



## Starting a Development NGO

While ACFID makes every effort to ensure information is accurate and up to date it is the responsibility of the user to check its accuracy with the relevant authorities before acting on it.

---

Development non-government organisations (NGOs) primarily exist for the purpose of improving the standard of living of people in developing countries. There are hundreds of development NGOs in Australia, from large professional bodies such as Oxfam Australia and World Vision Australia to small groups operated on an entirely voluntary basis.

Starting a development NGO is a significant undertaking involving substantial legal obligations. Before starting an NGO, you should be sure that you have the time and expertise required for the task, and that the development need you have identified could not be addressed through an existing organisation.

A number of different federal and state government regulations apply to development NGOs, in areas such as incorporation, fundraising, tax status and accreditation. Unfortunately, these requirements are not always well coordinated or consistent. The following sections deal with each of the main regulatory issues in turn.

### ***Incorporation***

A development NGO will generally be incorporated as an association or a company limited by guarantee. Incorporation creates a legal entity separate from the membership of the organisation. An incorporated association is registered under state legislation and has a lower level of regulatory obligation than a company limited by guarantee, which operates under Commonwealth corporations law.

An incorporated association is a suitable framework for a small organisation that will operate primarily in a single state or territory. For most development NGOs, it is preferable to be incorporated as a company limited by guarantee, as this automatically allows national operation and provides a higher level of assurance to donors and other stakeholders. An incorporated association can also operate nationally by applying to the Australian Securities and Investments Commission (ASIC) for an Australian Registered Body Number, however this imposes an additional set of fees and reporting requirements on the organisation.

Incorporation requires the adoption of a constitution setting out the purposes of the organisation, the governance structure, wind-up arrangements and other matters. In some cases, the relevant authority can provide a 'model' constitution.

Further information on incorporation is available on the websites of the Australian Securities and Investments Commission and relevant state government instrumentalities. Contact details are provided at the end of this fact sheet.

## **Fundraising/registration as a charity**

Fundraising from the public for charitable purposes requires authorisation from the appropriate government authority in each state where fundraising activities are to take place. This is a separate process from incorporation. In some states, the organisation itself is registered as a charity for fundraising purposes, while in others it is the *activity* of fundraising that is licensed.

You will need to familiarise yourself thoroughly with the fundraising requirements in your state(s) of operation. Although the application process is generally straightforward, fundraising legislation requires compliance with a range of conditions relating to record keeping, administrative expenses, identification of volunteers and other matters. Further information can be found on the websites of the authorities, listed at the end of this fact sheet.

N.B. Authorisation to fundraise for charitable purposes does not entitle an NGO to offer tax deductibility on donations. This is discussed in the following section.

## **Tax concessions**

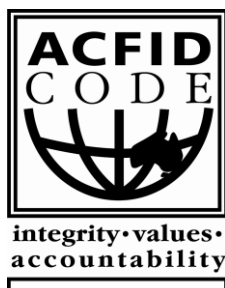
Organisations operated for charitable purposes (including international development) may be eligible for a range of concessions from the Australian Taxation Office (ATO). These include income tax exemption, the ability to provide tax-free fringe benefits, and concessional arrangements for goods and services tax.

Full details on the available tax concessions can be found on the ATO website (details at the end of this fact sheet). To apply for these concessions you need to complete the ATO form "Application for endorsement as a tax concession charity or income tax exempt fund".

Development NGOs that also wish to provide tax-deductible receipts to their donors must apply to become Deductible Gift Recipients (DGRs) under the Overseas Aid Gift Deductibility Scheme (OAGDS). In the first instance, this involves an assessment of the organisation's governance and program activities by the Australian Agency for International Development (AusAID).

Guidelines for the OAGDS may be found on the AusAID website, at: <http://www.ausaid.gov.au/ngos/tax.cfm>. Application for DGR status can be a lengthy process and success is by no means guaranteed. You are encouraged to discuss your application at an early stage with the Community Programs Section, AusAID and/or ACFID (details at the end of this fact sheet).

## **ACFID Code of Conduct**



Australian development NGOs operate under a self-regulatory code known as the ACFID Code of Conduct. The Code sets out minimum standards in areas such as governance, fundraising, personnel management and finance.

The ACFID Code of Conduct is widely regarded as one of the world's leading self-regulation mechanisms. Becoming a signatory to the Code is not compulsory for a development NGO, but provides a high level of confidence in your activities to donors and other stakeholders.

The Code Document and its Guidance Document provides further guidance on being Code Compliant. Further information about the Code and becoming a Code signatory is available online at: <http://www.acfid.asn.au/code-of-conduct>.

Many signatories to the Code of Conduct also choose to become ACFID members. ACFID membership provides access to a range of advisory, advocacy and networking services that can help maximise the effectiveness of your organisation.

### **AusAID Accreditation**

NGOs that have a track record of at least two years in aid delivery may seek accreditation with AusAID. AusAID accreditation offers a further level of assurance to donors and provides access to government funding programs such as the AusAID-NGO Cooperation Program (ANCP).

Accreditation involves a detailed review of an organisation's systems and programs. A high level of professionalism in organisational governance, financial systems, management of development programs and relationships with the Australian community is expected. Agencies seeking accreditation are required to be signatories to the ACFID Code of Conduct.

An NGO wishing to apply for accreditation must complete an 'Agency Profile' in the form set out in the Accreditation guidelines on the AusAID website. The Agency Profile is a substantial document that typically takes six to twelve months to complete. ACFID members can obtain assistance from the ACFID Secretariat when preparing their Agency Profile.

For further accreditation information see: <http://www.usaid.gov.au/ngos/accreditation.cfm>

### **Operating Overseas**

The operation of NGO programs in developing countries is subject to a range of Australian and local laws. Many countries require registration of foreign NGOs and may require compliance with taxation and other legislation. It is your responsibility to understand and comply with all applicable local laws.

Certain Australian legislation may apply to your overseas operations. For example, it is an offence in Australian law to provide direct *or indirect* support for terrorism. In some countries, this may affect your choice of local partners. A list of organisations and individuals associated with terrorism is available on the website of the Department of Foreign Affairs and Trade (DFAT):

[http://www.dfat.gov.au/icat/UNSC\\_financial\\_sanctions.html](http://www.dfat.gov.au/icat/UNSC_financial_sanctions.html).

Further information about International Counter-Terrorism and listed persons and entities is available from DFAT at: [www.dfat.gov.au/globalissues/terrorism.html](http://www.dfat.gov.au/globalissues/terrorism.html).

The Attorney-General's Department maintains a List of Terrorist Organisations which have been proscribed by the Government as terrorist organisations under Division 102 of the Criminal Code Act 1995:

<http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf/AllDocs/95FB057CA3DECF30CA256FAB001F7FBD?OpenDocument>

In July 2009, the Government released new guidelines to safeguard non-profit organisations against terrorism financing:

[http://www.nationalsecurity.gov.au/agd/WWW/nationalsecurity.nsf/Page/What\\_Governments\\_are\\_doing\\_Risk\\_of\\_Misuse\\_-\\_Terrorism\\_Financing](http://www.nationalsecurity.gov.au/agd/WWW/nationalsecurity.nsf/Page/What_Governments_are_doing_Risk_of_Misuse_-_Terrorism_Financing)

The DFAT website also contains up-to-date travel advisory information that can inform your risk assessment regarding overseas activities: <http://www.smarttraveller.gov.au>. In areas of potential instability, it is advisable to liaise with the relevant Australian embassy when working in-country. However, personal security is ultimately the NGOs responsibility and there are limits to an embassy's ability to assist in the event of an emergency.

## **Further resources**

Australian Council for International Development (ACFID)  
<http://www.acfid.asn.au> (02) 6285 1816

Australian Agency for International Development (AusAID)  
<http://www.ausaid.gov.au/ngos/default.cfm> (02) 6206 4000

Australian Securities and Investments Commission (ASIC)  
<http://www.asic.gov.au> 1300 300 630

In particular, see the fact sheet on 'Registering a not for profit or charitable organisation':  
<http://www.asic.gov.au/asic/asic.nsf/byheadline/Registering+not-for-profit+or+charitable+organisations?openDocument>

Australian Taxation Office (ATO)  
<http://www.ato.gov.au/nonprofit> 1300 130 248

Department of Foreign Affairs and Trade (DFAT)  
<http://www.dfat.gov.au> (02) 6261 1111

## **State bodies for charitable fundraising**

See the Senate Committee overview for each state online at:  
[http://www.aph.gov.au/senate/committee/economics\\_ctte/charities\\_08/report/e07.htm](http://www.aph.gov.au/senate/committee/economics_ctte/charities_08/report/e07.htm)

## **State bodies for incorporation**

ACT Office of Regulatory Services  
<http://www.ors.act.gov.au/BIL/WebPages/Assocns/associations.html>  
(02) 6207 0473

NSW Fair Trading (incorporation)  
[http://www.fairtrading.nsw.gov.au/Cooperatives\\_and\\_associations.html](http://www.fairtrading.nsw.gov.au/Cooperatives_and_associations.html)  
1800 502 042

Office of Liquor, Gaming and Racing (fundraising)  
[http://www.olgr.nsw.gov.au/charitable\\_home.asp](http://www.olgr.nsw.gov.au/charitable_home.asp)  
(02) 9995 0300

NT Department of Justice  
[http://www.nt.gov.au/justice/licenreg/baal/club\\_assoc.shtml](http://www.nt.gov.au/justice/licenreg/baal/club_assoc.shtml)  
(08) 8935 7777

Qld Office of Fair Trading  
<http://www.fairtrading.qld.gov.au/associations-nonprofits.htm>  
13 74 68

SA Office of Consumer and Business Affairs  
<http://www.ocba.sa.gov.au/Associations>  
1300 138 918

Tas Consumer Affairs and Fair Trading  
[http://www.consumer.tas.gov.au/business\\_affairs/incorporated\\_associations](http://www.consumer.tas.gov.au/business_affairs/incorporated_associations)  
1300 65 44 99

Vic. Consumer Affairs Victoria  
<http://www.consumer.vic.gov.au/>  
1300 55 81 81

WA Department of Consumer and Employment Protection  
<http://www.docep.wa.gov.au/ConsumerProtection/Content/Business/Charities>  
(08) 9282 4373