



AUSTRALIAN COUNCIL
FOR INTERNATIONAL
DEVELOPMENT

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

A DEFINITION OF CHARITY Consultation Paper

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Introduction

The Australian Council for International Development (ACFID) is the peak body for Australian not-for-profit international aid agencies working for the eradication of poverty through international development co-operation. ACFID has over seventy member agencies that operate in over one hundred developing countries worldwide. We provide this submission in order to represent the interests of our sector and for those Australians who donate over \$850 million each year to support the work of our members.

Since 1999 ACFID has had a Code of Conduct to which our members and some fifty other agencies are signatories. It is recognised as a high standard of practice for our sector by the Commonwealth Government, federal parliamentarians and others internationally. The ACFID Code covers fundraising governance, financial transparency and development effectiveness. The ACFID Code prescribes an effective standard for transparency and accountability that protects, amongst others, the interests of the public for the sake of their charitable donations. We consider the protection and respect of donors to be one of our most profound duties and the integrity of our Code helps to ensure public trust in the not-for-profit international aid and development sector. A copy of the Code of Conduct is attached.

ACFID welcomes this opportunity to provide feedback to the Government on this important initiative. We would be pleased to meet with representatives of Treasury to discuss the matter at greater length.

Generally

ACFID has long advocated for a single agency to be responsible for the regulation of the not-for-profit sector. This has always been sought as a vehicle for simplicity in compliance and for harmonisation in reporting. This statutory definition is one of the first initiatives on behalf of the ACNC. We welcome the creation of a single body for registration of charitable agencies but are also conscious of the perils both for the Government and for our sector.

The first area of concern is that the Federal Government is seeking to standardise rules and procedures across federal and state jurisdictions. Without a referral of powers or agreement for harmonisation at the level of COAG, in the name of simplicity and “report once use often,” the Government will be imposing a new level of complexity without a corresponding reduction of regulation at the state level. This does not help anyone.

The second area of concern is that the exposure drafts give to the ACNC responsibilities well beyond the scope of registration and reporting. The powers that it co-opts are currently the purview of different departments with their own areas of expertise; refer to the final section on “Illegal activities”.

The authority of the Attorney General’s Department and the Federal Police et al, remain valid and appropriate forms of compliance for corporations and natural persons who operate both domestically and internationally. The ACNC, however, is positioning itself not as a registration body but to replicate en masse powers of other government departments. As such, **ACFID strongly recommends at this time that the Government reconsider the expanse of authorities being planned for what should only be a registration and reporting body.**

Core definition

ACFID is very pleased to see that the 2011 drafting of a definition of charity, unlike the 2003 understanding, allows for advocacy on the part of a charity. The ability to do this gives a significant improvement to the quality of public policy outcomes. This was a plank of the submission provided in 2003 by ACFID (then known as ACFOA). This is an excellent development for the not-for-profit sector and we are appreciative of the attention shown by the Government in this regard.

The Core definition and especially the second test of “public benefit” is of particular concern to our sector. There is nothing in the discussion points that specifically allows for the benefit provided by a charity to be outside of Australia. **As per consultation question three: it would be very easy for a court to read down the terms “public” or “sufficient section of the general community” to be domestic which would exclude foreign nationals, outside of Australia. We recommend that the definition should specifically recognise international aid and development work.**

Peak bodies

In response to consultation question two: The Council would like to see that the NSW Administrative Tribunal’s finding of 2003 is enshrined in the understanding of a peak body’s “degree of integration and commonality of purpose with [its] membership” as definitive of its charitable nature. This, however, does not go far enough.

The term “peak body” is used differently by different organisations. As such, the purpose of the organisation may not necessarily be the same as that of its constituent members. Indeed, a peak body may provide services to its members without being of the same nature as its members. The charitable nature of the peak body must be able to be extrapolated from the charitable nature of its membership while not necessarily being limited by it.

We refer to the decision of the Supreme Court of the ACT in the *Australian Council for Overseas Aid v FCT 80 ATC 4575, 11 ATR 343*; a case concerning the status of a Public Benevolent Institution. The case, in which ACFID a material interest, but one which allowed that the nature of the constituent members, by implication, helped to define the charitable nature of the peak body. **We recommend, therefore, that a peak body must be viewed as a charitable institution and be able to access at least the same benefits that are held by its membership.**

ACFID is a member of the National Roundtable of Nonprofit Organisations (NRNO). **Concerning consultation question one: we support the NRNO’s submission in this regard and refer you to that submission.**

Familial ties

The concept of all agents in a society acting as individuals in singular relationship with the state is a peculiarly western concept, arising since the industrial revolution. For many communities that our members work with in developing countries, the family unit of blood relatives - alive and dead - is the basis of their identity. What’s more, people in the developing world are living in close geographical proximity to their relatives. Some

of the tenets of best practice within the professional, not-for-profit aid and development sector run contrary to the full public benefit test.

Best practice within our sector includes such concepts as only working through local partner organisations, as working for gender equity, as pursuing policies of disability inclusiveness. It is altogether possible that staff of a local agency are relatives of the people receiving development assistance. It is altogether probable that a project in a village is providing assistance to multiple members of the same extended family. In the geographical circumstances in which our membership works, it would be impossible not to run contrary to this element of the proposed Public Benefit test.

In response to consultation question four: it is absolutely necessary to allow for beneficiaries with family ties to receive charitable development assistance. It may be necessary for other organs of the Government to apply tests for probity so that charitable organisations are not being used for corrupt purposes, but the ACSC should not apply this to the international aid and development sector.

“Benefit” and “Presumption of public benefit”

Benefits

The definitions being worked up to cover the charitable sector assume that the whole of the charitable sector is of the same ilk. We are not.

The ACNC is attempting to use universal terms to cover organisations that provide health care to indigenous Australians in the outback, that provide sports based lifestyle coaching for children with obesity, that run meat raffles to raise money for a local art gallery. The ACNC will be forever having to clarify and re-clarify its increasingly contorted definitions in order to allow for the breadth of the charitable sector.

Paragraphs 71 to 77 of the Consultation Paper concerning the term “benefit” are only of concern to those elements of the charitable sector for which a benefit might possibly accrue to the membership. The not-for-profit international aid and development sector does not suffer from this conflict. The membership of aid agencies are not in a club for those with a mutual interest, they are an altruistic gathering whose purpose for being is focussed on the underprivileged, living in the developing world.

The ACNC will need to grapple with the many issues and public conflicts for organisations seeking registration as a charity. As such, with two exceptions, ACFID supports the application of a public benefit test. **We propose, however, that any not-for-profit aid and development organisation that is a signatory to the ACFID Code of Conduct be presumed to have met this test when seeking registration.**

As stated in the Introduction, those agencies that are signatories to the ACFID Code of Conduct can be relied upon to be operating under the highest ethical and professional standards. The ACNC can take comfort that the general community, as defined in the Core definition, receives the benefits defined by the expert understanding of this self regulating sector.

Religious organisations

The second exception that we propose to the public benefit test is for religious organisations. Religion remains an everyday practice for millions of Australians and

identification with it continues to be at the core of even more Australian's social and cultural identity.

The intrinsic nature of religion is intangible. If an organisation seeks to demonstrate the benefit it provides to the community, it will be forced to provide a secular explanation for its existence. The nature of such an organisation does not fit the evidentiary demands of such a test and should not be subjected to it. **In response to consultation question nine: an exception should be made for religious organisations and, being a signatory to the ACFID Code should be prima facie proof of meeting the public benefit test for aid and development organisations.**

Illegal activities

Paragraph 117 strikes us in two different ways. Firstly, we support that there should be a level of warnings and threats if an agency is in breach of the law. We appreciate that previous proposals did not allow for any official sanctions to be applied before deregistration. As such, we support this as a positive advancement.

The second aspect of this proposal fits into the overall concern that ACFID has about the planned nature of the ACNC. Pre-empting the separate consultations referred to in paragraph 117, we repeat the same comments we made in 2003: "The [ACNC]'s role is to define the characteristics of a charitable organisation, not to provide a mechanism for determining whether an organisation has committed a serious or unlawful offence. More appropriate legislation is available to determine whether an organisation has committed an offence. . . . This is unworkable and inappropriate. The judicial system should be responsible for determining whether the actions of an organisation are in breach of any law of the Australian Commonwealth, states or territories." These comments are as true today as when we submitted them to the Government eight years ago.

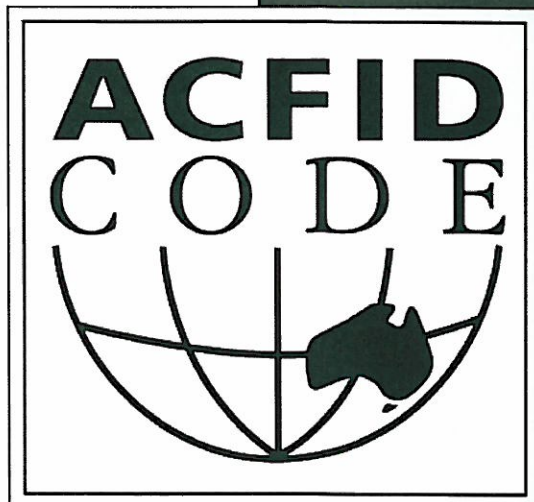
Our concern is that in the refinement of the ACNC, it presumes too many branches of authority unto itself. The instruments of government already have ample means by which to prosecute a director in breach of his/her fiduciary responsibilities, investigate an organisation accused of money laundering or sanction an organisation for publishing a misleading set of annual accounts. Under the ruse of protecting public confidence, the ACNC will develop a parallel universe of administration when that administration already exists for the country as a whole.

The role for the ACNC should be to respond to investigations and prosecutions undertaken by the various other organs of government. It should not be co-opting the multiple powers of other departments.

ACFID Member Organisations:

40K Foundation Australia	Burnet Institute	Nusa Tenggara Association
Act for Peace – NCCA	Care Australia	Opportunity International Australia
ActionAid Australia	Caring and Living as Neighbours (CLAN)	Oxfam Australia
ADRA Australia	Caritas Australia	OzGREEN – Global Rivers Environmental Education Network Australia
Afghan Australian Development Organisation	CBM Australia	Partners in Aid
Anglican Board of Mission – Australia	ChildFund Australia	Plan International Australia
Anglicord	Credit Union Foundation Australia	Project Vietnam
Archbishop of Sydney's Overseas Relief and Aid Fund	Emergency Architects Australia	Quaker Service Australia
Assisi Aid Projects	Foresight (Overseas Aid and Prevention of Blindness)	RedR Australia
Australasian Society for HIV Medicine	Fred Hollows Foundation, The	Refugee Council of Australia*
Australia for UNHCR	Friends of the Earth (Australia)	RESULTS Australia
Australian Aid International	Global Development Group	Salesian Society Incorporated
Australian Business Volunteers	GraceWorks Myanmar	Save the Children Australia
Australian Conservation Foundation	Habitat for Humanity Australia	Sexual Health & Family Planning Australia
Australian Doctors International	HealthServe Australia	TEAR Australia
Australian Federation of AIDS Organisations	Hunger Project Australia, The	Transparency International Australia
Australian Foundation for the Peoples of Asia and the Pacific	International Centre for Eyecare Education	Union Aid Abroad–APHEDA
Australian Himalayan Foundation	International Nepal Fellowship (Aust)	UnitingWorld
Australian Lutheran World Service	International Women's Development Agency	WaterAid Australia
Australian Marist Solidarity	Interplast Australia – Royal Australasian College of Surgeons	World Education Australia
Australian Medical Aid Foundation	Lasallian Foundation	World Vision Australia
Australian Red Cross*	Leprosy Mission Australia, The	WWF Australia
Australian Reproductive Health Alliance	Live & Learn Environmental Education	
Australian Respiratory Council	Marie Stopes Foundation Australia	
Australian Volunteers International	Mercy Works	
Baptist World Aid Australia	Mission World Aid	
	Motivation Australia	

** Consulting Affiliates*



**integrity • values •
accountability**

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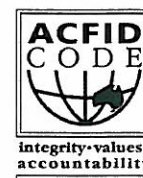
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ACFID CODE OF CONDUCT

For Non Government Development Organisations



This Code of Conduct sets out standards and requirements to which signatories to the Code are bound and against which **complaints and compliance is assessed**.

1. Preamble

- 1.1 This Code of Conduct defines standards of governance, management, financial control and reporting with which non government development organisations (NGDOs) should comply. It identifies mechanisms to ensure accountability in NGDO use of public monies. The Code aims to maintain and enhance standards throughout the NGDO community, ensuring public confidence in: the integrity of individuals and Organisations comprising the NGDO community; and quality and effectiveness of NGDO programs.
- 1.2 Organisations which are signatories to this Code aim to build creative and trusting relationships with people of developing countries and to meet program standards which:
 - give priority to the needs and interests of the people they serve;
 - encourage self help and self-reliance among beneficiaries and thus avoid creating dependency;
 - involve beneficiary groups to the maximum extent possible in the design, implementation and evaluation of projects and programs;
 - respect and foster internationally recognised human rights, both socio-economic and civil-political;
 - seek to enhance gender equity; and
 - are based on an understanding of the history and culture of the people served.
- 1.3 NGDOs are required to meet a range of state and federal legal obligations which are presumed in this Code. These obligations may include corporations laws, rules of incorporation of associations, fundraising and charitable institutions legislation, privacy legislation, equal employment opportunity principles, occupational health and safety standards, anti discrimination legislation, intellectual property and copyright legislation and other codes of ethics.

2. Organisational Integrity

- 2.1 In all of its activities and particularly its communications to the public, the Organisation will accord due respect to the dignity, values, history, religion, and culture of the people with whom it works consistent with principles of basic human rights.
- 2.2 The Organisation will be formed voluntarily and be not-for-profit.
- 2.3 The Organisation will oppose and not be a willing party to wrongdoing, corruption, bribery, or other financial impropriety in any of its activities. It shall take prompt and firm corrective action whenever and wherever wrongdoing is found among its Governing Body, paid staff, contractors, volunteers and partner Organisations.
- 2.4 The Organisation will have a policy to enable staff confidentially to bring to the attention of the Governing Body evidence of misconduct on the part of anyone associated with the Organisation. All reports must be channelled through the Chief Executive Officer unless it is an issue concerning the Chief Executive Officer which should be taken directly to a member of the Governing Body.
- 2.5 The Organisation will conduct itself in ways that do not denigrate other agencies, or make misleading or false public statements regarding other agencies.
- 2.6 The Organisation will have policies and procedures to promote the safety and well being of all children accessing their services and programs, particularly to minimise the risk of abuse of children.
- 2.7 Funds and other resources designated for the purposes of **aid and development** will be used only for those purposes and will not be used to promote a particular religious adherence or to support a political party, or to promote a candidate or organisation affiliated to a political party.
- 2.8 An Organisation (being an Australian NGDO) should only disburse donated funds or resources to a third party (including to an international affiliate or an overseas partner organisation) for use in relation to an aid and development program if it is satisfied that:
 - a. the particular aid and development program is aligned with or consistent with the Organisation's strategy for achieving its objects and purpose;
 - b. the third party to whom funds or resources are to be disbursed has the capacity to utilise the funds or resources in accordance with the specific instructions of the Organisation, in accordance with relevant provisions of the Code of Conduct and in a manner consistent with the Organisation's donor promise, express or implied;
 - c. the funds and resources will be disbursed in accordance with relevant laws including counter terrorism financing and anti-money laundering legislation; and
 - d. appropriate control and risk management mechanisms (such as contractual arrangements specifying funding conditions and relevant reporting and monitoring obligations) are in place to mitigate the risk of misappropriation or improper use of the funds or resources once disbursed.

3. Governance

- 3.1 An Organisation's governing instrument (constitution, articles of association, rules, by-laws or similar documents) will be consistent with legislative requirements and set forth the Organisation's basic goals and purposes, define membership, governance structure of the Organisation including the frequency of meetings (at least two a year) and the size of a quorum.
- 3.2 Each Organisation will have a governing body elected/appointed by members from within the membership/supporters. The Governing Body will approve the annual budget and may delegate authority to staff or others but must accept ultimate responsibility for governance over all aspects of the Organisation. There should be clearly defined lines of authority between the Governing Body and management.
- 3.3 There will be written policies covering appointment, termination and, where applicable, remuneration of members of the Governing Body. The Organisation will have policies restricting the number of paid staff who are voting members of the Governing Body.
- 3.4 Members of the Governing Body, paid staff, and volunteers will make known to the Governing Body any conflict of interest or any affiliation they might have with an actual or potential supplier of goods and services, recipient of grant funds or Organisation with competing or conflicting objectives. Members of the Governing Body and paid staff will absent themselves from discussion and abstain from voting or otherwise participating in the decision on any issue in which there is a conflict of interest. Large or otherwise inappropriate gifts to members of the Governing Body or staff for personal use shall be forbidden.
- 3.5 The Governing Body will commit the Organisation to open and accurate disclosure of information concerning its goals, programs, finances and governance. Due regard will be given to the human rights and personal safety of staff, partners and aid recipients, legal requirements regarding privacy and confidentiality, proprietary information and personnel matters.
- 3.6 The Organisation will hold an annual general meeting of its members as defined in its governing instrument and which meets the requirements of the legislation under which the Organisation is incorporated. The AGM will receive the annual audited financial statements and appoint an independent auditor for the subsequent year(s).

4. Communication with the Public

- 4.1 An Annual Report is to be produced and made available to the organisations own members, supporters and members of the public upon request.
- 4.2 Fundraising solicitations will be truthful, will accurately describe the Organisation's identity, purpose, programs, and needs and will only make claims which the Organisation can fulfil. There will be no material omissions or exaggerations of fact, no use of misleading photographs, nor any other communication which would tend to create a false impression or misunderstanding.
- 4.3 In all fundraising activities initiated or authorised by it, the Organisation will have policies (consistent with the Privacy Act 1988) set up to protect donors' rights to:
 - have their names deleted from mailing lists;
 - have their names deleted from mailing lists the Organisation may intend to share;
 - be informed whether those seeking donations are volunteers, paid staff or agents of the Organisation;

- be informed about the causes for which funds are being raised;
- get information on the application of their donation; and
- be able to identify collectors and have documentation confirming the bona fides of the Organisation.

4.4 The Organisation will be responsible for all fundraising activities outsourced to a third party and will put all such contracts and agreements in writing.

5. Finances

5.1 The Organisation will have internal control procedures which minimise the risk of misuse of funds. Reporting mechanisms which facilitate accountability to members, donors and the general public will be used. The Organisation will have adequate procedures for the review and monitoring of income and expenditure. Loans to and transactions with Governing Body members or related parties shall be publicly disclosed. Loans to staff shall be disclosed to the Governing Body.

5.2 Notwithstanding any other legal requirements, the Organisation must publish in their Annual Report, financial statements prepared in accordance with the Code of Conduct Summary Financial Report Format found in the Guidance Document to the ACFID Code of Conduct. Additionally, organisations may choose to publish their Full Financial Statements within their Annual Report.

5.3 Code of Conduct Summary Financial Reports and Full Financial Reports must be audited by at least a qualified accountant who is a member of CPA Australia, the Institute of Chartered Accountants in Australia, the National Institute of Accountants or by a Registered Company Auditor. The Auditor's statement of the summary reports presented must accompany the financial report in the Annual Report.

5.4 Where an organisation chooses to publish only their Code of Conduct Summary Financial Reports in their Annual Report and not the organisation's Full Financial Report, the Annual Report must make reference to the fact that the Full Financial Report is available on request. Any other organisational publications that detail, summarise, or comment on financial performance must also indicate that the Full Financial Report is available on request.

5.5 Donations shall be used as promised or implied in fundraising appeals or as requested by the donor. When funding is invited from the general public for a specific purpose, the Organisation shall have a plan for handling any excess and shall make this known as part of the appeal. Organisations shall substantiate, upon request, that their application of funds is in accordance with donor intent or request.

5.6 The use of ratios in publications shall at all times be accompanied by a note explaining how these have been determined.

6. Personnel and Management Practice

6.1 The Organisation will seek to achieve best practice in its personnel policies in response to initiatives in the aid sector and to changes in working and legal environments. The Organisation will have well defined policies and procedures relating to paid staff including expatriate and local staff employed overseas and volunteers working in Australian or overseas. These policies and procedures will clearly define and protect the rights and safety of personnel assuring fair treatment in all matters. Policies and procedures relating to staff and volunteers based outside Australia will be informed by the *People in Aid: Code of best practice in the management and support of aid personnel*.

- 6.2 The Organisation's expectations of its employees' and volunteers' professional conduct shall be clearly communicated and consistent with the requirements of the ACFID Code of Conduct.
- 6.3 The Organisation will be committed to continuous improvement in its management practice including the provision of regular opportunity to employees for training and professional development.
- 6.4 The Organisation will have policies and strategies to promote gender equity especially in senior positions in the management and governance of the Organisation.

7. Reference to Other Codes and Standards

- 7.1 Organisations that are signatories to the ACFID Code of Conduct are guided by the strategies and standards of engagement for program management in the ACFID NGO Effectiveness Framework.
- 7.2 Organisations which are signatories to this Code, will also be informed by the following codes and standards where they are relevant to the work of the Organisation:
- *The Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*
 - *Sphere Humanitarian Charter and Minimum Standards in Disaster Response*

8. Complaints Handling Process

- 8.1 No legal representation or hearings

No person has a right to:

- a. legal representation;
- b. a hearing; or
- c. make oral submissions,

under this complaint handling process set out in this clause 8.

8.2 Complaint received

A Complaint may be made by any person and must:

- a. be in writing, and should be addressed to the chairperson of the ACFID Code of Conduct (**Chairperson**);
- b. include the name and contact details of the person making the Complaint (**Complainant**),

and should be made in the form (if any) approved by the ACFID Code of Conduct Committee.

8.3 Complaint to be acknowledged

Receipt of the Complaint will be confirmed in writing to the Complainant.

8.4 Chairperson review of Complaint

The Chairperson (in consultation with one member of the ACFID Code of Conduct Committee of the Chairperson's choosing) will review the Complaint and decide whether:

- a. to recommend to the ACFID Code of Conduct Committee that the Complaint be dismissed. If such a recommendation is made and the ACFID Code of Conduct Committee does not accept the recommendation, the Chairperson must appoint an Investigating Officer under clause 8.5;
- b. to recommend to the ACFID Code of Conduct Committee that the Complaint be referred to a more appropriate body. If such a recommendation is made and the ACFID Code of Conduct Committee does not accept the recommendation, the Chairperson must appoint an Investigating Officer under clause 8.5; or
- c. to appoint an Investigating Officer under clause 8.5 to investigate the Complaint further.

If the ACFID Code of Conduct Committee accepts a recommendation made under paragraph (a) or paragraph (b) of this clause 8.4, then the Complaint is dismissed (in the case of a recommendation under paragraph (a)) or must be referred to the other body (in the case of a recommendation under paragraph (b)).

8.5 Investigating Officer review of Complaint

- a. If a Complaint is to be investigated following the Chairperson's review under clause 8.4, the Chairperson must appoint a member of the ACFID Code of Conduct Committee or a team including at least one member of the ACFID Code of Conduct Committee, and any number of other people (as the Chairperson considers appropriate) with expertise related to the nature of the Complaint (**Investigating Officer**) to investigate the matters raised in the Complaint. A person may not be appointed as the Investigating Officer (and a person may not be appointed to the team which is the Investigating Officer) if they have, or the Chairperson reasonably considers them to have, a material personal interest in the outcome of the Complaint.
- b. The Investigating Officer must give the Affected Signatory a copy of the Complaint and invite the Affected Signatory to respond to the Complaint in writing no later than 21 days after the date of the notice.
- c. The Investigating Officer must inform the Complainant in writing of the decision to investigate the Complaint further and any expected timeframes for dealing with the Complaint. The Complainant will be notified in writing of any substantial changes to expected timeframes.
- d. The Investigating Officer must consider the Complaint and any response submitted by the Affected Signatory if that response is submitted within the time period set out in paragraph 8.5(b). The Investigating Officer may, but is not required to, seek further information or invite further written submissions from the Complainant, the Affected Signatory or any other person, with such time limits to respond as the Investigating Officer considers reasonable in the circumstances. The Investigating Officer must consider any further submissions made in accordance with this paragraph 8.5(d), if they are submitted within the relevant time limit set by the Investigating Officer.

- e. In its investigations, the Investigating Officer is not limited to the breaches of the Code and/or, if applicable, the Rules specified in the Complaint and may investigate any other breaches arising from substantially the same circumstances as those set out in the Complaint. The Investigating Officer is not bound by the laws of evidence.
- f. The Investigating Officer must prepare a draft report regarding the Complaint and make a recommendation on whether, in the opinion of the Investigating Officer:
 - i. the Complaint should be dismissed;
 - ii. the Complainant should be referred to a more appropriate body; or
 - iii. the Affected Signatory has breached the Code.
 - iv. If the Investigating Officer considers that the Affected Signatory has breached the Code and/or, if applicable, the Rules, the Investigating Officer must make a recommendation as to the disciplinary action that should be taken by the ACFID Code of Conduct Committee.
- g. A copy of the draft report (with recommendations) must be given to the Affected Signatory, who may, within 7 days after the date on which the draft report is sent, submit written submissions in response to the draft report.
- h. The Investigating Officer must consider any submissions in response to the draft report made by the Affected Signatory, and may, but is not required to, make changes to the draft report when it prepares a final report (with recommendations) for the ACFID Code of Conduct Committee.
- i. The final report of the Investigating Officer and the submissions of the Affected Signatory in response to the draft report must be submitted to the ACFID Code of Conduct Committee for a final determination.

8.6 Determination by ACFID Code of Conduct Committee

- a. The ACFID Code of Conduct Committee must consider the Complaint, the final report of the Investigating Officer, any submissions made by the Affected Signatory in response to the draft report, and may consider any other information it considers relevant. The ACFID Code of Conduct Committee must make a determination (by simple majority of those present and eligible to vote) as to whether the Affected Signatory:
 - i. has not breached the Code, in which case the Complaint must be dismissed; or
 - ii. has breached the Code and/or, if applicable, the Rules.

The ACFID Code of Conduct Committee is not bound to follow the recommendations made by the Investigating Officer or the laws of evidence.

- b. A member of the ACFID Code of Conduct Committee who:
 - i. is the Investigating Officer (or any member of the Investigating Officer, if a team has been appointed);
 - ii. is an employee or director (or equivalent) of either the Complainant or the Affected Signatory; or

- iii. for some other reason has a material personal interest in the outcome of the Complaint,

must not be present at discussion regarding the Complaint or at any vote in relation to the Complaint.

8.7 Signatories must co-operate

If the Investigating Officer or the ACFID Code of Conduct Committee requests information from a signatory to the Code in relation to an investigation, the signatory must not without reasonable excuse fail to comply with the request. Without limiting what may be considered a reasonable excuse, the signatory is not required to comply with the request to the extent that:

- a. to do so would involve the signatory breaching a law or an obligation under a contract to which it is a party; or
- b. the request involves the disclosure of information which is subject to legal professional privilege or an obligation to keep the information confidential.

To avoid doubt, a breach of the obligation under this clause 8.7 is a breach of the Code.

8.8 If a breach is found

If the ACFID Code of Conduct Committee determines that the Affected Signatory has breached the Code and/or, if applicable, the Rules, it may:

- a. attempt to negotiate (including through conciliation or mediation) a course of action with the Affected Signatory. If the ACFID Code of Conduct Committee and the Affected Signatory are not able to reach an agreement within such time as the ACFID Code of Conduct (in its absolute discretion) considers appropriate in the circumstances, the ACFID Code of Conduct Committee may take disciplinary action in accordance with clause 8.9; or
- b. take disciplinary action in accordance with clause 8.9.

8.9 Disciplinary action

- a. The ACFID Code of Conduct Committee may take any of the following actions (including any combination of them) as it considers appropriate:
 - i. require the Affected Signatory to provide information concerning the breach to the Affected Signatory's donors;
 - ii. revoke the Affected Signatory's status as a signatory to the Code, or suspend its status as a signatory to the Code or any period it determines not exceeding 1 year;
 - iii. notify the ACFID Executive Committee of the details of the disciplinary action (if any) which the ACFID Code of Conduct Committee has determined it will take under this clause 8.9;
 - iv. if the Affected Signatory has been accredited by AusAID, notify AusAID of the breach; and

- v. publish the name of the Affected Signatory and the nature of the breach on the ACFID website.
- c. No disciplinary action may be taken until the expiry of the period within which an appeal may be requested in accordance with clause 8.13(a), or if an Appeal (as defined in clause 8.11 has been made, until the Appeal has been determined by the Appeals Officer.
- d. The Affected Signatory must comply with any disciplinary action the ACFID Code of Conduct Committee determines in response to the breach. If the Affected Signatory fails to do so, the ACFID Code of Conduct Committee may take any further disciplinary action in accordance with this clause 8.9 as it considers appropriate.

8.10 Notification of outcome

The ACFID Code of Conduct Committee must notify the Complainant and the Affected Signatory in writing:

- a. of its determination under clause 8.6(a);
- b. of any action it has determined to take in accordance with clause 8.8 or clause 8.9(a); and
- c. that the decision may be appealed in accordance with this clause 8.

A copy of the notices must be given to the ACFID Executive Committee.

8.11 Appeal

An appeal from a determination of the ACFID Code of Conduct Committee made under clauses 8.6 to 8.9 (inclusive) (**Appeal**) may be made to the Appeals Officer in accordance with clause 8.13.

8.12 Appeals Officer

The ACFID Executive Committee must appoint an Appeals Officer, for a term of three years and on such other terms and conditions as the ACFID Executive Committee resolves. The Appeals Officer is to be selected from nominations made by the ACFID Code of Conduct Committee.

8.13 Review process

- a. An Appeal must be:
 - i. made in writing;
 - ii. sent to the ACFID Code of Conduct Committee Appeals Officer;
 - iii. received within 30 days after the date of the notice referred to in clause 8.10; and
 - iv. specify the grounds on which the Appeal is made.
- b. An Appeal may be made on any grounds, and may relate to the whole or a part only of a determination.

- c. The Appeals Officer must
 - i. consider the Appeal;
 - ii. give:
 - A the Complainant, if the Affected Signatory has made the Appeal; or
 - B the Affected Signatory, if the Complainant has made the Appeal,

a copy of the Appeal and the opportunity to make written submissions in response to the Appeal within 21 days after the date of the notice;
 - iii. consider any submissions made in accordance with clause 8.13(c)(ii).
- d. The Appeals Officer must notify the ACFID Code of Conduct Committee and the Investigating Officer of the Appeal. The ACFID Code of Conduct Committee must give the Appeals Officer copies of:
 - i. the Complaint and all submissions received by the Investigating Officer in relation to the Complaint;
 - ii. the Investigating Officer's draft report and the Affected Signatory's submissions in relation to it;
 - iii. the Investigating Officer's final report; and
 - iv. the ACFID Code of Conduct Committee's notices to the Complainant and Affected Signatory under clause 8.10.
- e. The Appeals Officer may:
 - i. uphold the determinations of the ACFID Code of Conduct Committee in whole or in part;
 - ii. overturn the determinations of the ACFID Code of Conduct Committee in whole or in part;
 - iii. make a new determination in relation to the Complaint; and
 - iv. if the Appeals Officer determines that there has been a breach of the Code, exercise the powers of the ACFID Code of Conduct Committee set out in clauses 8.8 and 8.9.
- f. The Appeals Officer must notify the Affected Signatory, the Complainant and the ACFID Code of Conduct Committee in writing of the determination made under clause 8.13(e).

8.14 No further appeal

A determination of the Appeals Officer may not be appealed.

8.15 Resignation of Affected Signatory

If an Affected Signatory ceases to be a signatory to the Code at any time before any action that must be taken under this clause 8 is taken, the ACFID Code of Conduct

Committee may resolve that any current procedures under this clause 8 in relation to the Complaint are to cease. If it does so, any action which may have been required to be taken under this clause 8 if the Affected Signatory had continued to be a signatory to the Code, is no longer required to be taken.

However, the resignation of an Affected Signatory does not prevent:

- a. the investigation of a Complaint concerning the Affected Signatory;
- b. a determination being made in relation to the Complaint; or
- c. the taking of any disciplinary action under clause 8.9, which is capable of being taken despite the Affected Signatory's ceasing to be a signatory,

in accordance with this clause 8.

8.16 **ACFID may publicise**

The ACFID Code of Conduct Committee may, but is not required to, publicise at any time and by any method it considers appropriate:

- a. the fact that a Complaint has been made, including the names the Complainant and the Affected Signatory;
- b. the fact that a Complaint will be, is being or has been investigated; and
- c. the outcome of an investigation and any disciplinary action taken.

9. **Amending the ACFID Code of Conduct and the Guidance Document**

- 9.1 The **ACFID Code of Conduct** may only be amended by ACFID Council according to the procedures in the ACFID Rules and Objects. The consent of non-members of ACFID which are signatories to this Code is not required for amendment of the Code of Conduct.
- 9.2 The **Guidance Document** to the ACFID Code of Conduct may be amended by ordinary resolution of the ACFID Council or by the ACFID Executive Committee on the recommendation of the ACFID Code of Conduct Committee.

10. Definitions

ACFID Code of Conduct

The standards and requirements set out in this Code to which signatories to the Code are bound and against which complaints and compliance is assessed.

Annual Report

The annual report is one of the principal windows of Organisational performance, activity and accountability. It should be both reflective of the pursuits, issues and achievements for the period being reported and be predictive on future directions and activity. It shall contain, as a minimum:

- a statement of the Organisation's goals or purposes;
- a summary of overall program activities by country or region;
- the names, qualifications and experience of current members of the Governing Body as well as those who served at any time during the period being reported on;
- financial statements using the Code of Conduct Summary Financial Report Format; and
- an audit opinion on the financial statements, clearly identifying the auditor (name, company, address and signature).

Code of Conduct Summary Financial Report

Summary Financial Report derived from Full Financial Report as detailed in the Guidance document to the Code of Conduct.

Full Financial Report

Organisations Full Financial Report (inclusive of statements, notes and auditors report) as approved by the organisations Governing Body and presented to Members.

The Governing Body

The Governing Body is the authority ultimately responsible for governance over all aspects of the Organisation and is the responsible for the Organisation's signature to and compliance with this Code of Conduct. The Governing Body must be elected or appointed by members from within the membership or support base of the Organisation.

Guidance Document

The guidance document to the ACFID Code provides guidelines on how signatories maintain adherence to the ACFID Code of Conduct. It includes the Code of Conduct Summary Financial Report Format, the Complaints Handling Process, explanatory notes and other documents which the Code of Conduct Committee recommend as useful to inform and guide the application of the ACFID Code to the work of signatories.

Organisation

A Non Government Development Organisation (NGDO), which is a signatory to this Code.