POLICY G012: ANTI MONEY-LAUNDERING AND COUNTER TERRORISM POLICY

Responsible person:	CEO	Version:	2.1
Approved by Board of Directors on:	May 2021	Scheduled review date:	May 2027

PREAMBLE

This policy was written by So They Can (Australian Entity) for use across all So They Can offices. So They Can operates five offices registered in each of Australia, Kenya, Tanzania, New Zealand, the USA and England & Wales, which are part of the So They Can Global Alliance. In this policy, 'CEO' means CEO of So They Can (Australian Entity). Unless specified otherwise the 'Board' refers to the board of So They Can (Australian Entity). This policy is intended for all So They Can staff, Board members and volunteers, in all 6 So They Can offices. So They Can procedures are consistent with So They Can policies.

INTRODUCTION

So They Can renounces all forms of terrorism and criminal activity. So They Can will never knowingly support, tolerate or encourage money laundering, terrorism or the activities of those who embrace criminal activity including money laundering and terrorism and will make every effort to ensure that its resources are not used to facilitate terrorist or money-laundering activity.

This policy sets out So They Can's commitment to comply with Australian laws relating to counter-terrorism and criminal activity, through processes and policies that minimise the risk of support for terrorists, terrorist organisations especially those on the UN Security Council's Consolidated List and the Australian Government's List of Terrorist Organisations. This policy responds to the risk of dealing with organisations and individuals associated with crime.

The Australian government has enacted legislation consistent with a number of international counter-terrorism treaties designed to combat terrorism. The relevant legislative mechanisms prohibiting activities in relation to individuals and organisations associated with terrorism can be found in:

Part 5.3 of the Criminal Code Act 1995;

Part 10.2 of the Criminal Code Act 1995 ('the Criminal Code') and

Part 4 of the Charter of United Nations Act 1945 ('the UN Charter Act')

The Criminal Code provides stringent penalties for, amongst other things, intentionally or recklessly 'getting funds to or from a terrorist organisation' (section 102.6), 'providing support to a terrorist organisation' (section 102.7) and 'financing terrorism' (section 103.1). The Criminal Code sets out offences concerning money laundering (section 10.2). A list of 'terrorist organisations' for the purposes of the Criminal Code is available on the National Security Australia website http://www.nationalsecurity.gov.au/Listedterroristorganisations.

Under the UN Charter Act, it is an offence to "directly or indirectly make any asset available to a proscribed person or entity". An asset is very broadly defined as "asset of any kind, or property of any kind, whether tangible or intangible, movable or immovable". While the UN Charter Act applies less stringent penalties, it

has a much broader application in the aid context due to its very wide definition of asset. A list of proscribed persons and entities is available from DFAT at:
http://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx

In addition So They Can will check the following two lists to ensure it doesn't deal with any listed terrorist organisations and/or proscribed persons or entities.

- World Bank Listing of ineligible firms and individuals;
- Asian Development Bank Sanctions List;

DEFINITIONS

So They Can Representatives – are all individuals and institutions who act on behalf of So They Can regardless of whether or not there is a formal legal agreement between them and So They Can. This includes, but is not limited to, all trustees, members, directors, employees, contractors, consultants, suppliers, advisors, volunteers, and implementing partners irrespective of which country their role is situated. In this document So They Can refers any or all of the international So They Can entities registered in Australia, New Zealand, Kenya, Tanzania and USA.

Responsible Person refers to those responsible for governing a charity. Generally, a charity's Responsible Persons are its board or committee members, or trustees (including insolvency trustees or administrators).

Under the "**reasonable endeavours**" clause, So They Can has a positive obligation to act; in particular to ensure that it:

a) knows the persons/organisations that it is directly assisting;
b) confirms that the people/organisations it is directly assisting are not on either of the lists before assistance is provided; and
c) ensures that directly funded persons/organisations are aware of and comply with these laws.

Money Laundering – the process of concealing the origin, ownership or destination of illegally or dishonestly obtained money and hiding it within legitimate economic activities to make them appear legal

Terrorism Financing – intentionally providing or collecting funds and being reckless as to whether those funds would be used to facilitate or engage in a terrorist act

Counter-terrorism – the practice, techniques and strategy used to combat or prevent terrorism

POLICY

1. Australian Government legislation prohibits dealing with individuals and organiations involved in criminal activities, listed terrorist organisations and/or proscribed persons or entities. So They Can will at all times adopt measures intended to facilitate compliance with this legislation.
2. So They Can will confirm the identity, credentials and good standing of the people or organisations it supports and will check that these people or organisations are not on the lists maintained by the Australian Government.

3. So They Can will use reasonable endeavors to ensure that all activities (including those carried out by a partner or affiliate organisation delivering aid) comply with relevant Australian laws and regulations (and those of the country in which the aid is being delivered), including but not limited to:
   a) Those in relation to the proscription against providing direct or indirect support or resources to organisations and individuals associated with terrorism, including 'terrorist organisations' as defined in Division 102 of the Criminal Code and listed in regulations under the Criminal Code and regulations made under the UN Chart Act; and
   b) Those in relation to corrupt practices, in particular the bribery of public and foreign officials.
4. So They Can will not knowingly remit any funds to known or suspected criminal and terrorist organisations or individuals.
5. So They Can will report any known or suspected criminal or terrorist offences or links to the relevant national authority.
6. So They Can will use reasonable endeavors to ensure that overseas recipients of So They Can's funds will adopt policies and procedures that enable them to comply with relevant Australian anti-terrorist and crime prevention legislation.
7. So They Can will ensure that all staff, volunteers and governing body members receive training regarding financial wrongdoing risks, prevention and reporting as part of their induction, and thereafter will receive annual refresher training.
8. So They Can will make sure that all Representatives understand their obligation to report without delay all cases of attempted, alleged, suspected or detected criminal activities or links to terrorist organisation/individual. All cases of fraud and corruption will be handled in a confidential, prompt and professional manner in accordance with procedures set in So They Can Complaints Policy and So They Can Whistleblowing Policy.

PROCEDURES

1. So They Can will check and document that its staff, board members, suppliers and other Representatives do not promote or have connections with identified terrorists or terrorist organisations (those on the Consolidated List or the List of Terrorist Organisations). Representatives must know the identity, credentials and good standing of their partners and recipient organisations (i.e. what they do, where they operate, who are their key decision makers and staff).
2. Prior to engagement with any individual staff, board member, or with regularly engaged volunteers, contractors and suppliers, So They Can requires a clear Australian Federal Police Criminal Record Check, or Criminal record check for any country in which they reside or have spent more than twelve months of residence during the last five years. Throughout engagement with So They Can, Criminal Record Check must be renewed every 2 years.
3. All staff appointments and appointments of new Responsible Persons are subject to successful reference checks.
4. Prior to an appointment of a Responsible Person So They Can will ensure that they are not disqualified from:
   - managing a corporation under the Corporations Act 2001 (Cth) (the Corporations Act), or
   - being a Responsible Person by the ACNC Commissioner, within the previous 12 months.

   by:
   - doing a search of the ASIC Disqualified Persons Register for that person
   - doing a search of the ACNC Register of Disqualified Persons for that person (the ACNC has not disqualified anyone at this time), and

- requesting each of its Responsible Persons to sign a declaration **(Attachment A)** confirming that they are not disqualified and that they understand what it means to be disqualified.

1. Prior to signing any partnership agreement, MOU or funding, So They Can will check that the partner organization or their representatives do not promote or have connections with identified terrorists or terrorist organisations (i.e. the Australian Government, UN, World Bank and Asian Development Bank lists of terrorists and proscribed organisations.)
2. So They Can will only transmit funds using reputable banks and other financial institutions for this purpose and observing procedures defined in So They Can Financial Manual and So They Can Inter Entity Transaction Policy.
3. Counter terrorism procedures will be included in Risk Management section of every in-country Project Plan document.
4. So They Can will immediately withdraw all support, including provision of resources, if it has reason to believe that a ministry or project partner has breached the requirements of this policy.
5. As far as practicable, any MOU, partnership or funding agreement will include wording that requires the recipient organisation to adopt policies and procedures consistent with Australian Government requirements. DFAT suggested wording is:
   "The Organisation acknowledges that the Australian Government has adopted a policy and laws consistent with relevant international counter-terrorism Treaties and UN Security Council Resolution 1373 (2001) of not providing direct or indirect support or resources to organisations and individuals associated with terrorism.
   The Organisation must use reasonable endeavours to ensure that funding provided under this Agreement is expended in a manner consistent with the UN Security Council Resolution and related Australian laws. If, during the course of this Agreement, the Organisation discovers any link whatsoever with any organisation or individual associated with terrorism it must inform the Australian Federal Police and/or AusAID immediately." So They Can will perform regular monitoring and evaluation of project and program activities to ensure funds are being used for the purposes they were approved and provided. Funding recipients are required to provide quarterly detailed accounting reports showing how funds have been spent.
9. Where recipient organisations or individuals are found to be on either list, forwarding funds will cease and the national security hotline on 1800 123 400 (+61 1300 123 401 if calling from outside of Australia) will be informed immediately.
10. So They Can will report any suspected terrorism and criminal activities or links involving DFAT funds to DFAT within five working days of detection using counter-terrorism.resourcing@dfat.gov.au.

RELATED DOCUMENTS

- Guidelines for Strengthening Counter-Terrorism Measures in the Australian Aid Program (AusAID 2004), found at: http://aid.dfat.gov.au/Publications/Pages/3068_5667_7689_8674_4936.aspx
- So They Can Policy and Manual Register
- So They Can Financial Manual
- So They Can Inter Entity Transaction Policy
- So They Can Recruitment Policy
- So They Can Fraud and Anti-corruption Policy
- So They Can Whistleblowing Policy
- So They Can Complaints Policy

- So They Can Project Plans

Date	Version	Comment
27 February 2019	1.1	Review of the policy in line with DFAT requirements
15 February 2021	2.0	Change of title to Anti Money Laundering and Counter Terrorism Policy Addition of money-laundering and criminal activities into the contents of the policy
May 2021	2.1	Policy review Added procedure for checking Responsible persons against ACNC and ASIC Disqualified Persons Registers, declaration template added Added requirement for new Responsible Persons to undergo reference checks (valid from 1 July 2021)
May 2023	2.1	Regular Policy review
May 2025	2.1	Regular Policy review, England & Wales entity added to preamble

ATTACHMENT A

so they can

Declaration for Responsible Persons confirming they are not disqualified under ACNC Governance Standard 4

I, [name] ……

of [address] ……

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……,

declare that:

- I am not disqualified from managing a corporation, within the meaning of the Corporations Act 2001 (Cth) and
- I have not been disqualified by the Australian Charities and Not-for-profits Commissioner at any time during the previous year from being a responsible person (what the ACNC Act calls a 'responsible entity') of a registered charity.

While I am a Responsible Person for [charity name], I agree to notify this charity as soon as possible if I do become disqualified from managing a corporation within the meaning of the Corporations Act 2001, or am disqualified by the Australian Charities and Not-for-profits Commissioner. Responsible persons are the members of a charity's governing body who share responsibility for the governance of the charity (called 'responsible entities' under the ACNC Act).

Declared at: [location]

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On: [date]

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Signature:

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Name:

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Position:

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