

## **EXPLANATORY STATEMENT**

### **Issued by authority of the Assistant Minister for Treasury and Finance**

*Australian Charities and Not-for-profits Commission Act 2012*

*Australian Charities and Not-for-profits Commission Amendment  
(2018 Measures No. 2) Regulations 2018*

The *Australian Charities and Not-for-profits Commission Act 2012* (the Act) provides for the registration and regulation of charities by the Australian Charities and Not-for-profits Commission (ACNC).

Section 200-5 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Australian Charities and Not-for-profits Commission Amendment (2018 Measures No. 2) Regulations 2018* (the Regulations) is to prescribe external conduct standards for the purposes of Division 50 of the Act. The external conduct standards provide a minimum level of assurance that registered entities meet appropriate standards of governance and behaviour when operating outside Australia.

The standards are intended to promote transparency and greater confidence in the not-for-profit sector across the Australian community that funds sent and services provided overseas by a registered entity are reaching legitimate beneficiaries and being used for legitimate purposes.

Registered entities will need to comply with these standards to be, and remain, registered with the ACNC. Consistent with the governance standards, the external conduct standards are designed as principles-based minimum standards for registered entities, rather than mandating detailed procedures and requirements.

Introducing external conduct standards will assist in meeting Australia's international obligations including under the Financial Action Task Force (FATF) Recommendations. The FATF is an inter-governmental body established in 1989 to promote measures for combatting money laundering, terrorist financing and related threats to the integrity of the international financial system. As a member of FATF, Australia has agreed to comply with the FATF Recommendations, including those related to improving the transparency of not-for-profit entities.

The external conduct standards will also assist in Australia meeting its obligations under a number of other international treaties that it is a party to.

Further details of the Regulations are set out in the Attachment.

Consultation was held on an exposure draft instrument and explanatory materials for six weeks from 13 August 2018 to 21 September 2018. During this period, a number of roundtable discussions were held with affected entities, representative bodies by officials from the Department of the Treasury and ACNC. Thirty-six public written submissions and two confidential written submissions were received in response to the consultation. These submissions were broadly supportive of the external conduct standards. However, as a result, a number of technical improvements were made to the standards, including:

- amending the definition of ‘third party’, so that it doesn’t include a registered entity;
- amending the legal test for when an activity will be ‘incidental’; and
- a number of minor technical improvements to the language used in the Regulations to improve clarity.

All public submissions are available on the Treasury website.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations commence on the latter of 1 July 2019 and the end of the last day of the disallowance period.

**Details of the *Australian Charities and Not-for-profits Commission Amendment (2018 Measures No. 2) Regulations 2018***

**Section 1—Name of Regulations**

This section provides that the title of the Regulations is the *Australian Charities and Not-for-profits Commission Amendment (2018 Measures No. 2) Regulations 2018* (the Regulations).

**Section 2—Commencement**

This section provides that the Regulations commence on the latter of 1 July 2019 and the commencement day referred to in section 50-20 of the *Australian Charities and Not-for-profits Commission Act 2012*. The commencement day referred to in that section is the end of the disallowance period that applies to the Regulations. As provided under section 42 of the *Legislation Act 2003*, the disallowance period is generally 15 sitting days of each House of Parliament.

**Section 3—Authority**

This section provides that the instrument is made under the *Australian Charities and Not-for-profits Commission Act 2012* (the Act).

**Section 4—Schedules**

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1—Amendments**

***Overview of external conduct standards***

The external conduct standards contain guide material to assist readers by providing a plain English explanation of the provisions. *[Schedule 1, item 2, section 50.1 of the Australian Charities and Not-for-profits Commission Regulation 2013 ('ACNC Regulation 2013')]*

There are four external conduct standards:

- a standard on the activities and control of resources (including funds);
- a standard on the annual review of overseas activities and record keeping;
- a standard on anti-fraud and anti-corruption; and
- a standard on the protection of vulnerable individuals.

***Application of the external conduct standards***

The term 'operates' is intended to have its ordinary meaning. Each of the four external conduct standards apply to a registered entity if it operates outside Australia,

or works with third parties that operate outside Australia. *[Schedule 1, item 2, subsections 50.20(2), 50.25(2), 50.30(2) and 50.35(2) of the ACNC Regulation 2013]*

A registered entity or third party operates outside Australia if it operates outside Australia in whole or in part. *[Schedule 1, item 2, subsection 50.4(1) of the ACNC Regulation 2013]*

The external conduct standards are intended to apply to registered entities in relation to matters outside Australia and matters that are not outside Australia, but that are closely related to entities, things or matters that are outside Australia. For example, the management of overseas aid within Australia is closely related to matters outside Australia if the registered charity either operates or collaborates with a third party outside Australia.

A ‘third party’ is defined in relation to a registered entity to mean an entity (other than a registered entity) that formally or informally collaborates with the registered entity for the purpose of advancing the registered entity’s purpose or purposes. A number of types of entity are specifically included in the definition of ‘third party’, including:

- an entity with which the registered entity has some form of membership, association or alliance; and
- an entity that has an ‘arrangement’ with the registered entity. *[Schedule 1, item 1, the definition of “third party” and the definition of “arrangement” in section 4 of the ACNC Regulation 2013]*

Because a third party does not include a registered entity, the standards do not require the registered entity to comply with the standards to the extent that they are dealing with another registered entity. This is because the second registered entity, if it is operating outside Australia, will have its own obligations under the standards. *[Schedule 1, item 1, the definition of “third party” in section 4 of the ACNC Regulation 2013]*

A third party is also required to collaborate for the purpose of advancing the registered entity’s purpose or purposes. This means that certain types of service provision to the registered entity will not be sufficient to make that entity a third party. For example, if an entity provides information technology support to the registered entity, it is not collaborating with it for the purpose of advancing its purpose, and is therefore not a third party. *[Schedule 1, item 1, the definition of “third party” in section 4 of the ACNC Regulation 2013]*

An ‘arrangement’ means any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings. *[Schedule 1, item 1, the definition of “arrangement” in section 4 of the ACNC Regulation 2013]*

However, a registered entity does not operate outside Australia only because it carries out activities outside Australia that are directly related to the pursuit of the entity’s purposes in Australia and merely incidental to its operations in Australia. *[Schedule 1, item 2, subsection 50.4(2) of the ACNC Regulation 2013]*

To qualify for the incidental exemption, the activities must be ‘directly related’ to the pursuit of the registered entity’s purposes in Australia—that is, a matter with a connection to Australia, such as where the registered entity has Australian

beneficiaries. If the activities are pursued for purposes outside Australia (that is, to benefit people or purposes outside Australia) the exemption cannot be relied on. *[Schedule 1, item 2, subsection 50.4(2) of the ACNC Regulation 2013]*

Similarly, even if the activities are directly related to the registered entity's purposes in Australia but are more than incidental when those activities are compared to the entity's operations in Australia, the entity cannot rely on the exemption. The term incidental is used in relation to the activities of the entity, rather than its purposes, so it is necessary to consider both the size and nature of the activities carried on overseas relative to the size and nature of the entity's operations in Australia in forming a qualitative assessment of whether the activities are 'incidental'. The term 'incidental' has its ordinary meaning, and means something minor in conjunction with or ancillary to something else. *[Schedule 1, item 2, subsection 50.4(2) of the ACNC Regulation 2013]*

#### **Example 1— Directly related to purposes and incidental to operations in Australia**

A registered entity is set up in Australia to help Australians suffering from cancer. Part of the treatment it provides can involve travel to Canada. The activities are directly related to the pursuit of the entity's purposes in Australia. They are also incidental when compared to the entity's operations in Australia because of the number of people who travel to Canada, and the fact that the treatment is ancillary to other treatments services offered in Australia. As a result, the entity would not have any obligations under the standards.

#### **Example 2—Directly related to purposes and incidental to operations in Australia**

A registered entity is set up in Australia to help homeless Australians. The entity acquires supplies, such as blankets, from overseas providers who are third parties of the registered entity. The activities are directly related to the registered entity's purposes in Australia. The activities are also incidental when compared to the entity's operations in Australia because purchase of blankets under the arrangement is incidental to helping homeless Australians, in the sense that it is a factor used in that service.

#### **Example 3—Directly related to purposes and incidental to operations in Australia**

A registered entity that is a school arranges for students to go on a trip overseas to its sister school in Canada. The school's overseas activities are directly related to the pursuit of their purpose in Australia, namely, educating Australian children. The activities are also incidental when compared with the entity's operations in Australia of providing education services, and the entity would not have any obligations under the standards.

#### **Example 4—Not directly related but incidental to operations in Australia**

A registered entity which is a church asks for collections in Australia for the purpose of sending the funds overseas to contribute to foreign disaster relief. The registered entity gives the small amount of funds raised to an overseas

church, which is not a registered entity. Because the amount of money raised is small when compared to the church's overall collections and donations to other organisations and causes in Australia, the incidental element is satisfied. However, because the funds are sent to an overseas church for a foreign purpose, it is not directly related to the pursuit of the registered entity's purposes in Australia. As the activities are not directly related to the pursuit of its purposes in Australia, the entity has obligations under the standards.

### ***Compliance under the external conduct standards***

A registered entity is responsible for assessing its compliance with the external conduct standards. Section 50-10 of the Act specifies that an entity must comply with the external conduct standards in order to become registered, and to remain entitled to be registered under the Act. Because compliance with the external conduct standards is a condition of registration, they are provisions that are 'subject to monitoring' under the Act.

Where a provision is 'subject to monitoring' the Commissioner of the Australian Charities and Not-for-profits Commission (the Commissioner) may use a range of powers under Chapter 4 of the Act in relation to the registered entity, such as requiring the provision of information.

Section 35-10 of the Act also allows the Commissioner to revoke an entity's registration, after they have taken into account a range of factors, including the nature, significance and persistence of any non-compliance.

The Commissioner may use all the enforcement powers contained in Chapter 4 when the Commissioner reasonably believes that a registered entity has not complied with an external conduct standard or will likely not comply.

### ***Standard 1—Activities and control of resources (including funds)***

The object of this external conduct standard is to give the public confidence that a registered entity is managed in a way that:

- ensures that the registered entity remains solvent;
- minimises risks to the registered entity's assets;
- ensures that the registered entity, and its resources, are furthering the registered entity's purposes; and
- ensures that the registered entity is operating in a way that is consistent with its purpose and character as a not-for-profit entity. *[Schedule 1, item 2, subsection 50.20(1) of the ACNC Regulation 2013]*

The term 'public' takes on its ordinary meaning and includes members, donors, employees, volunteers and benefit recipients of a registered entity to which the standard applies.

The standard's objects are not just about ensuring or safeguarding the activities undertaken by the registered entity while operating overseas, but also preventing registered entities from being used by other parties in a way that is not consistent with its status as an Australian not-for-profit entity. This promotes transparency and confidence across the sector and the public that the registered entity's activities, funds and services are applied for legitimate and intended purposes.

This standard also assists in meeting Australia's obligations under FATF Recommendation 8. In particular, the Interpretive Note to the Recommendation sets out measures that countries should adopt, including that not-for-profits are to have appropriate controls in place to ensure that all funds are fully accounted for and are spent in a manner that is consistent with the purpose and objectives of the organisation.

Under the standard, a registered entity is required to have in place reasonable procedures and take reasonable steps to manage the risks associated with its own operations and activities. The standard also requires that reasonable controls are in place with respect to resources given to third parties. *[Schedule 1, item 2, subsection 50.20(3) of the ACNC Regulation 2013]*

In relation to its own operations and activities, a registered entity must:

- take reasonable steps to ensure that its activities outside Australia are carried out in a way that is consistent with its purpose and its character as a not-for-profit entity; and
- maintain reasonable internal control procedures to ensure that resources (including funds) are used outside Australia in a way that is consistent with its purpose and character as a not-for-profit entity. *[Schedule 1, item 2, paragraphs 50.20(3)(a) and (b) of the ACNC Regulation 2013]*

In relation to resources the registered entity provides to third parties, it must take reasonable steps to ensure that the resources (including funds) given to third parties outside Australia (or within Australia for use outside Australia) are applied:

- in accordance with the entity's purpose and character as a not-for-profit entity; and
- with reasonable controls and risk management processes in place. *[Schedule 1, item 2, paragraph 50.20(3)(c) of the ACNC Regulation 2013]*

The requirement that the registered entity must act in accordance with its character as a not-for-profit entity ensures that while operating overseas the entity acts in accordance with the purpose for which the entity was created and is registered and operated in Australia. This means acting consistently with the legal requirements of being a particular type of charity and not knowingly operating in a way that is inconsistent with those requirements. *[Schedule 1, item 2, paragraph 50.20(3)(c) of the ACNC Regulation 2013]*

Because the standards are based around taking 'reasonable steps' or having in place 'reasonable procedures', what is reasonable depends will depend on each entity's particular circumstances. For example, where there is a higher risk of resources given

to third parties not being applied in accordance with the entity's purpose and character as a not-for-profit entity, more controls and risk management processes may be needed. If funds are being sent to an area with a high terrorism financing risk, greater controls and risk management processes would be needed to address or mitigate the risks, even if the amounts sent were relatively small. *[Schedule 1, item 2, subsection 50.20(3) of the ACNC Regulation 2013]*

What is reasonable will depend on the size of the registered entity and the scale of its operations inside and outside Australia and the location and nature of the operations. For larger registered entities or entities with significant resources overseas, having training manuals, staff training programs and staff that ensure compliance and routine audits may be appropriate, whereas this may be beyond what is reasonable for a smaller registered entity if there is less risk of funds being misapplied.

In addition to these requirements, a registered entity must comply and maintain reasonable internal control procedures to ensure compliance in relation to its operations or activities outside Australia with the following laws which apply to Australians both in Australia and whilst operating outside Australia:

- money laundering;
- the financing of terrorism;
- sexual offences against children;
- slavery and slavery-like conditions;
- trafficking in individuals and debt bondage;
- people smuggling;
- international sanctions;
- taxation; and
- bribery. *[Schedule 1, item 2, subsections 50.20(4) and (5) of the ACNC Regulation 2013]*

While a registered entity is already required to comply with these Australian laws, this provision allows the Commissioner to take a range of actions against a registered entity to protect the entity's assets and public trust in the sector.

### ***Standard 2—Annual review of overseas activities and record-keeping***

The object of this external conduct standard is to ensure that registered entities are transparent and accountable to the Australian public in relation to its activities carried-on outside Australia. *[Schedule 1, item 2, subsection 50.25(1) of the ACNC Regulation 2013]*

The standard assists in meeting Australia's obligations under FATF Recommendation 8, in particular, for not-for-profit entities to issue financial statements that provide detailed breakdowns of incomes and expenditures, and have the capacity to provide timely information on its activities, size and other relevant features.



The standard requires that a registered entity must obtain and keep records necessary to prepare a summary of its activities and expenditure outside Australia on a country-by-country basis for each financial year during which it:

- operated outside Australia; or
- gave resources (including funds) to third parties outside Australia (or within Australia for use outside Australia). *[Schedule 1, item 2, subsections 50.25(3) and (4) of the ACNC Regulation 2013]*

Obtaining and keeping records is necessary to ensure compliance with the external conduct standards. Because the records are required to be obtained and kept, the summary may be required to be provided as part of the Annual Information Statement. The ACNC may also request that the summary be produced other than through the Annual Information Statement, using its other powers.

If required to provide the summary as part of the Annual Information Statement the registered entity would need to provide the statement in the approved form no later than 31 December in the following financial year, or such later time as the Commissioner allows. If a registered entity has a substituted accounting period, the Act allows that entity to apply to the Commissioner to submit the report within six months of the end of that period.

Obtaining and keeping records and producing a summary is not intended to be an onerous requirement. Many registered entities with robust internal processes would already be obtaining and keeping records for internal purposes, or may also be subject to existing reporting requirements. For example, the *Public Ancillary Fund Guidelines 2011* have a similar reporting requirement.

The records that must be obtained and kept must enable a ‘summary’ to be produced. A ‘summary’ generally refers to a brief and comprehensive presentation of key facts or statements about particular matters, so records must be obtained and kept to enable a complete and accurate summary to be prepared. *[Schedule 1, item 2, subsection 50.25(3) of the ACNC Regulation 2013]*

Generally, it is expected that to enable the preparation of a ‘summary’, records must be obtained and kept of the following information:

- the kinds of activities that the registered entity conducted outside Australia, on a country-by-country basis;
- details of how the registered entity’s activities outside Australia enabled it to pursue and achieve its purpose, on a country-by-country basis;
- details of all expenditure relating to its activities outside Australia (on a country-by-country basis);
- details of any procedures and processes that the registered entity used to monitor its overseas operations and activities;
- a list of the third parties that the registered entity worked with outside Australia; and

- details of any documented claims of inappropriate behaviour by the registered entity's employees or responsible entities outside Australia, and subsequent actions taken by the registered entity as a result. *[Schedule 1, item 2, subsection 50.25(3) of the ACNC Regulation 2013]*

The ACNC will continue to consult with registered entities while setting the Annual Information Statement for 2019-20 to ensure it finds the right balance between ensuring transparency and meeting Australia's international obligations, whilst reducing red tape and minimising compliance costs.

### ***Standard 3—Anti-fraud and anti-corruption***

The object of this external conduct standard is to give the public confidence that a registered entity is managed in a way that:

- ensures that the registered entity remains solvent;
- minimises the risks to the registered entity's assets;
- ensures that the registered entity, and its resources, are furthering the registered entity's purposes; and
- ensures that the registered entity is operating in a way that is consistent with its purpose and character as a not-for-profit entity. *[Schedule 1, item 2, subsection 50.30(1) of the ACNC Regulation 2013]*

The standard is intended to promote confidence that the resources of Australian registered entities are being used to further their not-for-profit purposes and are not being misused for illicit or improper purposes.

The standard also assists in meeting Australia's obligations under FATF Recommendation 8, in particular, for not-for-profits to have appropriate controls in place to ensure that all funds are fully accounted for and are spent in a manner that is consistent with the purpose and objectives of the entity.

Under this standard, the registered entity must take reasonable steps:

- to minimise any risk of corruption, fraud, bribery or other financial impropriety by its responsible entities, employees, volunteers and third parties outside Australia; and
- to identify and document any perceived or actual material conflicts of interest for their employees, volunteers, third parties and responsible entities outside Australia. *[Schedule 1, item 2, subsection 50.30(3) of the ACNC Regulation 2013]*

The standard requires registered entities to take reasonable steps to minimise risks. An entity need only take reasonable steps, to comply with the standards. The standards do not necessarily require the elimination of any risk, if doing so would be unreasonable or impeded the ability of the entity to promote its purposes. What entities are required to do is identify risks of exploitation or abuse and take reasonable actions to mitigate and minimise those risks. Operating a registered entity will involve some level of risk and it would be counterproductive to eliminate all risk. *[Schedule 1, item 2, paragraph 50.30(3)(a) of the ACNC Regulation 2013]*

Similarly, registered entities are required to take reasonable steps to identify and document perceived or actual material conflicts of interest. Under the governance standards, registered entities are required to disclose perceived or actual conflicts of interest. The requirement under these standards to ‘identify and document’ recognises that when operating in certain circumstances overseas, conflicts of interest may be unavoidable where activities are carried out within small communities. This requires registered entities to at least identify such conflicts, and then report on it as necessary. What is an actual or perceived conflict of interest has its ordinary meaning. *[Schedule 1, item 2, paragraph 50.30(3)(b) of the ACNC Regulation 2013]*

Because the standard is based on the registered entity taking ‘reasonable steps’, the steps that are required to be taken depend on the circumstances. For example, a small registered entity may have basic systems and documentation outlining its approach to legal compliance, integrity and ethical conduct. For a large registered entity, reasonable steps may include having greater documentation including a purpose and values statement, detailed operational manuals, extensive training programs, detailed monitoring and reporting systems and a robust, multi-faceted complaints and whistle-blowing system. If the entity operates in a region or environment where there is a higher risk of corruption, it must take greater steps to ensure compliance and mitigate the higher risks. *[Schedule 1, item 2, subsection 50.30(3) of the ACNC Regulation 2013]*

#### ***Standard 4—Protection of vulnerable individuals***

The object of this external conduct standard is to ensure that when a registered entity operates outside Australia, it operates in a manner that minimises the risk of exploitation or abuse to vulnerable individuals. *[Schedule 1, item 2, subsection 50.35(1) of the ACNC Regulation 2013]*

This external conduct standard is intended to promote confidence that while operating overseas, registered entities work to protect vulnerable individuals from abuse, as this would be consistent with community expectations of how registered entities should operate.

This standard also assists in meeting Australia’s obligations under the Convention on the Rights of the Child (CRC), the UN Guidelines for the Alternative Care of Children and the Convention on the Rights of Persons with Disabilities (CRPD). In particular, Article 3 of the CRC, which requires the protection of children as is necessary to ensure their well-being through appropriate legislative and administrative measures. Similarly, Article 16 of the CRPD requires the protection of individuals with disabilities from all forms of exploitation, violence and abuse through appropriate legislative and administrative measures.

The external conduct standard requires a registered entity to take reasonable steps to ensure the safety of vulnerable individuals outside Australia when the registered entity or a third party in collaboration with the registered entity to the extent that it provides or makes available to the individual services or benefits. *[Schedule 1, item 2, subsection 50.35(3) of the ACNC Regulation 2013]*

Similarly, if a registered entity, or a third party in collaboration with the registered entity, employs or engages vulnerable individuals to provide services or benefits on behalf of the registered entity while operating overseas, they must take reasonable steps to ensure the safety of those individuals to the extent that they are engaged. *[Schedule 1, item 2, subsection 50.35(3) of the ACNC Regulation 2013]*

A registered entity's obligation under the standard require an appropriate nexus between the entity's and the individual concerned, namely, is that individual in receipt of services from the charity, or an employee of the charity and are those activities placing that individual at risk of abuse or exploitation.

A vulnerable individual is defined to mean a child or other individual who is or may be unable to take care of themselves, or is unable to protect themselves, for any reason, against harm or exploitation. For example, an individual may be unable to take care of themselves because of their age, an illness, trauma, disability, or some other disadvantage. A 'child' is defined to mean an individual who is under the age of 18 years of age. *[Schedule 1, item 2, subsection 50.35(3) of the ACNC Regulation 2013]*

Because the standard is based on the entity taking 'reasonable steps', the steps that are required to be taken will depend on the circumstances. For example, reasonable steps for a larger registered entity may involve having policy documents and specific training for employees and volunteers on how to minimise the risk of abuse to vulnerable individuals. Similarly, larger registered entities may be required to put in place procedures for handling complaints made about employees or volunteers to ensure that individuals in vulnerable circumstances are not put at risk by the employee or volunteer's presence. However, reasonable steps for a smaller charity may only involve appropriately investigating and dealing with complaints on an ad hoc basis to ensure that individuals in vulnerable circumstances are protected. *[Schedule 1, item 2, subsection 50.35(3) of the ACNC Regulation 2013]*

What is reasonable also depends on the risks posed to the vulnerable individuals. Where the risk is greater, more steps may be required to be taken. For example, if there is some risk of abuse to children, it may be necessary to take greater steps to reduce or eliminate that risk. *[Schedule 1, item 2, subsection 50.35(3) of the ACNC Regulation 2013]*

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### **Australian Charities and Not-for-profits Commission Amendment (2018 Measures No. 2) Regulations 2018**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

## **Overview of the Legislative Instrument**

The Legislative Instrument prescribes external conduct standards for the purposes of Division 50 of the Act *Australian Charities and Not-for-profits Commission Act 2012*.

The external conduct standards provide a minimum level of assurance that registered entities meet appropriate standards of governance and behaviour when operating outside Australia.

Registered entities will need to comply with these standards to be, and remain, registered with the ACNC. The external conduct standards set principles-based minimum standards for registered entities, rather than mandating detailed procedures and requirements.

The Legislative Instrument prescribes four external conduct standards:

- a standard on the activities and control of resources (including funds);
- a standard on the annual review of overseas activities and record keeping;
- a standard on anti-fraud and anti-corruption; and
- a standard on the protection of vulnerable individuals.

## **Human rights implications**

Human rights do not apply to registered entities, only individuals. The Legislative Instrument does not directly restrict individuals – it places limitations at the entity level. Human rights are only engaged to the extent that the Legislative Instrument impacts on individuals involved with registered entities.

This Legislative Instrument promotes two human rights: the rights of children to protection and care from the State as is necessary to ensure their well-being, recognised in Article 3(2) of the Convention on the Rights of the Child; and the rights of disabled persons to protection and care from the State from all forms of exploitation, violence and abuse, recognised in Article 16(1) of the Convention on the Rights of Persons with Disabilities.

The Legislative Instrument also promotes these rights by requiring a registered entity while operating overseas, or dealing with third parties operating overseas, to take reasonable steps to ensure the safety of vulnerable individuals to the extent that they are being provided with services or accessing benefits from the registered entity. It also requires the registered entity to take care to ensure that any vulnerable individuals who are employed or engaged by the charity while overseas are similarly protected.

A vulnerable person is defined to include a ‘child’ or an individual who is unable to take care of themselves or is unable to protect themselves against harm or exploitation. This includes people who are vulnerable for a range of reasons, including disability.

The requirement is broad, and applies to any provision of a service or benefit by a registered entity, so covers all manner of activities that a registered entity may engage in overseas. The registered entity is, however, only required to ensure the safety of vulnerable individuals to the extent that they are providing services or benefits. This ensures that to the extent the registered entity engages with individuals in pursuit of its charitable purposes that they are required to take reasonable steps to ensure the safety of vulnerable persons.

Where an entity fails to take reasonable steps to promote the safety of vulnerable persons in the way required, the ACNC may take a range of actions against the registered entity, including deregistration.

## **Conclusion**

This Legislative Instrument is compatible with human rights.