



Australian Government



Australian
Charities and
Not-for-profits
Commission

07 June 2024

Reforming Australia's anti-money laundering and counter-terrorism financing regime
Attorney-General's Department

Submitted Online: [Reforming Australia's anti-money laundering and counter-terrorism financing regime - Attorney-General's Department - Citizen Space \(ag.gov.au\)](https://www.austlii.edu.au/au/other/dfat/page/citizen-space/20240607-reforming-aml-ctf-act-2006.html)

Our reference: ACNCSUB2024-007

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 address only one question in the paper.

What guidance should AUSTRAC produce to assist reporting entities to meet the expectations of an outcomes-focused approach to Customer Due Diligence (CDD)?

3. We refer to our submission to the first round of consultation and reiterate our suggestion that guidance for reporting entities should include specific information about the charity sector. This would be in line with the Financial Action Task Force Recommendation 8, that countries "should have in place focused, proportionate and risk-based measures, without unduly disrupting or discouraging legitimate NPO activities, in line with the risk-based approach".¹
4. Currently, and despite AUSTRAC's 2021 statement on de-banking,² the risk of de-banking persists in Australia.
5. Financial institutions may be unwilling to offer services to charities for a range of reasons, including the perceived or actual costs of monitoring transactions, resulting in de-banking of charities. The risk is illustrated by the recent litigation between Human Appeal International Australia and Beyond Bank Australia Ltd. In this case, Beyond Bank was unsuccessful in terminating its banking services to its client Human Appeal International Australia, a registered charity.
6. Beyond Bank tendered evidence that it had had to dedicate extra resources to monitoring the charity's transactions in accordance with *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) but did not provide any evidence that

¹ Financial Action Task Force, *International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation The FATF Recommendations* (November 2023), 13, <<https://www.fatf-gafi.org/content/dam/fatf-gafi/recommendations/FATF%20Recommendations%202012.pdf.coredownload.inline.pdf>>.

² AUSTRAC, *AUSTRAC statement 2021: de-banking* (29 October 2021), <<https://www.austrac.gov.au/news-and-media/media-release/austrac-statement-2021-de-banking>>.



directly linked this cost to the decision to terminate. As a result, the judge did not accept that Beyond Bank had validly terminated its banking services.³

7. That case reflects the issues faced by charities and financial institutions in navigating the requirements of Australia's current regime. These issues indicate the need for AUSTRAC to provide charity-specific guidance to reporting entities, especially given that the 2017 risk assessment of the NPO sector by AUSTRAC and the ACNC assessed the overall money laundering risk and the overall terrorism financing risk for the sector as both medium.⁴

Guidance for reporting entities should direct reporting entities to the ACNC Charity Register

8. One area of difficulty for reporting entities and charities is customer due diligence. We support non-prescriptive measures which direct reporting entities to rely on the ACNC Charity Register, rather than the ASIC Registers.
9. AUSTRAC's guidance on customer identification and verification states that reporting entities should check ASIC for company details.⁵ However, ASIC does not hold the most up-to-date information for over 12,000 registered charities that are companies.
10. Section 111K of the *Corporations Act 2001* (Cth) turns off obligations for registered charities which are companies to notify ASIC of certain changes, include changes to directors. Instead, under s 65-5 of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), all registered charities must notify the ACNC of changes to directors as well as changes to constitutions, names, or the address for service. This reflects the intent behind the establishment of the ACNC, which was to create a "one-stop shop" regulator.⁶
11. The issue between ASIC and ACNC records was recently noted in the case of *Re Leeuwin Ocean Adventure Foundation Limited (In Administration); Ex Parte John Allan Bumbak and Richard Scott Tucker as joint and several administrators of Leeuwin Ocean Adventure Foundation Limited* [2023] WASC 480.
12. Despite this, reporting entities continue to rely on out-of-date information on the ASIC Registers as part of their customer due diligence for charities. Where this conflicts with the charity's current state of affairs, reporting entities insist that registered charities update their details with ASIC.

³ *Human Appeal International Australia v Beyond Bank Australia Ltd (No 2)* [2023] NSWSC 1161 at [135].

⁴ AUSTRAC and ACNC, *Australia's non-profit organisation sector risk assessment 2017*, 9, <<https://www.austrac.gov.au/business/how-comply-guidance-and-resources/guidance-resources/australias-non-profit-organisation-sector-risk-assessment-2017>>.

⁵ AUSTRAC, *Customer identification and verification: easy reference guide* (15 January 2024) <https://www.austrac.gov.au/business/core-guidance/customer-identification-and-verification/customer-identification-and-verification-easy-reference-guide>.

⁶ Revised Explanatory Memorandum, Australian Charities and Not-For-Profits Commission Bill 2012 and Australian Charities and Not-For-Profits Commission (Consequential and Transitional) Bill 2012 (Cth), [1.45]



13. This results in:
- Unnecessary delays for registered charities trying to open bank accounts, which can have flow-on effects on their activities. This is especially unfortunate given the important and often time-sensitive work that charities carry out.
 - Further duplication of work where the charity has already complied with its legal obligations to notify the ACNC of change and now must update ASIC to satisfy their bank. Most charities are very small, volunteer-run organisations,⁷ so this is burdensome for charities.
 - The automatic triggering of ASIC late fees for registered charities. These can be waived as ASIC's late fees do not apply to registered charities,⁸ but the process of challenging these fees is another administrative burden for charities.
14. As a result, we suggest that AUSTRAC's guidance should state that reporting entities should rely on the ACNC Charity Register for companies which are registered charities, not ASIC. Our understanding is that customer identification and verification rules oblige reporting entities to use reliable and independent documentation.⁹ In determining whether electronic data, such as the ASIC Registers, are reliable and independent, the AML/CTF Rules state that it is relevant to consider whether the data is accurate and kept-up to date. It is unclear how the ASIC Registers can be considered reliable and accurate electronic data for registered charities, particularly when the ASIC Registers entry for each ACNC registered charity includes a note that says:

This company is registered as a charity with the Australian Charities and Not-for-profits Commission (ACNC). For further information on the charity, including the address for service, details of responsible persons (for example company directors) and financial reports, search the Charities register at www.acnc.gov.au.

15. Registered charities may be structured as other types of entities, such as incorporated associations or trusts. AUSTRAC's guidance to reporting entities should also reflect that the Charity Register will hold information for those types of registered charities, given the requirement to notify the ACNC of the changes described above.

Other matters that may be covered by the guidance

16. Registered charities operating outside Australia are obliged to comply with the External Conduct Standards, set out in the *Australian Charities and Not-for-profits Commission Regulations 2022* (Cth).
17. External Conduct Standard 1 requires that registered charities operating overseas must comply with Australian laws relating to money laundering, the financing of terrorism, as

⁷ ACNC, *Australian Charities Report*, 9th edition, 2023, 19-21, <https://www.acnc.gov.au/tools/reports/australian-charities-report-9th-edition>.

⁸ ASIC, *Charities registered with the ACNC*, <https://asic.gov.au/for-business/running-a-company/charities-registered-with-the-acnc/>.

⁹ *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument 2007* (No. 1) (Cth) at [4.3.10].



well as international sanctions, taxation, and bribery, among other things. Registered charities must also maintain reasonable internal control procedures to ensure compliance with these laws.

18. We suggest that AUSTRAC guidance could direct reporting entities to obtain information from the charity regarding its compliance with the External Conduct Standards as part of assessing the charity's risk.

Next steps

19. If you have queries about this submission please contact Ruby Ramachandran, Policy Manager, Legal and Policy, ruby.ramachandran@acnc.gov.au.

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