

Voluntary Best Practice Principles for Non-Profit Organisations Counter-Terrorism Financing – Appendices¹

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¹ These Appendices are based on the Financial Action Task Force (FATF) *Combating the Abuse of Non-Profit Organisations: International Best Practices* (11 October 2002) and the Interpretive Note to Special Recommendation VIII: Non-Profit Organisations (15 February 2006)

Appendix I: Definitions

In the Principles the following abbreviations and references are used:

A *non-profit organisation (NPO)* is a legal entity or organisation that primarily engages in raising or distributing funds for religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”.² The term *associate NPOs* includes foreign branches of international NPOs.

The term *funds* refers to assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit.³

The term *beneficiaries* refers to those natural persons, or groups of natural persons who receive charitable, humanitarian or other types of assistance through the services of the NPO.⁴

The term *all reasonable efforts* is used to reflect the need for positive action and a common sense approach to meet legal obligations and avoid inadvertently financing terrorist activity.

² Financial Action Task Force, 2006. *Interpretive Note to Special Recommendation VIII: Non-Profit Organisations*.

³ This definition is contained in Section 100.1 of the *Criminal Code Act 1995* (Cth). The term ‘asset’ contained in Section 14 of the *Charter of the United Nations Act 1945* (Cth) holds the same definition. As the definition also includes intangible assets, this may include training or other non-monetary support.

⁴ Financial Action Task Force, 2006. *Interpretive Note to Special Recommendation VIII: Non-Profit Organisations*.

Appendix II: It is important that all NPOs make all reasonable efforts to ensure that aid funds and resources are not being misused to support terrorist activity

Non-profit organisations (NPOs) are encouraged to adopt the best practice measures outlined in the *Voluntary Best Practice Principles for Non-Profit Organisations – Counter-Terrorism Financing* and in these Appendices in order to take steps to protect themselves from misuse for the purpose of terrorism financing. In particular, organisations are encouraged to make all reasonable efforts to know who their beneficiaries are and where and how their funds are being used.

Appendix III: NPOs must comply with all applicable Australian laws.

Like all Australian persons, Australian NPOs must comply with Australian laws. While an NPO’s governing board is not expected to have specialised legal knowledge, it has responsibility for ensuring the NPO’s compliance with law and should therefore have some familiarity with relevant basic rules and requirements.

The tables below list a number of relevant pieces of Australian legislation. However, this list is not exhaustive. An NPO should seek legal advice if they are uncertain of their obligations under law.

Table 1 Applicable Commonwealth Legislation

Relevant Legislation
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>
<i>Income Tax Assessment Act 1936 (ITAA 1936) and/or the Income Tax Assessment Act 1997 (ITAA 1997)</i> ⁵
<i>Criminal Code Act 1995</i>
<i>Criminal Code Regulations 2002</i>
<i>Charter of the United Nations Act 1945</i>
<i>Charter of the UN (Dealing with Assets) Regulations 2008</i>
<i>Corporations Act 2001</i>
<i>Privacy Act 1988</i>

⁵ The ATO has published a *Charity Pack* as a taxation guide for charitable institutions and funds <http://www.ato.gov.au/content/downloads/nat3131.pdf>

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Table 2 Applicable State and Territory legislation

State or Territory	Relevant Legislation and Related Documentation	Relevant Authority
New South Wales	<i>Charitable Fundraising Act 1991</i> <i>NSW Best Practise Guidelines for Charitable Organisations</i> <i>Associations Incorporation Act 1984</i>	Office of Liquor, Gaming and Racing
Victoria	<i>Fundraising Appeals Act 1998</i> <i>Gambling Regulation Act 2003</i> <i>Associations Incorporations Act 1981</i>	Consumer Affairs Victoria Victorian Commission for Gambling Regulation
Queensland	<i>Collections Act 1966</i> <i>Associations Incorporation Act 1981</i>	Office of Fair Trading, Queensland
Western Australia	<i>Charitable Collections Act 1946</i> <i>Street Collections (Regulation) Act 1940</i> <i>Associations Incorporation Act 1987</i>	Department of Consumer & Employment Protection
South Australia	<i>Collections for Charitable Purposes Act 1939 (CCP Act)</i> <i>Collections for Charitable Purposes Act 1939 – Code of Practice</i> <i>Lottery and Gaming Act 1936</i> <i>Lottery and Gaming Regulations 1993</i> <i>Associations Incorporation Act 1985</i>	Office of the Liquor and Gambling Commissioner
Tasmania	<i>Gaming Control Act 1993</i> <i>Associations Incorporation Act 1964</i>	Liquor and Gaming Branch representing the Tasmanian Gaming Commission
Australian Capital	<i>Charitable Collections Act</i>	Office of Regulatory

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Territory	2003 <i>Associations Incorporation Act 1991</i>	Services
Northern Territory	<i>Gaming Control Act (Part IV) and supporting Regulations</i> <i>Associations Act 2005</i>	Racing, Gaming & Licensing Division of NT Treasury

Appendix IV: If a NPO conducts programs outside Australia, it must also comply with applicable international laws, regulations and conventions.

As with Australian laws, NPOs should be aware of relevant international rules and requirements when providing funds and assistance in locations outside Australia. The Australian framework for countering terrorist financing is set out in Appendix VIII. NPOs are encouraged to refer to the Department of Foreign Affairs and Trade (DFAT) website for further information on UN financial sanctions (http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html#3) and the UN Consolidated List of individuals and entities associated with Al Qa'ida and the Taliban (<http://www.un.org/sc/committees/1267/consolist.shtml>). NPOs are encouraged to refer to the Australian Council for International Development (ACFID) for guidance on overseas aid and assistance.

Appendix V: NPOs should ensure that directly funded persons/organisations and local partners are aware of and obliged to comply with relevant laws, and that they in turn are obliged to make sure that their distribution of the funds or support is made on the same basis.

A NPO should take reasonable steps to ensure that beneficiaries and local partners are aware of the relevant Australian laws and requirements referred to in Appendix IV and refer them, where necessary to the *Voluntary Best Practice Principles for Non-Profit Organisations – Counter-Terrorism Financing* and *Voluntary Best Practice Principles for Non-Profit Organisations – Counter-Terrorism Financing – Appendices*.

Appendix VI: NPOs should know who their beneficiaries are and ensure that all reasonable efforts are taken to prevent funds being misused to support terrorist activities.

NPOs should follow a “know your beneficiaries and associate NPOs” rule, which means that the NPO should make best efforts to confirm the identity, credentials and good standing of their beneficiaries and associate NPOs. NPOs should also undertake

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best efforts to document the identity of their significant donors and to respect donor confidentiality.

Where practical, NPOs should collect the following basic information about beneficiaries:

- a) the name, date of birth, available postal, email and URL addresses and phone number/s of a beneficiary
- b) the nationality and country of residence of beneficiaries
- c) the available postal, email and URL addresses and phone number/s of each place of business of a beneficiary
- d) a statement of the principal purpose of the beneficiary, including a detailed report of the beneficiary's projects and goals
- e) the names and available postal, email and URL addresses of individuals, entities, or organisations to which the beneficiary currently provides or proposes to provide funding, services, or material support, to the extent reasonably discoverable, and
- f) if the beneficiary is an organisation or business, any reasonably available historical information about the beneficiary that assures the NPO of the beneficiary's identity and integrity, including:
 - i) the jurisdiction in which a beneficiary organisation is incorporated or formed,
 - ii) copies of incorporating or other governing instruments,
 - iii) information on the individuals who formed and operate the organisation, and
 - iv) information relating to the beneficiary's operating history.

NPOs are also encouraged to keep appropriate records and implement follow-up procedures as outlined in Appendix VII.

Appendix VII: NPOs should keep records of funds they provide to beneficiaries and make all reasonable efforts to implement appropriate follow-up procedures to ensure they know where and how those funds were used.

Solicitations for donations should accurately and transparently tell donors the purpose(s) for which donations are being collected. NPOs should have appropriate controls in place to ensure that all funds are fully accounted for and spent in a manner consistent with the purpose and objectives of the NPO's stated activities. NPOs should also be in a position to know and verify that funds have been spent as advertised and planned.

Some basic steps:

1. NPOs should take steps to know who their beneficiaries are, as outlined in Appendix VI.
2. NPOs should maintain, for a period of at least five years, and make available to appropriate authorities, records of domestic and international transactions

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that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation.⁶

3. NPOs should maintain and be able to present full program budgets that account for all program expenses. These budgets should indicate the identity of recipients and how the money is to be used. The administrative budget should also be protected from diversion through similar oversight, reporting, and safeguards.
4. In many cases, NPOs will be required by law to report financial information to members and regulatory authorities. Where this is not required, NPOs should still maintain and make available to relevant authorities, annual financial statements that provide detailed breakdowns of incomes and expenditures.
5. NPOs that handle funds are encouraged to maintain registered bank accounts, keep funds in them, and utilise formal or registered financial channels for transferring funds, especially overseas. Where feasible, therefore, NPOs should use formal financial systems to conduct their financial transactions.
6. Auditing may also alert NPOs to incidences of misuse for the purpose of terrorism financing. Independent auditing is a widely recognised method of ensuring that that accounts of an organisation accurately reflect the reality of its finances and should be considered a best practice. Many major NPOs undergo audits to retain donor confidence, and many States and Territories require them for NPOs under relevant charitable collections legislation and regulations. It should be noted that such financial auditing is not a guarantee that program funds are actually reaching the intended beneficiaries.
7. NPOs should be able to document their administrative, managerial, and policy control over their operations.
8. NPOs should maintain information on
 - a) the purpose and objectives of their stated activities
 - b) the identity of all employees and their current and previous involvements in other NPOs and commercial entities, and
 - c) the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information should be publicly available either directly from the NPO or through appropriate authorities.
9. To help ensure that funds are reaching the intended beneficiary, NPOs should ask the following general questions:
 - a) Have projects actually been carried out?
 - b) Are the beneficiaries real?
 - c) Have the intended beneficiaries received the funds that were sent for them?
 - d) Are all funds accounted for?

Where practical, direct field audits of programs (ie sending staff to those regions where assistance is being directed) should be conducted to confirm the responses to these questions.

⁶ This requirement does not exempt NPOs from other record keeping obligations that may be required under Commonwealth or State legislation.

Appendix VIII: NPOs should ensure that funds or assistance are not provided to people or organisations that are listed under the Charter of the United Nations Act 1945 or which meet the definition of a terrorist organisation under the Commonwealth Criminal Code Act 1995 including those organisations which have been listed in the Criminal Code Regulations 2002,

Australian counter-terrorism laws stem from obligations under international law which oblige United Nations (UN) Member States to ensure that no funds get into the hands of terrorists and that terrorist offences are not supported.

NPOs should ensure that funds or assistance are not provided to people or organisations that are listed under the UN Charter Act or which meet the definition of a terrorist organisation under the Criminal Code, including those organisations which have been listed in the Criminal Code Regulations.

Criminal Code Terrorist Financing Offences

The Commonwealth *Criminal Code Act 1995* contains a number of offences which criminalise the financing of terrorism.

It is a criminal offence for a person to provide or collect funds for the purpose of facilitating terrorism. The penalty for these offences is life imprisonment. In addition, a person commits an offence if they intentionally receive funds from, or makes funds available to a terrorist organisation (whether indirectly or directly) or collect funds for, or on behalf of, a terrorist organisation (whether indirectly or directly).

It is also an offence under the Criminal Code to provide support to a terrorist organisation. Providing support to a terrorist organisation means any support or resources that are intentionally provided to help the organisation prepare, plan, assist in or foster the doing of a terrorist act. If found guilty of one of the terrorist organisation offences, a person may be imprisoned for up to 25 years.

A 'terrorist organisation' is defined in the Criminal Code as an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act occurs), or an organisation specified in the Commonwealth *Criminal Code Regulations 2002*.

For general information on terrorism offences please refer to <<http://www.nationalsecurity.gov.au/>>. This website also includes a full list of the terrorist organisations which have been listed under the Criminal Code Regulations.

Asset Freezing

In Australia it is a criminal offence under *Charter of the United Nations Act* (the UN Charter Act) for an Australian or any person in Australia to:

- use or deal with funds, other financial assets and economic resources that are owned or controlled by sanctions designated persons or entities; or

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- give funds, financial assets or economic resources to sanctions designated persons or entities.

The penalty for these offences is:

- for individuals, a maximum 10 years' imprisonment and a fine the greater of \$275,000 or three times the transaction value; and
- for bodies corporate, a fine the greater of \$1.1 million or three times the transaction value (the offence is a strict liability offence for bodies corporate)

In relation to terrorist financing, the measures above apply to persons and entities designated by the Minister for Foreign Affairs under the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (2008 Regulations) as being a person or entity referred to in subparagraph 1(c) of the UN Security Council Resolution 1373 (2001), as well as to persons and entities designated by the UN Security Council pursuant to Resolutions 1267 in relation to Taliban and Al Qa'ida.

Regulation 40 of the 2008 Regulations requires DFAT to maintain a Consolidated List (available on the internet) of individuals and entities to which the UN Charter Act applies. At 21 May 2008, there were 573 individuals and entities associated with terrorism, the Taliban or Al Qa'ida (plus their various aliases) on the Consolidated List, comprising 484 names designated by the UNSC 1267 Committee and 89 names designated by the Minister for Foreign Affairs pursuant to UNSC Resolution 1373.

Any person who is engaged in the business of holding, dealing in, or facilitating dealing in assets, may apply to DFAT for notice of updates to the UN Charter Act list. To apply for this service, please forward your email address and a summary of your organisation in relation to assets to: asset.freezing@dfat.gov.au.

For more information on Australia's Terrorist Asset Freezing Regime please refer to the DFAT website <http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html#3>.