

ACFID Submission: Australia's Autonomous Sanctions Review

ACFID appreciates the opportunity to make this submission to DFAT concerning the *"Review of Australia's Autonomous Sanctions Framework"*.

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 from 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 goals.

Executive Summary

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. In these contexts, 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.¹ Compliance with humanitarian principles is what enables humanitarian organisations to access hard to reach areas where, often, people are most in need.

In order to enable humanitarian organisations to fulfill this mandate, the Australian Sanctions Office should consider the recommendations in this submission with urgency, particularly the need for a standing humanitarian exemption. ACFID and its members are grateful that the impact of sanctions on the delivery of humanitarian assistance will be considered as a priority issue in this review. Safeguarding humanitarian action in sanctions regimes limits the potential harm of sanctions for civilian populations. Without clearly worded and explicit humanitarian exemptions, sanctions (whether country-wide or targeted to individuals) complicate and delay the delivery of humanitarian aid, especially at times of crisis and disaster.

ACFID and its members have seen this become a recurrent issue in both autonomous and UN Security Council sanctions regimes in Afghanistan but also Syria, Somalia, the DPRK and Yemen. On 9 December 2022, the UN Security Council adopted a resolution reinforcing a cross-cutting exception to existing – and future – UN financial sanctions for funds or assets necessary for humanitarian assistance and activities to meet basic human need, removing obstacles from the provision of principled humanitarian assistance.

Granting exemptions or waivers on a case-by-case basis has consistently proven time-consuming and inefficient. It requires a significant investment of time and resources by humanitarian organisations and may hinder the principled delivery of humanitarian aid. Often, the chilling effect of sanctions has already taken hold before waivers can be issued and this causes critical delays in the provision of assistance. Revising programs to ensure sanctions compliance costs humanitarian organisations and their in-country partners and stakeholders. It creates uncertainty, inefficiencies and ultimately reduces their ability to provide life-saving aid at times when it is most needed.

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. A clear humanitarian exemption would send a signal to the private sector that humanitarian activities are not prohibited by sanctions.

For these reasons, we recommend that the Australian Government consider front-ending humanitarian safeguards for both our implementation of UNSC sanctions and autonomous sanctions. This would mean establishing clear legal or regulatory paths which enable humanitarian organisations to continue critical humanitarian operations during transitional times of crisis, unless and until the government affirmatively acts to restrict humanitarian assistance.

Recommendation 1: Urgently establish a standing humanitarian exemption to enable the provision of principled humanitarian assistance

Without clearly worded and explicit humanitarian exceptions, sanctions (whether country-wide or targeted to individuals) complicate and delay the delivery of humanitarian aid, especially at times of crisis and disaster. ACFID and its members have seen this become a recurrent issue in both autonomous and UN Security Council sanctions regimes in Afghanistan, Syria, Somalia, the DPRK and Yemen. Sanctions can restrict humanitarian action in a range of ways. First, applying for a permit (as the current Australian Regulations allow) requires a significant investment of time and resources by humanitarian organisations, and may pose a challenge to the principled delivery of humanitarian aid. To our knowledge, there is no precedent of humanitarian organisations successfully applying for such a permit in Australia and no guidance as to how this would be approached.

Second, humanitarian work in sanctions-affected environments is often impeded by private-sector de-risking. In seeking to mitigate the possibility of running afoul of sanctions laws (which can be complex and difficult to interpret), banks and other private sector actors often restrict or refuse to provide services to humanitarian organizations. This also causes delay and blockages to the procurement and import of humanitarian supplies such as food and essential medicines. These problems have been particularly acute in the DPRK and Syria, where banks, suppliers, shippers, and authorities in transit countries are taking a risk-averse approach, which limits the work of humanitarian actors. Constraints around humanitarian actors' ability to provide assistance, in some cases due to sanctions, also make it increasingly difficult for children in these areas to be supported. To best support children living through crises and conflict, changes to Australia's autonomous sanctions framework should be grounded in the principles of international humanitarian law, as they relate to accountability and humanitarian access. Front-ending humanitarian safeguards would mitigate these problems and reduce inefficiencies and delays in the provision of life-saving humanitarian assistance in emergency situations.

Granting waivers on a case-by-case basis through measures such as permits have consistently proven time-consuming and inefficient. Often, the chilling effect of sanctions has already taken hold before permits or licenses can be issued, and this causes critical delays in the provision of assistance. Humanitarian organisations are required to undertake a costly revision of their program activities (as noted, often erring on the side of caution which compromises the extent and kinds of protection they offer) and then revise once more once the exemption has been granted. This costs humanitarian organisations, and their in-country partners and stakeholders. It creates uncertainty, inefficiencies and ultimately reduces their ability to provide life-saving aid at times when it is most needed.

Third, DFAT officials sometimes suspend DFAT funding via NGOs in certain locations citing sanctions as the reason. It is our observation that other donor governments, such as the US, and some European countries, using standard humanitarian exemptions to their own domestic sanctions regimes, continue to fund NGOs affiliated to the Australian NGO. The risk appetite of Australian officials has fallen so low in relation to sanctions, that we have lost sight of the greater risk, that people suffer unnecessarily due to suspension of Australian government funded humanitarian assistance via NGOs.

Scope of Humanitarian Exemption

The exemption should apply to all impartial humanitarian actors including ACFID members and their local partners. 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](#).

Organisations that have undergone DFAT accreditation [Accreditation of Australian NGOs | Australian Government Department of Foreign Affairs and Trade \(dfat.gov.au\)](#), under the Australian NGO Cooperation Program, have also been through 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.

The scope of this exemption should allow for 'humanitarian plus' activities that focusses on life-saving assistance as well as early recovery and resilience building. In 2018-19 Australia provided AU\$ 10.5 million support to communities in Somalia with a 'humanitarian plus' approach.

The EU has applied this approach in Afghanistan, allocating over 250 million Euros to 'humanitarian plus' work which includes maintaining education, sustaining livelihoods, and protecting public health. As the US representative to the UNSC Mr Jeffrey DeLaurentis has noted, the humanitarian exemption to the UNSC sanctions permits "activities designed to meet the basic needs of the Afghan people including those that primarily benefit poor and at-risk populations – including in the areas of shelter, food security, education, energy, water, sanitation, health, nutrition and hygiene." There is a growing consensus that donors must go beyond conventional humanitarian aid, and support activities in areas such as education, livelihoods and protection which are essential to the wellbeing, safety and stability of people and communities in Afghanistan.

This approach will be critical to following through on the Australian Government's stated intention to support the rights of women and girls, assisting women's rights defenders, human rights defenders, NGOs and civil society who share this mission.

Further, we note that the third category of exempt actors under paragraph 63(a) of the Issues Paper having the dual criteria of being both ANCP accredited and needing to have an agreement with the Department. This requirement will not only restrict the ability of local actors (particularly diaspora entities) to provide humanitarian assistance who will not be ANCP accredited but may nevertheless face sanctions risk, but will also limit the Department's options in the future to fund such local actors in the region.

We recommend that the Government not limit the application of a humanitarian exemption to specific categories of humanitarian actors. If the Government were to specify humanitarian actors, at a minimum, our preference is for all ACFID members and their local partners to be exempt. We also recommend including a flexible provision that will permit the Department to specify, from time to time, other persons or entities that may be exempt from autonomous sanctions. This would allow flexibility for the Department to exempt broader local actors and diaspora entities, including regional actors that are funded by the Department and other actors that are critical to the provision of localised impartial humanitarian activities.

Recommendation 2: Structured civil society engagement is necessary to avoid unintended consequences and ensure a 'do no harm' approach

Under the Autonomous Sanctions Act 2011 (Cth) and the Autonomous Sanctions Regulations 2011 (Cth) there is a lack of provision for civil society engagement in the application of sanctions. Civil society organisations (CSOs) have access to valuable information and possess on-ground abilities to document human rights abuses and corrupt practices. Further, they may have greater capacity to assess and monitor violations against certain groups, for instance children or minority groups. Australia can adopt best practice from other governments that have introduced Magnitsky style sanctions and set a bar for which other states can also draw from. Australia introduced some like-minded state leading measures through the Modern Slavery Act 2018 (Cth).

One such best practice example is providing for a legislated role for civil society contributions. This is the case in the United States, which recognises the need for input from civil society in targeting rights-based sanctions and gathering information “from the ground”. The Global Magnitsky Act 2016 (United States) provides that: “[i]n determining whether to impose sanctions...the President shall consider...credible information obtained by other countries and non-governmental organizations that monitor violations of human rights.”ⁱⁱ

Engagement with CSOs could take the following forms:

- Independent Advisory Panel (recommended by the Joint Standing Committee)
- Consultation with civil society organisations (CSOs) is incorporated into legislation and regulations as a requirement for the Minister to consider
- Quarterly consultation meetings with CSOs
- Responsive consultation meetings with CSOs
- Establish secure communication mechanisms, including encrypted email to protect CSOs
- Establish a strategy and guidelines for CSO engagement
- Provide funding for a CSO to perform act as a primary contact point

Recommendation 3: Establish clear links to human rights abuses

We would welcome the explicit reference to human rights abuses, breaches of international humanitarian law etc. to increase the deterrence value of any potential sanctions and to ensure that relevant individuals and entities involved in human rights abuses are comprehensively captured in scope.

ACFID would be pleased to meet to discuss further and can convene an expert panel to further brief the Australian Government on the important issues of humanitarian exemptions, civil society consultation and links to human rights abuses in the review.

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

ⁱⁱ Section 1263 (c) of the Global Magnitsky Act 2016