ACFID Submission: AUSTRAC guidance

ACFID appreciates the opportunity to make this submission to AUSTRAC concerning the draft guidance "*Financial services for customers that financial institutions assess to be higher risk*".

About ACFID

The Australian Council for International Development (ACFID) is the peak body for Australian non-government organisations involved in international development and humanitarian action.

OUR VISION

Our vision is Australia acting with compassion and fairness for a just, sustainable and equitable world.

OUR SHARED PURPOSE

Our purpose is to lead, unite and support international development and humanitarian organisations to realise our vision.

ABOUT ACFID

Founded in 1965, ACFID currently has 128 full members and 21 affiliates operating in more than 65 developing countries. The total revenue raised by ACFID's membership from all sources amounts to $1.83 billion (2020 - 21), $721 million of which is raised from over 996,000 thousand Australians. ACFID's members range between large Australian multi-sectoral organisations that are linked to international federations of NGOs, to agencies with specialised thematic expertise, and smaller community-based groups, with a mix of secular and faith-based organisations.

ACFID members must comply with the ACFID Code of Conduct, a voluntary, self-regulatory sector code of good practice that aims to improve international development and humanitarian action outcomes and increase stakeholder trust by enhancing the transparency, accountability and effectiveness of signatory organisations. Covering 9 Quality Principles, 33 Commitments and 92 compliance indicators, the Code sets good standards for program effectiveness, fundraising, governance and financial reporting. Compliance includes annual reporting and checks. The Code has an independent complaint handling process.

ACFID'S VALUES

INTEGRITY
We act with honesty and are guided by ethical and moral principles in all that we do.

ACCOUNTABILITY
We take responsibility for our actions and are accountable to our stakeholders, and in particular primary stakeholders, for our performance and integrity.

TRANSPARENCY
We openly share information about our organisations and our work with all our stakeholders and the public.

RESPECT
We recognise the value and diversity of all people and are committed to treating others with due regard for their rights, dignity and integrity.

EFFECTIVENESS
We strive to deliver outcomes that bring about positive change in the lives of people living in poverty.

EQUITY
We are committed to overcoming prejudices and disadvantage and promoting fair and just access to resources and opportunities.

COOPERATION
We work with and alongside others in a spirit of mutuality, respecting diversity and difference in the pursuit of common goal

SUMMARY OF RECOMMENDATIONS

Include additional guidance material that covers:

1. Alignment with the humanitarian sector to avoid private sector de-risking in countries where the UN has imposed sanctions regimes in light of UN Security Council Resolution 2664 (2022).

2. A scenario to cover the profile of a humanitarian organisation working in a fragile context and the risk mitigation efforts taken in general both from internal and donor compliance standards.

In sections describing a risk-based approach and/or related due diligence:

3. The guidance should prompt financial institutions to consider features of a charity operating abroad that indicate a sophisticated approach to financial controls. Such features include:
    - ACFID membership and compliance with the ACFID Code of Conduct
    - Accreditation under the Department of Foreign Affairs and Trade's Australian NGO Cooperation Program
    - Registration with the Australian Charities and Not-for-Profits Commission;
    - Demonstrated compliance with any other regulations and standards of due diligence e.g. bi-lateral grant funding, pooled humanitarian funding

4. The guidance should recommend the use of a risk-based approach that pragmatically considers local context and capacity of humanitarian organisations to manage anti-money laundering and counter terrorism financing risks in complex or rapid response contexts in which they work and for blanket risk assessments related solely to countries of operation to not take place in lieu of detailed risk assessment.

5. Ensure that financial institutions understand the criticality of providing financial services to humanitarian groups and recognise the compliance mechanisms that exist and promote sustained engagement between humanitarian organisations, the financial sector and the Australian Government to reconcile knowledge, awareness and interests of key stakeholders.

Looking ahead:

6. Partner with ACFID to co-convene a roundtable discussion on the challenges raised in this submission with select commercial banks.

Executive Summary

The risk of diversion of funds towards terrorist financing is an issue that impacts government, business and charity entities alike. The Australian Council for International Development (ACFID) and its members are invested in ensuring that funds received by our organisations are applied to their designated purposes and, particularly relevant to this submission, not diverted to fund or support terrorist activity. The importance ACFID's members place on this issue is reflected in terrorist financing and broader financial wrongdoing being a key focus area for Code of Conduct compliance, and a feature of a program of learning undertaken via ACFID's longstanding partnership with the Department of Foreign Affairs and Trade (DFAT). The combination of the ACNC Governance and External Conduct Standards alongside the ACFID Code of Conduct, and many ACFID members' additional accreditation under DFAT's Australian NGO Cooperation Program[1] or extensive due diligence via the grant-making process means that ACFID's members often meet and exceed the requirements of Government regulation. Yet, the charity sector is often miscast in these settings, and ACFID's data suggests that de-risking remains an issue despite these efforts[2].

Supporting the recommendations outlined above, this submission describes the existing standards deployed in the charity regulatory environment that financial institutions should have regard to when conducting risk-based assessments, and the particular considerations of the humanitarian funding context that are acutely impacted by bank derisking.

ACFID believes that explicitly reframing and acknowledging the work of the charity sector in relation to AML/CTF, offering specific examples of how a risk-based approach night be applied in the context of their important work, and in keeping with Australia's international commitments via AUSTRAC guidance could assist with addressing this issue.

For the purposes of AUSTRAC's guidance and the avoidance of unnecessary derisking by financial institutions, it is important to have a consistent articulation of the framing of the factors that financial institutions, business and the charity sector should have front of mind in considering and responding to these issues. Nonetheless, this guidance should also recognize that whilst many similar issues affect each of these organizations, there are also unique factors impacting the work of international development and humanitarian action focused organizations that are working in less secure or higher risk contexts, and these should be properly understood and accounted for in the risk-based approach outlined in the guidance.

By definition, the work of ACFID's members often takes place in less secure or uncertain environments, yet timely delivery is also often critical to sustaining human life and preventing suffering. Globally recognised principles of development and humanitarian action acknowledge these risks and guide action.[3] The constant challenge for all bodies involved in international development and humanitarian action is to strike an appropriate balance between delivering timely and targeted aid and development support, and ensuring that organisations take measures to prevent funds and resources being diverted from their intended use. The complexity of these organisations' operating environment often compounds the issue, and poses additional challenges to maintaining that balance.

The development of guidance by AUSTRAC in this space is an opportunity to shift the conversation and build understanding regarding the important work of charities to ensure the control and security of funds directed overseas for important work, including those that ACFID represents. Engaging with these issues via a resource of this kind creates a valuable pathway to many charities initiating dialogue with financial institutions on how their work is affected daily by the issues described within this submission. ACFID would welcome the opportunity to discuss this submission further, and to continue building dialogue for greater collaboration in combating the issues in AML/CTF with AUSTRAC and financial institutions.

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[1] https://www.dfat.gov.au/development/who-we-work-with/ngos/ancp/australian-ngo-cooperation-program

[2] ACFID's statistical survey indicates that 19 ACFID members have experienced bank de-risking since 2017. For more information about ACFID annual statistical survey, see p.54 of ACFID's annual report: https://acfid.asn.au/wp-content/uploads/2022/04/ACFID_Annual_Report_2020-2021_Final.pdf

[3] Inter-Agency Standing Committee, Guidance: Impact of Sanctions and Counterterrorism Measures on Humanitarian Operations, September 2021, https://interagencystandingcommittee.org/system/files/2021-09/IASC%20Guidance%20to%20Humanitarian%20Coordinators%20-%20Impact%20of%20Sanctions%20and%20Counterterrorism%20Measures%20on%20Humanitarian%20Operations.pdf

The Humanitarian Context

Humanitarian organisations in seeking to meet the needs of the most vulnerable, often operate in insecure environments which are not within government-control and recognisable rule of law. Such areas of operation are often subject to anti-money laundering, sanctions and counter-terrorism measures, with humanitarian organisations inadvertently impacted by refused transactions, closed accounts and other restrictions. While bank de-risking issues for humanitarian organisations have to a large degree concerned money transfers to operations in fragile contexts, there are more and more examples of humanitarian organisations facing difficulties transferring funds even at the headquarters level. Therefore, a blanket risk assessment of countries of operation is being taken by Australian commercial banks without assessing the nature of operations and organisations.

Humanitarian organisations are committed to the principles of humanity, neutrality, impartiality and independence, which are enshrined in international law. These principles require humanitarian assistance to be delivered for the purpose of alleviating human suffering on the basis of need without discrimination, without taking sides in conflict and while maintaining autonomy from political, economic, military or other objectives. In addition, almost 900 organisations are signatories to the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief.[4] Compliance with humanitarian principles is what enables humanitarian organisations to access hard to reach areas where often, people are most in need. Adherence to the modes of operation is critical in order to distinguish and protect humanitarian action in complex and militarized environments and is key to gaining acceptance by all relevant actors on the ground and to ensuring humanitarian personnel have safe, unimpeded and sustained access to affected people.

Organisations operating in regions subject to sanctions and other financial regulations experience significant difficulties transferring funds to support humanitarian activities. Financial institutions often choose to forego processing transactions due to concerns related to anti-money laundering (AML), counter terrorism financing (CTF), and the regulation of sanctions. These issues cause delays and limit access to critical lifesaving services, hindering organisations' ability to fulfill their mandate in accordance with the humanitarian principles.

In some cases de-risking is a misapplication of the risk-based approach and is inconsistent with official guidance.[5] After the fall of Kabul in August 2021, significant private sector de-risking occurred in Afghanistan, partly due to the United Nations Security Council (UNSC) sanctions regime that was in place against the Taliban[6]. The UNSC clarified on 22 December 2021 that humanitarian assistance and other activities that support basic human needs in Afghanistan are not a violation of the sanctions regime. Yes, getting cash into Afghanistan to deliver humanitarian aid remains extremely difficult. In a study conducted in March 2022, 67 percent of NGO respondents stated that access to cash or limited cash withdrawal from the bank is the greatest challenge that they are currently facing.[7] The sector remains concerned that a similar situation will result with respect to [UN Security Council Resolution 2664 (2022)]. Alignment with the private sector to address de-risking could prevent this.

ACFID and its members have observed this as a recurrent issue in both autonomous and UN Security Council sanctions regimes not only in Afghanistan but also Syria, Somalia, the DPRK and Yemen, where granting exemptions or waivers on a case-by-case basis has proven time-consuming and inefficient in addressing private sector de-risking. Often, the chilling effect of sanctions has already taken hold before humanitarian exemptions have been granted (either through case-by-case waivers or overarching legal exemptions) causing critical delays in the provision of assistance where financial institutions are not responsive to the policy shifts of the UN or cognisant of the safeguards which already exist through the humanitarian system and leadership in country.

The UNSC adopted a resolution on 10 December 2022 to clarify that UN sanctions regimes do not prevent the delivery of humanitarian assistance.[8] **ACFID recommends that financial institutions implement screening and due diligence processes that reflect this direction by the international community, showing its intention and**

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[4] OCHA on Message: Humanitarian Principles, https://www.unocha.org/sites/unocha/files/OOM_Humanitarian%20Principles_Eng.pdf

[5] CSIS - Mitigating Financial Access Challenges Proposals from the CSIS Multi-stakeholder Working Group on Financial Access, https://www.csis.org/analysis/mitigating-financial-access-challenges

[6] UNSC Resolution 2615

[7] Barely Above Water, 'Challenges of National and Local NGOs Navigating Humanitarian Space in the New Afghan Context', ACBAR Briefing Paper, March 2022

[8] https://reliefweb.int/report/world/adopting-resolution-2664-2022-security-council-approves-humanitarian-exemption-asset-freeze-measures-imposed-united-nations-sanctions-regimes

ability to provide services in contested areas through principled humanitarian actors and align their decision making on risk appropriately. Financial institutions should also be cognisant of the unique role of humanitarian organisations when screening financial transactions for counterterrorism and autonomous sanctions risks.

Appropriately recognising the critical role that humanitarian organisations play and ensuring that financial institutions are able to recognise and service that role will also prevent the use of less secure transfer methods to reach people in need, promoting better compliance and visibility overall.

Humanitarian case study: Lebanon

Mired in one of the largest economic contractions in history, Lebanon faces multiple overlapping and escalating crises. According to the World Bank, Lebanon is contending with one of the three most severe economic crises since the mid-19th century[9]. According to UN ESCWA, multidimensional poverty has doubled, and now affects about 80% of households[10]. In addition to contending with the devastating economic collapse that began in 2019, which has been exacerbated by the COVID-19 pandemic, Lebanon is reeling from the impact of the Beirut Port blast in August 2020. This compounds the effects of Lebanon hosting a sizable refugee population – 1.5 million Syrian refugees and over 200,000 Palestinian refugees – and 85,000 migrants living in the most dire of circumstances[11].

The banking sector remains unstable and several major banks are on the verge of collapse. Breakdown in the banking system makes it harder and riskier to pay humanitarian staff and suppliers, especially for local organizations that are not able to make payments abroad. If banks collapse, NGOs will face increasing challenges delivering cash assistance and paying essential program support costs in-country. Compounding the situation are a number of AML/ATF restrictions on operations in Lebanon. Counter-terror measures have required humanitarian organisations to forego, alter, or cease their activities. Affected organizations have often been required to restrict engagement with national partners, or restrict the sector of humanitarian program or beneficiaries due to restrictive banking compliance measures.

Commitment to humanitarian principles means that we review donor and bank requirements to ensure that they do not restrict our ability to protect and deliver assistance according to our principles. To reduce the risk of aid diversion and ensure compliance with counterterrorism legislation, humanitarian organisations carry out a variety of due diligence procedures, including vetting against prohibited entities on the UN's sanction list and relevant donor government lists[12]. This includes screening or vetting downstream partners, as well as potential and existing contractors, vendors and staff members. For many organisations, vetting beneficiaries remains a red line. In many instances, this puts us at odds with compliance standards of banks, often requiring negotiation of satisfactory agreement with commercial banks for specific humanitarian programmes.

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[9] https://www.worldbank.org/en/news/press-release/2021/05/01/lebanon-sinking-into-one-of-the-most-severe-global-crises-episodes

[10] https://www.unescwa.org/sites/default/files/news/docs/21-00634-_multidimentional_poverty_in_lebanon_-policy_brief_-_en.pdf

[11] https://docs.wfp.org/api/documents/WFP-0000130024/download/

[12] https://www.nrc.no/globalassets/pdf/position-papers/counterterrorism-measures_position-paper.pdf

Australian Charities and Not-for-profits Commission

All ACFID full members must be registered with the Australian Charities and Not for Profits Commission and must comply with the Commission's Governance Standards and External Conduct Standards, External Conduct Standard 1: Activities and control of resources, includes requirements for charities to comply with Australian laws on money laundering and terrorism financing, while operating overseas. Charities must also maintain reasonable internal controls to comply, including having clear policies, having procedures to detect any wrongdoing and processes that allow people to report wrongdoing without fear, recrimination, or disadvantage. Penalties for non-compliance can include the revocation of an organisation's charitable status.

ACFID Code of Conduct

ACFID members must comply with the ACFID Code of Conduct and ACFID operates a continuous regime of compliance monitoring.

The ACFID Code of Conduct requires members to have policies, procedures and guidance documents across all of their practice and includes those that address risk management and control, financial wrongdoing (including terrorism financing and money laundering), vetting organisations and individuals they fund against proscribed terrorist listings and appropriate and effective internal controls. Members are expected to act in accordance with their policies. They are also required to extend the Code's financial wrongdoing requirements to partners. Members are expected to apply the ACFID guidance on how to develop a financial wrongdoing policy.

The Code also requires members to undertake due diligence and capacity assessments of partners including partners' capacities to manage funds and vetting of partners against proscribed terrorist listings. The ACFID Code has a number of other associated requirements that complement the financial wrongdoing requirements, such as for complaints handling mechanisms and for whistleblowing.

Applicants for full ACFID membership must demonstrate that they comply with the ACFID Code before being admitted as members. This includes a desk review of their risk management and financial wrongdoing documents, their internal controls and their partner due diligence processes. Members must have a stated policy on financial wrongdoing and show that their policies apply to their governing body, management, staff, contractors, volunteers and partners. Applicants must also show that they vet individuals and organisations they fund against the Criminal Code list of terrorist organisations and the DFAT consolidated list of individuals and entities subject to targeted financial sanctions. ACFID requires that members will have clear and accessible channels where incidents of financial wrongdoing can be safely reported, from within Australia and from overseas. Members operating in high-risk environments are expected to have stronger and more robust policies and procedures commensurate with risk.

Full members must undertake a self-assessment of their compliance with the ACFID Code once every three years. As part of this, members are required to explain to ACFID how they comply with the financial wrongdoing, partner due diligence, complaints handling and whistleblowing requirements of the ACFID Code. ACFID may also ask for members to send in supporting documents, such as policies and procedures. The member responses are reviewed by ACFID who, if not satisfied, can ask for members to undertake remedial actions to strengthen their policies and processes so that they meet the standards set out in the ACFID Code and associated guidelines. On the other two years, members are required to provide ACFID with an undertaking that the comply with the ACFID Code for that particular year, and if not, advise the areas of the Code where they are not compliant, the actions being taken to comply and the timeframes in which compliance will be achieved. ACFID may ask for remedial action where non-compliance is for a high priority area of the Code, such as financial wrongdoing, or where members report continued non-compliance with the same area of the Code. Non-compliance can result in disciplinary action such as suspension or withdrawal of ACFID membership.

ACFID can also receive complaints from the public, member staff, from overseas and from anyone else who believes a member has breached the ACFID Code of Conduct, including the financial wrongdoing requirements. Complaints are independently considered by the Code of Conduct Committee. ACFID's ongoing assessment of risk also identifies any areas of potential non-compliance that may be detrimental to the interests of ACFID, its Membership or the Code and will undertake compliance spot checks as needed.

DFAT Accreditation and Due Diligence

Being a full member of ACFID is a pre-requisite to participate in the Australian Government's Australian NGO Cooperation Program which is administered by DFAT. Just under half of ACFID members have been accredited by the DFAT to participate in the program. Accreditation is a rigorous front end risk management process that provides DFAT and the Australian public with confidence that the Australian Government is funding professional, well-managed organisations that are capable of delivering quality development outcomes and are accountable to their stakeholders. Once accredited an organisation must be re-accredited at least once in every five years to continue participation in the program. Alternatively, ACFID members who elect not to participate in the Australian Government's Australian NGO Cooperation Program but wish to remain eligible for other grant funding from DFAT undergo an extensive due diligence assessment to assess a potential delivery partner's ability to deliver in line with the policy and legislative requirements of the Australian development program.

DFAT accreditation and due diligence requirements broadly constitute third-party, in-depth assessment. These reviews assess the policies and procedures of the organisation, and their application in practice. They consider whether the policies, and the procedures which give effect to the policies, would reasonably be expected to satisfy the accreditation criteria if implemented consistently across the ANGO, over a reasonable period. A sample of projects, partnerships and records are selected to assess and test whether the procedures are being followed and whether they give effect to the policies in a manner which satisfies the accreditation criteria. Organisations are assessed against 15 criteria which all must be satisfied. Assessment comprises of online application, desk assessment of documents and information provided by the organisation which can include policies and procedures and organisation review, where a review team can spend up to three days in the organisation reviewing documents and interviewing the organisation's staff.

The accreditation criteria include governance and risk management, partner due diligence and capacity assessment and financial management. Under each criterion are a number of indicators. For governance and risk management, the indicators cover organisational risk management, stronger risk processes for higher risk contexts, public facing complaints handling, whistleblowing and incident management systems that are accessible to all stakeholders. For partner due diligence and capacity assessments, indicators include a formal due diligence process (which normally looks at legal identity, governance, organisational structure, values and objectives, checks against prohibited entities listings, implementation of key safeguarding and risk policies and practices, track record, and financial management) and regular assessment of the financial capacity of the partner. Financial management includes having effective policies and systems in place to manage financial risk, including the risk of terrorism financing. More particularly, organisations are expected to have a policy to prevent terrorism financing, systems and processes to ensure implementing partners undertake terrorism screening, systems to support implementing partners to have controls in place to prevent terrorism financing, risk management systems to prevent funds going directly or indirectly to individuals or organisations associated with terrorism. The last requirement is wide ranging and covers all 'downstream' activity, for example, the partners of implementing partners. It requires organisations to understand the risk of terrorism financing at all levels of their organisation.

Good risk management depends upon checks and balances that can be calibrated to the different contextual realities in which humanitarian organisations work; and such practice would be consistent with the Financial Action Task Force's call to "apply focused and proportionate measures, in line with the risk-based approach."[13]

In conclusion, the development of guidance by AUSTRAC in this space is an opportunity to shift the conversation and build understanding regarding the important work of charities to ensure the control and security of funds directed overseas for important work, including those that ACFID represents. Engaging with these issues via a resource of this kind creates a valuable pathway to many charities initiating dialogue with financial institutions on how their work is affected daily by the issues described within this submission. ACFID would welcome the opportunity to discuss this submission further, and to continue building dialogue for greater collaboration in combating the issues in AML/CTF with AUSTRAC and financial institutions.

[13] Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations, 2019, page 11, available at: https://www.fatf-gafi.org/media/fatf/documents/recommendations/ pdfs/FATF%20Recommendations%202012.pdf