

Our ref :Not-for-Profit Law Committee

24 April 2013

Reporting and Red Tape Reduction Directorate  
Australian Charities and Not-for-profits Commission  
GPO Box 5108  
MELBOURNE VIC 3001

Dear Directorate,

## 2014 ANNUAL INFORMATION STATEMENT PUBLIC CONSULTATION PAPER

Queensland Law Society welcomes the Government's call for comments on the 2014 Annual Information Statement Public Consultation Paper (2014 AIS).

While the Society has an interest in the not-for-profit sector reforms because it is a not-for-profit organisation, this submission is made on behalf of the Queensland legal profession which the Society represents.

The Society limits its comments to the following points:

**Consultation question 1: related party transactions (medium and large) – do you agree that medium and large registered charities should separately disclose related party transactions in the AIS as proposed in attachment (ii)? If not, what approach would you suggest and why?**

The Society does not support the requirement that medium and large registered charities should separately disclose related party transactions in the 2014 AIS. There are two issues to consider, the role of the AIS and the issues relevant to reporting. The financial reporting function of the AIS is discussed in more detail in answers to questions below. In answering this question we focus only on the overarching reporting function of the AIS and the way charities report generally.

Charities should report as to how their purposes are fulfilled in whatever manner is most appropriate. There is not an agreed standard for reporting against purpose. Until there is an agreed standard it should be for the charities to determine how the purposes they are pursuing are best reported.

It is clear, though, that reporting on an entity basis and with related party transactions declared might be difficult, costly and produce anomalous or confusing results. This is because charities frequently operate in concert although the arrangements are often not as subsidiaries or by other formal ties. Tax Ruling 2005/22 [21] explains:

21. In the non-profit sector, to which Division 50 largely applies, various structures are found. For example, a sporting group might include several unincorporated associations and several corporations. By way of further example, a religious group might include an unincorporated

association and some corporations (where each may include several quasi-independent divisions or branches), and several trusts. An educational group might have a main corporation and several related corporations and trusts. Within such groups the various structures will commonly be thought of collectively - all are 'the club', or 'the church', or 'the college'.

These various entities, in carrying out their mutual purpose frequently act to the detriment of a particular entity but for the advancement of the overall charitable purpose. Thus one entity may passively hold land but another may pay accounts in relation to the land and the land might be utilized by a third entity or perhaps shared with a different but related purpose charity. These relationships make sense when understood by reference to the sporting, religious or educational purpose but not otherwise. Reporting on an entity basis and declaring related party transactions might suggest impropriety or mismanagement by a board of one entity unless the reporting is by the 'the club', or 'the church', or 'the college'. The AIS reporting strictures proposed are likely to be unhelpful. The Society respectfully submits that it would be more appropriate for charities to be asked to demonstrate, in circumstances where there are relationships that related party transactions have occurred, that the related party has used the benefit for its "purpose" and allow the charity to report this as it sees fit. The use of accounting standards is not the appropriate way for the ACNC to obtain that information.

**Consultation question 2: Business activity (small, medium and large) – Do you agree that small, medium and large charities should separately disclose information about their business activities are proposed in attachment (i) and (ii)? If not, what approach would you suggest and why?**

The Society does not support the requirement for charities to disclose information about their business activities for the reasons set out above under consultation question 1 and for the reasons set out below:

- there needs to be a clear definition of "business activities" (following appropriate consultation with the sector);
- in respect to the provision of business activity, if a charity carries out that activity within its structure, then legally there should be no private benefit. If a charity carries out this activity in a separate entity, then this information would be set out in its accounting records;
- ACNC has advised the purpose of asking about business activities is to help the public understand the nature of activities conducted by a charity. However, it is also proposed to use this information to assess whether the charity is a not-for-profit entity and whether there is a likelihood of private benefit. This information is not asked at registration and so the question as to why that information should be provided by charities subsequent to registration is questionable. The Society considers that widening the power of the ACNC, through the provision of information required to be provided to it in the 2014 AIS (which may allow it to take regulatory action) is more appropriately done through legislative intervention to amend the Act; and

- the Society submits that charities should not be required to disclose information that would not otherwise need to be disclosed by a charity who is engaging in activities, including business activities, with the purpose of reinvesting the income for the purpose of the charity.

**Consultation question 3: Reserves (medium and large) What information, if any, should medium and large charities be required to provide about reserves in the AIS? Why?**

The Society does not support the requirement that charities be required to report using the Australian Accounting Standards Board Accounting Standards (AASB).

The Society respectfully draws the Directorate's attention to the AASB meeting action alert issued on 22 February 2013 in which the Board:

- acknowledged research into special purpose financial recording is raising questions about:
  - the application of the reporting entity concept in determining whether they should prepare general purpose financial statements;
  - the extent to which different types of entities are lodging general purpose financial statements compared with special purpose financial statements; and
  - the quality of those respective financial statements in relation to the recognition and measurement requirements of the Australian Accounting Standards.
- decided its staff should liaise with other regulators, including the Treasury and the Australian Securities and Investments Commission with a view to coordinating the board's and other regulators' efforts in dealing with the issues emerging in the research report and potentially transitioning to a more coordinated reporting regime; and
- noted in respect to the implementation guidance for not-for-profit entities re AASB10, limited additional explanation of non-financial returns should be added in the exposure draft.

The Society submits the AASB are not an appropriate way for charities to report as they are "transaction neutral". The standards will not provide the ACNC, as the regulator, with a sense of the charity's "purpose". By implementing AASB accounting standards, it is allowing a body external to it to determine standards for some, but not all reporting requirements for all charities. By way of example, the AASB standard that will apply to an incorporated small charity is approximately 30 pages in length, the regulation over which the ACNC has no control.

The Society acknowledges that financial statements do not speak for themselves. However, they should and if the ACNC set the accounting standards it could take account of the "purpose" of a charity so that it would not be necessary for the ACNC to ask further questions about reserves in the 2014 AIS.

The Society recommends that the format of the 2012-13 AIS be extended until such time as the ACNC has considered the application of the accounting standards to the not-for-profit sector and the term “not-for-profit entity” has been defined.

Thank you for considering our comments in relation to these issues. Please contact our Policy Solicitor, Ms Raylene D’Cruz on (07) 3842 5884 or [r.dacruz@qls.com.au](mailto:r.dacruz@qls.com.au); or Graduate Policy Solicitor, Mr Jennifer Roan on (07) 3842 5885 or [j.roan@qls.com.au](mailto:j.roan@qls.com.au) for further inquiries.

Yours faithfully

Annette Bradfield  
**President**