conduct, it is *likely* to meet the ACNC's Governance Standards, however, the Code does not map to ACNC Governance Standards in an exact way.

- Since July 2019, External Conduct Standards apply in addition to the Governance Standards for all charities operating outside Australia; this is defined broadly to include charities for which overseas activities are just a minor part of their work, those that send only a small amount of money overseas, and when such activities are conducted through a third party. The ACNC does not require organisations to submit evidence of compliance against the standards, unless requested. However, organisations newly registering as a charity, or applying for new charitable subtypes, are asked about the steps they have taken to comply.

  The four standards are:

  o Standard 1: Activities and control of resources (including funds)
  o Standard 2: Annual review of overseas activities and record keeping
    ▪ Related to reporting requirements, this standard includes requirements for maintaining financial and operational records of overseas activities, as specified, for at least 7 years.
  o Standard 3: Anti-fraud and anti-corruption
  o Standard 4: Protection of vulnerable individuals

  The ACFID Code of Conduct does not map to the ACNC External Conduct Standards completely, and the ACNC may still require a charity to demonstrate how it meets the External Conduct Standards.

- ACNC Reporting Requirements specify that registered charities must submit an Annual Information Statement to the ACNC, which is published on the ACNC Charity Register, and with data shared to data.gov.au and other authorised Australian Government Agencies. Medium- and large-sized agencies are also required to submit annual financial reports, which are similarly published online. From 2022:
  o Medium-sized charities: Those with annual revenue of $500,000 plus, but under $3 million (accrual accounting is required, but statements can be either reviewed or audited depending on constitutional or other funding requirements)
  o Large-sized charities: Those with annual revenue of $3 million or over, must submit audited financial statements

The ACNC records a charities legal name, address for service, responsible people (directors, committee members, or trustees), and governing document. Charities must notify the ACNC if they think their organisation is not meeting ongoing obligations to the ACNC in a significant way, such that the organisation is no longer entitled to be registered.

- ## Core Humanitarian Standards on Quality and Accountability (CHS)
  The CHS is a global, voluntary standard of nine commitments, for organisations and individuals involved in humanitarian response. CHS Alliance, Groupe URD and Sphere are leading a revision process for the standards, currently in its first round of consultations.

  The recommendation was made to map and align linkages and terminologies for increased international consistency, and to support the Code operating as a learning mechanism and conduit for organisations exploring CHS commitments.

  In addition to the nine Standards, the specific tool most referred to was the CHS Alliance's PSEAH Index. Protection from Sexual Exploitation, Abuse and Harassment (PSEAH) is woven throughout the CHS commitments; the PSEAH Index collates and states the various safeguarding requirements embedded across 22 standards. This was recommended as an example of how the ACFID Code could similarly seek to collate and represent Safeguarding requirements, amongst others, that are embedded throughout the Code.

  One respondent also referenced the Humanitarian Quality Assurance Initiative (HQAI); HQAI undertake audit services to benchmark, independently verify, or certify, organisations' progress against or conformance with the Core Humanitarian Standards.

- ## Environmental, Social, and Governance (ESG) Principles and Frameworks
  ESG refers to three key factors for measuring the sustainability and ethical impact of a business or company, or criteria against which to screen an investment in a business or company. There are multiple ESG reporting frameworks, standards or platforms.

  While respondents did not specify preferred frameworks, ESG criteria were mentioned in three contexts:
  - As an area with which requirements or terminology used in the Code should be better aligned with ESG principles, also enabling ACFID members to promote their ESG commitment and achievements;
  - As an area of well-established good practice not yet seen as appropriately captured by the Code
  - As a way for how the Code could better incentivise or support Climate Action.

  Despite being commonly mentioned, no responses proposed or referenced specific ESG frameworks. One response shared *ESG reporting in Australia - the full story, or just the good story?* (PwC, 2021) This report suggests that globally, a convergence of standards is occurring, and other regulators are increasingly mandating specific ESG disclosures.

- ## Fundraising Institute Australia Code and State/Territory fundraising legislation
  Many ACFID members are also members of Fundraising Institute Australia (FIA); all FIA members must comply with the FIA Code, most recently relaunched in 2017, and informed by the International Statement of Ethical Principles in Fundraising. The Code spans conduct towards donors, beneficiaries, and suppliers, as well as overall commitments to ethical conduct in fundraising, and FIA Code compliance mechanisms.

In addition to voluntary codes, Australia has seven different sets of fundraising laws – in every state and the ACT. These laws were developed before the internet, the Australian Consumer Law (ACL), and the Australian Charities and Not-for-profits Commission (ACNC). Charities need permission under each of these laws to fundraise online, and then need to comply with and report to seven different state & territory regulatory bodies. In addition to these seven sets of laws, charities must comply with the Australian Consumer Law (don't mislead or deceive donors), criminal laws (fraud) and local government laws (door knocking and street collections) and various codes (what time you can phone people).

The #FixFundraising campaign – which includes the Public Fundraising Regulatory Association (PFRA) and the Fundraising Institute Australia (FIA) – is advocating for Australian Fundraising Principles to provide a national standard for fundraising (underpinned by the Australian Consumer Law, Privacy Act, Telecommunications Industry Standard, local council regulations, and the ACNC, but with states retaining their oversight and enforcement powers). These principles are designed to complement the existing self-regulatory fundraising codes, and are stated to not require additional compliance to meet them.

In October 2022, the Federal Assistant Minister for Charities and the Victorian Minister for Consumer Affairs' jointly announced that the previously foreshadowed framework for national consistency on charitable fundraising is expected to be released before the end of the 2022.

- **Australian Humanitarian Partnership** (AHP) Administrative Controls Framework
  AHP is a strategic ten-year (2017-2027) partnership between the Department of Foreign Affairs and Trade (DFAT) and Australian NGOs. It is activated in response to specific disasters and crises. Additionally, through Disaster READY, it strengthens Pacific community disaster preparedness and resilience. Six peak Australian NGOs individually, or with consortium partners, partner in delivery of this program.

  The AHP Administrative Controls Framework is not publicly available for reference. This was cited by a member, along with other standards, as examples of the level of complexity in the sector, with multiple compliance frameworks, and the perspective that these collectively inhibit innovation and impact. No specific recommendation was received in relation to the Code, or its interaction with the AHP.

- **National Principles for Child Safe Organisations**
  The National Principles set out a consistent Australia-wide approach to creating organisational cultures and practices that promote the safety and wellbeing of children. The Principles reflect and give effect to ten child safe standards recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse; the Commission recommended that all institutions in Australia that engage in child-related work be required to implement these. They go beyond child sexual abuse, to cover other forms of potential harm to children and young people. Each of the ten standards is accompanied by key action areas and indicators.

  At present, the Principles are not mandatory, although they are being required by some funders; organisations that engage with children and young people must continue to meet existing child safe requirements in their state or territory. It is noted several members conduct both overseas and in-Australia activities.

  This Standard was referenced as an example of where opportunity exists for the Code to better align regulation and Australian understanding of good practice. This included specific

references to Principles 2, 3 and 9, and recommendations relevant to Code Commitments 1.4, 1.5, and 2.5. The Principles provide a framework and language that could bring specificity to or opportunities to align some actions/indicators and indicators/verifiers.

- ## Modern Slavery Act 2018
  The Commonwealth Modern Slavery Act 2018 entered into force on 1 January 2019, establishing a national Modern Slavery Reporting Requirement. The Reporting Requirement to submit an annual Modern Slavery Statement applies to large businesses and other entities, including charities, in the Australian market with annual consolidated revenue of at least $100 million. These statements must set out the reporting entity's actions to identify, assess and address modern slavery risks in their global operations and supply chains. Statements are published through a central online register.

  Few ACFID members meet the revenue threshold. Any entity carrying on a business in Australia can provide a voluntary statement, however, once an organisation has volunteered to report and the related reporting period commences, it is bound as if a mandatory reporting entity. Alternatively, equivalent statements could be published by organisations independently, without submission to Australian Border Force.

  This Standard was referenced as an example of where opportunity exists for the Code to better align with external regulation; in this case, regulation advocated for by many in the sector. Opportunities for alignment were proposed in Code commitments 5.1, 8.1, 9.1, 9.2 and 9.3.

  The Australian Government is currently undertaking a statutory review of the Act's operation and compliance over the first three years since commencement, which is due for completion no later than 31 March 2023.

- ## Whistleblower Protections and the Corporations Act (2001)
  Australian whistleblower legislation was amended by The Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 (Cth), which amended the Corporations Act 2001 (Cth) to broaden the whistleblower protection regime. The purposes of these changes was to strengthen protections, to encourage whistleblowers to come forward with their concerns and protect them when they do, with the Act giving certain people legal rights and protections as whistleblowers. A qualifying disclosure involves reporting conduct by a charity or an officer or employee of the charity that represents misconduct, an improper state of affairs or circumstances, or breach of the law. These legislative changes came in subsequent to the last major review of the Code.

  The Taxation Administration Act 1953 (Cth) also contain protections for whistleblowers for misconduct related to tax, however, due to charitable tax exemptions it is less likely a qualifying disclosure would be made against a charity under these provisions.

- ## International Standard for Anti Bribery Management Systems (ISO 37001)
  ISO is an organisation made up of 167 member national standards bodies. Through its members, it brings together experts to develop voluntary, consensus-based, international standards. These include ISO 37001, focused on how organisations can best prevent, detect and address bribery by adopting an anti-bribery policy, appointing a person to oversee anti-bribery compliance, training, risk assessments and due diligence on projects and business

associates, implementing financial and commercial controls, and instituting reporting and investigation procedures.

This Standard was referenced as an example of where opportunity exists for the Code to better align with another standard representing globally understood good practice.

- **Racial Discrimination Act 1975**
  The Racial Discrimination Act 1975 (RDA) makes it unlawful to discriminate against a person because of the person's race, colour, descent, national origin or ethnic origin, or immigrant status. The RDA protects people from racial discrimination in many areas of public life, including employment, education, getting or using services, etc. It additionally makes racial hatred unlawful. Australian States and Territories have their own racial discrimination legislation, which compliments the Commonwealth legislation.

  The Act was mentioned for possible inclusion as a reference when making Anti-Racism explicit in the Code, as a source from which existing legal obligations derive. However, caution was also offered given the many critiques that the Act itself is not sufficiently wide-ranging or responsive, and that it does not set further aspiration for the sector (beyond being compliant with law).

- **Good Practice Study on Principles for Indicator Development, Selection, and Use in Climate Change Adaptation Monitoring and Evaluation**
  This study was referenced as a possible source of good practice relating to Climate Action.

- **Sustainable Development Goals** (SDGs)
  The SDG targets were referenced as a possible consideration in considering commitments or indicators related to Climate Action (amongst other possible areas).

For **Locally-led Development and/or Humanitarian Action**, references included:
  - USAID Locally Led Development Spectrum and Checklist
  - Pledge for Change
  - Grand Bargain and Grand Bargain Annual Independent Report 2021
  - Charter for Change
  - Humanitarian Advisory Group reports, including:
      - ARC-Localisation-report-Electronic-301017.pdf (humanitarianadvisorygroup.org)
      - Measuring Localisation: Framework and Tools
      - https://humanitarianadvisorygroup.org/wp-content/uploads/2020/12/TC-Harold-Practice-Paper_final-electronic.pdf
  - NEAR Localisation Performance Measurement Framework
  - Global Mentoring Initiative, Localisation in Practice: Emerging Indicators & Practical Recommendations
  - ACFID Localisation Framework [under development]

No mention was made of NGO accreditation frameworks in other countries, nor of the [Global Standard for CSO Accountability](#)/[Accountable Now](#) (noting many existing elements in common between the ACFID Code and the Global Standard, with this alignment being an intentional objective of the 2015-16 Code review).