



16 June 2023

Attorney-General's Department

Submitted Online: [[Modernising Australia's anti-money laundering and counter-terrorism financing regime - Attorney-General's Department - Citizen Space \(ag.gov.au\)](#)]

Our reference: ACNCSUB2023/10

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to comment on the proposed reforms to Australia's anti-money laundering and counter-terrorism financing (**AML/CTF**) regime.
2. We have answered questions in the consultation paper that we consider are relevant to the ACNC's role.

About the ACNC and the charity sector

3. The ACNC is the national regulator of charities established by the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**). The objects of the ACNC Act are to:
 - a. maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector, and
 - b. support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector, and
 - c. promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.
4. Currently, the ACNC has oversight of around 60,000 registered charities that vary considerably in size, role, and function. Charities are a vital part of our community and economy. Registered charities employed over 1.3 million people¹ and reported revenue of \$176 billion in the 2020 reporting period.² While some charities are large and well-known entities, most charities are

¹ Australian Charities and Not-for-profits Commission, *Australian Charities Report – 8th edition, 2022*, 13.

² Australian Charities and Not-for-profits Commission, *Australian Charities Report – 8th edition, 2022*, 14.





small, volunteer-run organisations.³ Approximately 7 per cent of charities operate overseas, either directly or by sending support to partner organisations.⁴

5. Charities (other than Basic Religious Charities) must comply with the ACNC Governance Standards. Governance Standard 3 requires charities to comply with Australian laws, and Governance Standard 5 requires charities to control the use of their funds and assets.
6. All charities, including Basic Religious Charities, that operate overseas must comply with the External Conduct Standards. External Conduct Standard 1 requires charities to maintain control of their funds and assets overseas, and explicitly requires them to comply with Australia's AML/CTF legislation in their overseas operations.

1. How can the AML/CTF regime be modernised to assist regulated entities address their money laundering and terrorism financing risks?

7. We consider that any modernisation of the AML/CTF regime should support regulated entities to service the charity sector. We understand that modernisation and simplification of the regime includes making amendments to ensure that the regime remains fit for purpose, meets international standards, and reduces the burden for industry and regulators.
8. The US Department of the Treasury has recently reported that its consultations with banks and not-for-profit organisations “support the notion that ML/TF risks in high-risk countries and reputational risks, along with banks’ ability to mitigate risk, contribute to bank de-risking of [not-for-profit organisations] customer accounts”.⁵ We consider that these concerns arise in Australia as well, having regard to the historical closure of accounts of Australian remittance service providers.⁶
9. Access to financial services is important for charities. Beyond the ability to make cross-border payments, access to financial services also enables charities to receive online donations, pay their staff, and access credit and insurance, among other things.⁷ Further, anecdotal evidence suggests that bank de-risking of the charity sector may lead to charities using informal

³ Australian Charities and Not-for-profits Commission, Australian Charities Report – 8th edition, 2022, 7; 11-13.

⁴ Australian Charities and Not-for-profits Commission, Australian Charities Report – 8th edition, 2022, 51

⁵ US Department of the Treasury, AMLA The Department of the Treasury's De-risking Strategy (April 2023) 19 <https://home.treasury.gov/system/files/136/Treasury_AMLA_23_508.pdf>.

⁶ Louis De Koker, Supriya Singh, and Jonathan Capal, 'Closure of Bank Accounts of Remittance Service Providers: Global Challenges and Community Perspectives in Australia' (2017) *University of Queensland Law Journal*, 119, <<http://www.austlii.edu.au/au/journals/UQLawJl/2017/6.pdf>>.

⁷ *Ibid* page 37.



methods and/or carrying cash to legitimate partners or beneficiaries overseas.⁸ This can hamper efforts to monitor such cash flows.

10. Modernisation of the AML/CTF regime may therefore consider the role that AML/CTF regimes may play in de-risking of the charity sector and measures that may be implemented to reduce the potential for de-risking of the charity sector.
11. The regime may also be modernised by including other ways that entities may transfer value, including informal value transfer systems (for example, hawala and fei ch'ien). Charities may use such systems to transfer funds where there are no banking facilities available⁹ or they do not align with the charity's religious motivation. The Charity Commission for England and Wales states that the use of such methods by charities "require greater resource and effort on the part of the charity to ensure adequate systems are in place to protect the charity, and to ensure proper records are kept to show the legitimate movement and use of charitable funds".¹⁰ Ensuring such systems are regulated and robust would support the charity sector to operate more efficiently and build greater public trust and confidence.

7. What guidance would you like to see from AUSTRAC in relation to AML/CTF programs?

12. Given the potential for a withdrawal of services to Australian charities, we suggest the publication of guidance about the charity sector for regulated entities to consider.
13. The US Department of the Treasury has noted that "in the absence of a feeling of clarity, banks will often choose to de-risk".¹¹ This demonstrates the importance of clear, comprehensive guidance as to regulated entities' obligations under AML/CTF regimes.
14. Such guidance could:
 - a. reiterate the importance of access to financial services for charities
 - b. recognise that not all charities are inherently high risk

⁸ AUSTRAC and ACNC, Australia's non-profit organisation sector risk assessment 2017, 56 <<https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/australias-non-profit-organisation-sector-risk-assessment-2017>>.

⁹ Charity Commission for England and Wales, *Compliance toolkit: protecting charities from harm*, Chapter 4: Holding, moving and receiving funds safely in the UK and internationally, 5.1 <<https://www.gov.uk/government/publications/charities-holding-moving-and-receiving-funds-safely>>.

¹⁰ Ibid.

¹¹ US Department of the Treasury, AMLA The Department of the Treasury's De-risking Strategy (April 2023) 15 <https://home.treasury.gov/system/files/136/Treasury_AMLA_23_508.pdf>.



- c. explain that the legitimate transactions of charities may mirror criminal patterns,¹² and provide guidance on distinguishing such transactions
- d. provide guidance about proportionate risk assessment
- e. provide examples of information that regulated entities can obtain to satisfy due diligence requirements.

15. We suggest the guidance could also make it clear that the [ACNC Charity Register](#) is a source of truth regarding registered charities. Registered charities have various ongoing obligations to the ACNC, including to lodge Annual Information Statements and to notify the ACNC of changes to their details, such as changes to their Responsible Persons and their contact details. This information is published on the Charity Register.¹³

16. To further the ACNC's object to 'promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector', the ACNC has worked with federal and state regulators to ensure registered charities report once through the ACNC.¹⁴ By way of example, charities that are also registered with ASIC are not required to comply with certain requirements in the *Corporations Act 2001* (Cth), including certain obligations to report to ASIC.¹⁵ This can lead to outdated information appearing on ASIC registers. As a result, we suggest that any guidance provided to regulated entities could outline how due diligence for registered charities will differ to other types of entities, and how regulated entities may make use of the Charity Register in carrying out their due diligence.

8. What are your views on the proposed simplification of the customer due diligence obligations as outlined?

9. Do you have suggestions on other amendments to customer due diligence obligations?

17. We consider that any change should not lead to a reduction of the services offered to charities; however, there is a risk this may occur if customer due diligence obligations are unclear and/or burdensome.

18. The US Department of the Treasury's consultations with not-for-profit organisations found that these organisations "often faced significant and

¹² Ibid 36.

¹³ Australian Charities and Not-for-Profits Commission, Ongoing obligations to the ACNC, <<https://www.acnc.gov.au/for-charities/manage-your-charity/obligations-acnc>>.

¹⁴ Australian Charities and Not-for-Profits Commission, Red tape reduction, <<https://www.acnc.gov.au/about/red-tape-reduction>>.

¹⁵ Australian Charities and Not-for-Profits Commission, Companies limited by guarantee, <<https://www.acnc.gov.au/for-charities/manage-your-charity/other-regulators/companies-limited-guarantee>>. See also Australian Securities & Investments Commission, Charities registered with the ACNC, <<https://asic.gov.au/for-business/running-a-company/charities-registered-with-the-acnc/>>.



expansive due diligence requests from banks. This diligence sometimes leads to closing accounts.”¹⁶

19. The majority of charities have revenue of less than \$1 million per year¹⁷ and are largely reliant on part-time, casual and volunteer labour.¹⁸ As a result, charities typically have limited resources to call on to respond to additional administrative requirements and expenses. Also, the charity sector is aware that the general public expects charities to expend their resources on their purposes and can be critical of charities which are perceived to be ‘wasting’ resources on administration expenses.¹⁹ These characteristics mean that charities may struggle to comply with complex due diligence requests from banks.
20. As a result, we suggest that any amendment to customer due diligence obligations be supported by clear and detailed guidance to assist the charity sector in fulfilling its obligations.

14. What are the benefits and challenges of expanding the AML/CTF obligations to a broader range of digital currency-related services?

21. We support this expansion of obligations. We are aware that a growing number of charities are currently, or are considering, working with crypto-assets.²⁰ Expanding obligations and ensuring greater transparency will enhance trust in digital currencies, which may be of benefit to the charity sector through access to additional funding sources.

23. What services by lawyers, accountants, conveyancers and trust and company service providers should be regulated under the Act so that they can manage their AML/CTF risks? Are there international examples that have worked well for these sectors?

Charities providing such services

22. Some charities provide legal services, such as community legal centres, or carry out property management, such as housing providers. We understand the Department is considering the inclusion of property management and leasing services.

¹⁶ US Department of the Treasury, AMLA The Department of the Treasury’s De-risking Strategy (April 2023) 19 <https://home.treasury.gov/system/files/136/Treasury_AMLA_23_508.pdf>.

¹⁷ Australian Charities and Not-for-Profits Commission, ‘Australian Charities Report’ (8 ed, 2022) 7 <<https://www.acnc.gov.au/tools/reports/australian-charities-report-8th-edition>>.

¹⁸ Ibid 11-13.

¹⁹ See, for example, Social Ventures Australia and the Centre for Social Impact, ‘Paying What It Takes: Funding Indirect Costs to Create Long-term Impact’ (2022) 37.

²⁰ Australian Charities and Not-for-Profits Commission, Charities and crypto-assets, <<https://www.acnc.gov.au/tools/guides/charities-and-crypto-assets>>.



23. We refer to our comments above regarding the limited ability of charities to comply with additional administrative requirements. As a result of their limited abilities, charities who provide or otherwise carry out such services may find compliance with the regime burdensome.
24. It will therefore be important to provide clear guidance to charities about the services which will be in the scope of the modernised regime and the obligations that will be placed on providers.

Provision of such services to charities

25. These professions (in particular, lawyers and accountants) play an important role in the charity sector, including as advisors and in offering their expertise as volunteer Responsible Persons managing charities.
26. We refer to our comments about the role that AML/CTF regulations play in the de-risking of charities by financial services. The expansion of the AML/CTF regime to lawyers, accountants, conveyancers and trust and company service providers may result in a similar de-risking of the charity sector by these professions.
27. Any expansion of the regime may deter members of these professions from providing services to the charity sector if there is insufficient guidance as to their obligations.

24. What guidance could be provided to assist those providing proposed legal, accounting, conveyancing and trust/company services in managing these AML/CTF obligations?

Charities providing such services

28. Comprehensive guidance will be important to reduce the administrative burden on charities who are within the scope for the regime. This may include guidance on managing the cybersecurity risks associated with the collection and holding of the increased amount of personal information regarding the charity's clients necessary to meet due diligence requirements.

Provision of such services to charities

29. We refer to our comments above regarding the necessity for adequate guidance about the charity sector for current regulated entities.
30. These comments are also applicable to any expansion of the regime to lawyers, accountants, conveyancers and trust and company service providers.
31. We suggest that any guidance should enable these professionals to continue to support the charity sector.



Next steps

32. If you have queries about this submission please contact Joanna Austin, Director, Legal and Policy, joanna.austin@acnc.gov.au.

A handwritten signature in black ink that reads "Anna Longley". The signature is written in a cursive, flowing style.

Anna Longley
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Australian Charities and Not-for-profits Commission