

# EXTERNAL CONDUCT STANDARDS

## Frequently Asked Questions

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### When the External Conduct Standards apply

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***What if we are giving money to an overseas individual as opposed to supporting a ministry or organisation?***

The ECS apply to your own activities, as well as those of a “third party” with whom your charity “collaborates to pursue its purpose”. A third party may be an individual or an organisation. If you give money to an individual based overseas (even if it is only a minor amount or a minor program or project) **and** you are collaborating with that individual to advance your purpose, the ECS apply to the activities of that individual.



***Does this mean my charity (which has minor overseas operations) is better off operating through an existing Australian charity?***

Potentially, provided the organisation is an ACNC registered charity. In that case the other ACNC registered charity will be responsible for complying with the ECS, rather than your organisation.

A good example of this is a Church making one off or small donations to overseas communities that does not want to work through the process of considering and implementing the ECS. You’ll still have to comply with the ECS for the management of the money you send, but not for the programs themselves. Some denominations have established charities that may be able to fulfil this role for churches.

If you partner with an entity that is **not** an ACNC registered charity then your organisation **remains responsible** for complying with the ECS.



***What about gifts to visiting (overseas) speakers?***

If the gift is for the speaker’s work overseas then the ECS will apply.

These gifts are often low in value. In this case, the ECS still apply, but the amount of the gift, the one-off nature of the transaction and the relationship with the speaker is taken into account when considering what might constitute “reasonable steps” to comply with the ECS. What constitutes “reasonable steps” for ECS compliance in the context of a low value speaker’s gift would usually be minimal – perhaps an email of acknowledgement from the recipient.



***What about salaries sent for overseas staff? Does it matter if they have an Australian bank account?***

If the staff are located overseas and carrying out programs overseas, then the ECS will apply. It does not matter if they have an Australian bank account – the ECS are concerned with the purpose for which funds are used rather than the location of bank accounts.



***What if a member or associate of our organisation visits a country and disperses their personal funds? Is this covered by the ECS?***

The ECS apply to the use of ACNC registered charities' funds and resources. A member or associate of your organisation is free to use their personal funds as they see fit and the ECS ordinarily would not apply.

However, the ECS may apply to the use of personal funds by a member or associate of your charity if the member or associate's activities in the country are connected in some way to your charity's operations. For example:

- The dispersal is made while the member or associate is representing your organisation. In this case, you may be responsible for general implications of their actions even though you are not responsible for protecting their personal funds. For example, you are required to minimise the risk of corruption, fraud, bribery or financial impropriety – the dispersal of personal funds in the context of your organisation's programs may increase this risk.

A good indicia of whether or not a member or associate is representing your organisation is the amount of control your charity has – did you arrange the visit, set dates for the trip, build the team, provide guidelines for behaviour or somehow facilitate their connection with your overseas partners?

- Your charity provided funds for the member or associate to visit the country. This can lead to uncertainty around whether the individual is dispersing their personal funds or the funds provided by your organisation.



***What advice should we give to local churches that send small groups on a short term overseas visit? What kind of activities are captured by the ECS?***

Local churches (that are ACNC registered charities) will be required to comply with the ECS for all overseas visits, unless the visit is “merely incidental” to their purpose in Australia. An example of an overseas trip that is “merely incidental” to an Australian purpose (and exempt from the ECS) might be sending a group of employees to a pastoral care conference in New Zealand so that they can develop skills to apply in Australia.

Other activities will be covered by the ECS, including providing relief work and support to overseas schools, churches and communities. If an Australian church that is a registered charity is conducting these activities, the church needs to comply with the ECS. Two options to consider are:

- Proceeding with the overseas activities and complying with the ECS. Because ECS compliance is based on what is “reasonable” given the ECS risks, compliance for short term visits might not be onerous. Following a risk assessment (as set out in the Guide), the responsible persons for the church might determine that basic steps are appropriate such as using suitable accommodation, ensuring third parties are legitimate, keeping records and having team members that are trained in protection of vulnerable persons.
- Conducting the trip under the auspice (or umbrella) of a larger ACNC registered entity, like a denominational body. If the national body arranges and facilitates the trip, the ECS compliance obligations will shift onto that entity, which may have greater resources and structures to comply with the ECS.



***How do we determine which overseas activities are captured by the ECS? Some of our activities overseas include meetings, conferences, church services and leadership training.***

This is addressed at the beginning of the Guide (When do the ECS apply). Consider the primary purpose of the travel – is it to further your Australian purpose? Attending leadership training, for example, could develop your Australian leadership team's skills and help them to better conduct ministry in Australia. These activities may be merely incidental and not covered by the ECS (unless they form a substantial part of your budget). Other activities are more likely to further an overseas purpose, in the sense that the main beneficiaries of the activity will be outside Australia. If you preach in a church service overseas, the beneficiaries will be those congregants – the ECS will apply to that activity.



***Which overseas travel costs are captured for Australians travelling overseas? E.g airfares, accommodation, transfers, meals etc.***

All of these costs are likely to be captured if the expenditure is connected to overseas operations of your charity. Once the activity is caught by the ECS, all related expenses are too.



***If a small group of individuals (two or three people) do mission work overseas, pay for expenses personally and are not employees of a church or organisation, do they need to comply with the ECS? What if the church provides offerings or provides some money for their mission? What would be the best arrangement for those offerings?***

The group of individuals do not themselves need to comply with the ECS. The ECS only apply to ACNC registered charities.

If an ACNC registered charity provides support to those individuals, the charity will need to take reasonable steps to comply with the ECS in respect of that support. What is reasonable will depend (as always) on the context – factors such as the level of collaboration you have with the individuals, the amount of support you provide, the extent to which they represent your organisation and the nature of their activities. For a one-off small love offering, a simple email update from the individuals about their activities should suffice.



***We are sending a donation directly to the Australian bank account of a Christian worker (on support) who works largely in Australia and is a resident, but who does travel overseas periodically as part of their role. Is there an ECS reporting requirement with this donation? If so, would it suffice for our organisation to get a letter from the supported worker which states that the received funds are all used for expenses within Australia?***

If you are the sole supporter of this worker and the overseas travel is (as you say), part of their role, then this is likely to be covered by the ECS (unless it is merely incidental – connected to your Australian purpose and not significant in scale).

If you only contribute a part of the worker's costs that is proportionate to their Australian activities, then it is appropriate to confirm that you are supporting their Australian work and activities only. Be a little more specific - rather than saying the received funds are used for expenses within Australia, consider confirming in your letter to the worker that the funds are for the work they are doing in Australia with (and for the benefit of) Australians.



***If we give scholarships which remain at the College for local expenses toward the tuition fees of a student who lives overseas and studies online, is there any ECS reporting requirement?***

This activity is likely to be covered by the ECS. The student, studying online, is receiving a benefit in their home country. In this sense, the activity happens overseas. The beneficiary is outside Australia, so it is not likely to be connected to your Australian purpose.

That said, the associated ECS risks are likely to be much lower – no money is changing hands and there is physical, face to face contact with the individual. If the individual is a minor or otherwise vulnerable, consider what safeguarding measures may be appropriate in their online contact with your staff. If there is a process of selecting scholarship recipients, consider the extent to which this process might be open to corruption. There is a potential for ECS risks, but it is likely to be limited.

## Complying with the External Conduct Standards

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***Our overseas partners are registered charities in their own countries – is that proof of compliance?***

No, the requirements for charity registration differ in all jurisdictions. Registration overseas is not indicative of ECS compliance. In general, Australian charity regulation is more demanding than that in many other countries, particularly developing countries.

However, depending on the country this may be one factor that could change what “reasonable steps” your charity is required to take to comply with the standards.

- As an example – the anti-terrorism financing policies and procedures you would need to send money to a New Zealand charity would ordinarily be much less comprehensive than when sending money to an Indonesian charitable foundation. This is because (unlike New Zealand) Indonesia is a country identified as having a high risk of terrorism financing that does not closely regulate not-for-profit organisations.



***Are the ECS only concerned with funds? What about missionaries we send overseas?***

The ECS apply to all overseas activities – so they will apply to staff and volunteers sent overseas as well even if you do not send funds. If you are the “sending organisation” for a self-funded missionary, you are still required to ensure compliance with the ECS (for example, the provisions relating to protection of vulnerable persons). Some parts of the standards (such as financial management requirements) will not be relevant if you are not sending funds.



***What are the key differences between ECS and Overseas Aid Gift Deduction Scheme (OAGDS)?***

The **ECS** applies to all charities “operating overseas” or working with third parties operating overseas. They cover traditional “overseas aid” work, but also other overseas activities – for example, Christian mission work.

The **OAGDS** (a scheme allowing certain organisations to receive tax deductible donations) is focused on overseas aid/development/humanitarian work in developing countries.

The two schemes impose different, but overlapping requirements. OAGDS registered charities may already be compliant with most ECS requirements but should still review the Guide.

Another sector body that imposes standards on overseas development organisations is **ACFID**. See this page from the ACNC for more information on the ACFID Code of Conduct and the ECS - <https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/acnc-external-conduct-standards/acfid-code-conduct>



***A tiny proportion of our funds go towards overseas activities. Complying with the ECS feels like overkill – what should we do?***

The ECS apply regardless of the size of overseas activities, but what constitutes “reasonable steps” to comply is proportionate to the risk. The ECS are a prompt for the responsible persons for a charity to consider what compliance might require in their own context. Once you work through the process of turning your minds to the ECS and the risks they seek to mitigate you may determine that the “reasonable steps” that are appropriate are fairly minor – for example, a simple written annual report might be appropriate for a small operation, instead of asking for financial budgets and proof of expenditure.

If compliance is still too daunting, consider working through an ACNC registered charity (discussed above).



***Some host countries are hostile to our charitable purpose. While our activities and operations are legal under Australian law, it is in our interest to keep our presence quiet in countries we operate in. For that reason we can't use traditional means to transfer funds overseas. How do we comply with the ECS?***

Our discussions with the ACNC suggest it appreciates the reality of operating in some political, religious and social environments. The environment in which you operate is one of the contextual factors to take into account when determining what “reasonable steps” are for ECS compliance.

Sometimes, the context in which you operate may mean that you can't follow best practice for risk mitigation. Transfer of funds is an example of this. “Reasonable steps” in your case may mean using a less secure method to transfer the funds so as to ensure that you protect your in-country staff and volunteers.

A charity might need to take alternative steps to be satisfied funds and resources are being used for their intended purpose – such as ensuring only senior staff carry cash into the country, complying with customs disclosure requirements regarding cash (part of ECS 1 – complying with Australian laws), confirming receipt of cash, having more frequent meetings with any third parties and in-person trips to confirm funds are going towards their intended recipient or purpose.



***How do we respond to stakeholders inquiring about our compliance with the ECS, particularly before we have conducted a risk assessment and compliance plan?***

Demonstrating compliance with the ECS can be difficult because they are standards based regulation – this means there is no “one size fits all” approach to compliance and each organisation must decide what “reasonable steps” to take to meet the ECS. The process set out in the Guide will help you identify risks, collate what is already in place and work to address any gaps.

Your organisation may already be taking “reasonable steps” in the areas covered by the ECS, but without a structured ECS risk assessment process it may not be easy to summarise and communicate these steps to stakeholders.

In the interim, we recommend communicating to stakeholders (if appropriate and accurate):

- That you currently have steps in place to protect the use of your resources overseas, safeguard vulnerable persons and protect against financial impropriety like corruption;
- Examples of some of these steps (i.e agreements and relationships with third parties, policies for protection of vulnerable persons, and review processes for overseas activities);
- That your organisation is undergoing a thorough risk assessment process to review current practices and identify and gaps in addressing the ECS; and
- You anticipate this process will be complete in 3/6/12 months (as appropriate).

You can also note to your stakeholders that the ACNC's approach to regulation in this area is strongly focused on charities that are "[seriously or deliberately breaching](#)" the ECS, and (again, if appropriate) that your charity is confident it does not fall into this category.

Organisations that are ACFID members will have an easier time answering these questions, as they can point to their compliance with the ACFID Code of Conduct and to show that they already have processes in place to address the majority of the ECS. See this page from the ACNC for more information on the ACFID Code of Conduct and the ECS - <https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/acnc-external-conduct-standards/acfid-code-conduct>.



***We don't send money overseas, we send people. Do we still have requirements under ECS 2 – Annual Review and Record Keeping?***

Yes – you will still need country-by-country records of the following:

- Types of activities conducted;
- How these activities relate to your purpose;
- Processes and procedures to monitor overseas activities;
- Third parties you collaborate with; and
- Complaints, breaches of law and other claims of inappropriate behaviour by your charity.



***We work closely with a third party's organisation overseas and send significant funds to them to disperse. We trust the third party and have good oversight of their operations, but do not have oversight of their partners. Is this acceptable?***

The ACNC Guidance states that the ECS apply not only to third parties, but also to their partners (to the extent that those partners are involved in delivering your projects). Charities will usually not be expected to have direct oversight over third party's partners, but the question is always what is "reasonable". This will likely include being sure that your third party has good selection criteria, monitoring and agreements with its partners. Depending on the level of risk involved, "reasonable steps" might also include imposing requirements on your third party through an MOU regarding selection, monitoring and agreements with any partners.



**Wait, so the ECS can apply to parties 4 and 5 times removed? How can we possibly comply?**

The ECS apply to the activities of your third parties and the activities of partners with whom those third parties collaborate to deliver your projects. This is effectively two steps away from you.

You are not expected to have the same level of oversight over your third party's partners as you do over the third party. In practice, charities will impose ECS related obligations directly on third parties – those obligations will include requirements around how that third party selects and works with any partners to deliver the project. Effectively, they will oversee third party organisation's partners **through** those third parties.



***What are our record keeping obligations in regards to third parties, and the partners of our third parties? I'm concerned this is going to be really difficult to obtain.***

The ACNC has not provided detailed guidance on what information a charity needs from third parties and their partners in order to meet ECS 2. For direct work with third parties, we consider you are likely to meet this standard if you keep records of:

- The third party's name and contact details (including a contact person at the third party);
- Nature of the collaboration and agreements (i.e a project plan, MOU or email chain explaining the collaboration);
- Expenditure/funds sent to third party (i.e receipts, or for significant expenditure the financial statements of third parties);
- Approval and monitoring processes (i.e Board minutes, acquittal reports, reports prepared by visitors from your charity); and
- Records of complaints.

For **partners** of third parties the expectation to have records will be lower, but must be appropriate to the level of risk or expenditure provided. For example, if your third party is essentially a conduit to pass funds onto their partners (i.e an international church body in the USA that passes the majority of your funds onto a local organisation in India), then you will need more detailed records of the third party's partner. If your third party's partner merely delivers a small portion of the activities (i.e your direct partner in India engages a contractor to repair a church you fund), then the records can be less detailed. In those instances, names of third party's partners and how they relate to your work may suffice.

At this stage we have not seen a request from the ACNC to provide records under ECS 2. As we see the ACNC develop its regulatory approach in regards to the ECS we expect clearer guidance on what records are required.



***Do the ECS apply differently to suppliers when compared to partners? If we are paying for a service and the service is provided, then how far do our responsibilities under the ECS go?***

This is a really good distinction to draw – working with third parties overseas can range from a partnership relationship (for example, sending a missionary to work at an overseas church), to requesting services and supplies (for example, commissioning a builder to repair an overseas church building).

Reasonable steps under the ECS are likely to involve lower level of assessment for

suppliers as opposed to partnership relationships.

While there might be a lower standard for engaging suppliers and service providers, the ECS will still apply and you may be required to take some steps - for example the ECS may require you to do some background screening and assessment of the builder before engaging them, such as googling the organisation, asking whether they pay staff fairly and checking their reputation. As always, this will depend on your assessment of what are “reasonable steps” to mitigate the ECS risk in the engagement.

After you have engaged them there should also be some level of monitoring – which may include checking that they are actually delivering on what you are paying them for.

You may already be doing these things – in this case, don’t forget to document and keep records of the steps you take to mitigate risk.



***What are reasonable steps to manage ECS risks in response to opportunities that arise on short notice? For example, when we are already in the field we may be invited by a new contact to go and help a day or half day in an orphanage or prison. How do we allow for ECS in those situations?***

ECS risk assessment is a dynamic process. For organisations that have established programs, your responsible persons are likely to formally work through risk assessment now (when the ECS have just been released) and then review the assessment annually or biennially.

For organisations that have changing programs on the ground, you’ll probably need two processes:

- a “big picture” process similar to that outlined in the Guide that assesses known and anticipated risks before you enter a country. One of the contextual factors to take into account may be that in-country team leaders are given autonomy to engage with new projects without seeking approval from your Board or senior staff.
- a “case by case” process that gives guidance to in-country team leaders to conduct a brief program specific risk assessment. This is likely to be much less involved than the big picture process, as:
  - it will sit under the “big picture” process, which should have covered off many of the potential issues;
  - your risk assessment will take into account the context - this may be a one-off visit and any financial support is likely to be small; and
  - “reasonable steps” under the ECS for oversight of a third party are likely to be much less involved where you are making a one-off visit to that third party, as opposed to an ongoing relationship with significant financial and practical investment.

By way of example your big picture risk assessment identifies that teams are likely to come into contact with vulnerable persons. So you put into place a vulnerable person policy, including requirements for individuals on teams to have working with children checks. Your in-country team are then given an opportunity to visit families in small groups of one or two. Your team leader’s case by case risk assessment determines that sending out lone team members creates an unacceptable risk and decides to require at least two team members to go together on each visit.



***We provide debit cards to our workers and beneficiaries in other countries. Would this comply with the financial record keeping and transfer of funds requirements of the ECS?***

We emphasise that ECS implementation requires each organisation to make its own assessment of what “reasonable steps” looks like. Compliance is not black and white and will look different for each organisation.

Use of a debit card would help to meet some of the record keeping requirements, but you still need to monitor who is using the cards and for what purpose – and how this relates to a charity’s purpose.

The cards are a good start to preventing money being lost or misappropriated when transferring overseas, but cards can still be subject to misuse so this may not be enough in isolation. Consider processes around the use of cards –are there individual thresholds or limits on the cards? What expenses they can be used for? How does the charity monitor appropriate use? This could be put in a policy that individuals using cards could be asked to sign. Card registers and other monitoring processes might also be “reasonable steps” towards ECS compliance. The level of supervision might vary depending on the relationship of the users to the charity – i.e whether they are an employee/volunteer, or beneficiary.



***We understand the ECS is retrospective 7 years. Does this mean we have to look through all of our historical records?***

The ECS is **not retrospective in effect**. This means that registered charities are not expected to have obtained and kept records of operations outside Australia specifically for the purpose of ECS compliance in respect of the period prior to July 2019.

However, the general ACNC record keeping obligations still apply, requiring charities to retain the past seven years of financial and operational records.



***What should we do about historical activities for which records are unavailable? For example - on a short term visit, some cash was given to a local organisation, but we didn't ask for detailed records.***

If the activities were before July 2019, the ECS do not require you to do anything. If the activities were after July 2019, the key individuals involved should at least record their recollections of important events in writing.



***We are still struggling with how to assess our "scale of operations", as it impacts risk. For example is a \$20k donation low or high risk?***

This is not as straightforward as the question suggests – like all ECS risk assessment, your organisation’s **context and operations** have to be taken into account. Where your charity operates and the activities undertaken are key considerations. \$20,000 would be, for example, a lower risk proposition in a country like New Zealand than it would be in a remote part of Indonesia. In Indonesia, many locals would consider this to be an extraordinary sum of money – the risk of corruption and terrorism financing is also higher. You need to consider the combined effect of these factors when assessing the likelihood and severity of a particular risk.



***We have Australian-based workers producing materials for potential overseas use. Would this be in-scope for ECS?***

Activities that may be considered “operating outside Australia” include sending resources overseas. Exporting goods for market value is less likely to be caught by the ECS, as it may be able to be characterised as an income generating activity that is incidental (in the sense that it supports your Australian purpose and is not significant in scale compared to your Australian operations). Donating goods or providing them for less than market value (particularly at less than the cost of production) is likely to be caught by the ECS, unless it is both directly related to your purposes in Australia and incidental in scale to your Australian operations.



***We understand that the ECS do not apply to individuals. What about funds that individuals send to our organisation, which we then send overseas on their behalf (e.g child sponsorship)? In this regard we are merely passing funds through. We are not making decisions about how the funds are used, nor have we solicited donations. Is this in-scope for ECS?***

It would be difficult to characterise child sponsorship as “merely passing funds through”. If the individuals providing funds to your organisation do not have either a direct relationship with the child or are unable to send the funds overseas by themselves, then your charity is likely to be somehow enabling that relationship. Once funds pass through the hands of an ACNC registered charity, it is hard to avoid the application of the ECS (unless, again, handling the funds in this way is both directly related to your purposes in Australia and incidental to your Australian operations).

Whether or not you solicit donations is not relevant when considering whether or not the ECS apply.



***For one of our international projects we send funds via an ACNC registered third party. Our organisation is responsible for the project. The third party has no direct involvement in the project other than distributing funds. Which of our two organisations is responsible for ECS compliance?***

This depends on what you mean by “responsible for the project”. Are you doing something more than sending money? Are you selecting the recipients? Determining how the money will be spent once it is received? Communicating with the recipients? Sending volunteers or staff? If so, it is likely that both organisations will be responsible for ECS compliance. The ACNC registered third party will be responsible for compliance in respect of the transfer of funds. You will be responsible for how it is used on the ground.



***From the guide – “if you send money overseas to an ACNC registered charity” – if a charity is overseas isn’t it by definition not an ACNC registered charity? Isn’t the ACNC for Australian charities?***

ACNC registered Australian charities may control overseas bank accounts. If you transfer funds to an overseas account controlled by an ACNC registered charity, the ECS may apply **to that transaction** (that is, the process by which you transfer the funds and the controls you have in place) but will not apply to the subsequent use of those funds by the recipient charity.



***What is the best way to ensure overseas organisations comply with the 14 Australian laws in relation to ECS 1? Is it sufficient to send them Schedule 2 and seek written confirmation that they (and their partners) comply? Or do we need to make further assessments?***

This part of ECS 1 applies to your organisation – you must comply (and maintain reasonable internal control procedures to ensure compliance) with Australian laws. It does not apply to overseas organisations and their partners that you work with. Review Schedule 2 of the Guide and consider the checklist under each legislation header as it applies to your charity's operations.



***What advice should we give to local churches that send small groups on a short term overseas visit?***

Local churches could consider partnering with another ACNC registered charity that regularly operates outside Australia and is better able to carry the responsibility of ECS compliance. Alternatively, their denomination may have (or could establish) an ACNC registered entity that could advise and support ECS compliance for short term mission work. Otherwise, the church's responsible persons will need to work through an ECS risk assessment and consider what steps are reasonable to mitigate ECS related risk for this project in their particular context.



***Does the ACNC review an organisation's compliance with the ECS?***

Currently, the ACNC does not have plans to proactively review ECS compliance in the sector. However, the ACNC may review ECS compliance in the following circumstances:

- when an application is made for registration as a charity;
- when a charity applies to change its registration (for example, changing charity subtypes or applying for deductible gift recipient status);
- if the ACNC is notified of non-compliance – for example, through a media report, member of the public, or internal whistleblower. Where there is a significant failure to comply with the ECS, the law requires charities to proactively notify the ACNC of the failure;
- in the context of a review triggered by a breach of the ACNC Governance Standards or other failure (such as a failure to report when required); and
- if compliance issues are identified in the course of the ACNC's planned proactive reviews of charities that are deductible gift recipients.