



**CHARTERED SECRETARIES
AUSTRALIA**

Leaders in governance

24 April 2013

Reporting and Red Tape Reduction Directorate
ACNC
GPO Box 5108
Melbourne, Victoria, 3001

By email: consultations@acnc.gov.au

Dear staff of the ACNC

***2013 and 2014 Annual Information Statement Public
Consultation***

Chartered Secretaries Australia (CSA) is the peak body for over 7,000 governance and risk professionals. It is the leading independent authority on best practice in board and organisational governance and risk management. Our accredited and internationally recognised education and training offerings are focused on providing governance and risk practitioners with the skills they need to improve their organisations' performance.

Our Members are all involved in governance, corporate administration and compliance with the *Corporations Act* (the Act). Many of our Members serve as officers of not-for-profit (NFP) organisations, or work for or are involved with companies limited by guarantee. CSA itself is a company limited by guarantee, established to promote and advance the efficient governance, management and administration of commerce, industry and public affairs and the development of secretaryship of organisations through education and the dissemination of information.

CSA welcomes the opportunity to comment on the *2014 Annual Information Statement* (consultation paper). We understand that the Australian Charities and Not-for-profits Commission (ACNC) would prefer that we utilise the online survey tool to provide our responses to the consultation paper, but CSA has an obligation to make our submission available to our Members and so we have chosen to respond in the form of a written submission that we can post online for our Members to access.

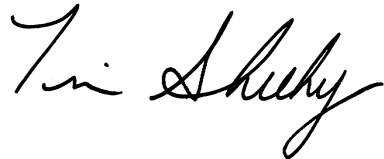
General comments

CSA Members are of the view that the proposed Annual Information Statement (AIS) for the most part fulfils the ACNC's aim of balancing the task of collecting sufficient information to enable the ACNC to maintain public trust and confidence with its commitment to red tape reduction. CSA is of the view that a great deal of time and effort has gone into making the AIS clear and easy for people to fill out, in turn making it relatively easy for charities to meet their compliance obligations. CSA also commends the ACNC on its consultation process, which has been open and transparent, and with sufficient time to respond.

There are some instances when particular terms or questions may have the potential to confuse those charged with completing the AIS. Our detailed comments on the following pages address these instances.

Please do not hesitate to contact us should you require any further information in relation to our comments.

Yours sincerely

A handwritten signature in black ink that reads "Tim Sheehy". The signature is written in a cursive, flowing style.

Tim Sheehy
CHIEF EXECUTIVE

2013 Annual Information Statement (sample)

Section A: Question 5

Guidance notes

CSA appreciates that the consultation paper includes some short-form guidance notes on:

- Business activity
- General purpose/special purpose financial statements (medium, large)
- Audits and reviews (medium, large)
- Related-party transactions (medium, large).

However, we are of the view that each of these should be provided as a separate guidance note (rather than bundled together), and be numbered.

We note that the Australian Securities and Investments Commission (ASIC) numbers its guidance notes, and regulatory guides, and this assists companies when they need to locate the material on the ASIC website, or contact ASIC with queries in relation to particular matters.

CSA recommends that all guidance be provided in the form of guidance notes that are numbered for ease of reference.

Many charities are companies limited by guarantee and will be familiar with this system. We believe it will also aid those charities that have not encountered such a system previously, as it is an easy system to follow.

Reporting period

We note that if charities have a different reporting period (for example, to respond to their constitution), they need to notify the ACNC by 2 June 2013.

However, if the charity is in operation already, it may choose to change its accounting period to bring it into line with the recommended year-end. This will then require a reporting period from the old year-end to the new year-end. That will require a reporting period which is shorter or longer than the normal 12 months depending on the choices made. How are charities to address this issue? Further, there will be charities which have not previously prepared financial reports of the form now required.

We understand that, at present, the aim is to provide clear, accessible information about a variety of matters on the ACNC website. However, given the confusion that is still prevalent as charities seek to come to terms with their new obligations, any assistance in locating guidance material will be greatly appreciated and will assist compliance.

For example, in relation to an application for a substituted accounting period, we note that there is currently no 'guidance note' on the ACNC website. There is the Commissioner's Policy Statement, which sets out when the ACNC will approve the use of accounting periods ending on a day other than 30 June (substituted accounting periods) for charities under s 60-85 of the Australian Charities and Not-for-profits Commission Act (the ACNC Act), which can be found at http://test.acnc.gov.au/ACNC/Publications/Policy_PDFs/CommSt_SAP.aspx. There is also information on general changes to reporting periods, which can be found at http://test.acnc.gov.au/ACNC/Manage/Top_tasks/Top_Reporting/ACNC/Edu/TT_RepChnge.aspx?hkey=a0ce433f-48e5-4a99-bc1d-ed79fccee1fa.

However, users are likely to search for a guidance note, given this is the terminology used in the AIS.

CSA recommends that the ACNC:

- collate the policy statement and information on general changes into a guidance note
- include information setting out the multiple issues that may affect different charities in relation to changing reporting periods
- number the guidance note to which users are meant to refer when considering if they need to apply for a substituted accounting period.

CSA also recommends that this guidance note be referenced in the 2013 AIS and be available by 1 July 2013.

Section A: Question 9

CSA recommends that the ACNC develop a guidance note on how to apply to be part of a reporting group and also how to report if approved by the ACNC. Reference to this guidance note should be included on the AIS at Question 9.

Again, **CSA recommends** that this guidance note should be numbered for ease of reference.

Section C: Question 16

CSA recommends that a new box be included as a response to this question as follows:

Australia-wide (include a box to tick)

Otherwise, we note that charities, if they operate nationally, will need to tick each box (except Overseas/outside Australia) in response to this question.

Many charities operate Australia-wide and it would be a slight reduction in the compliance burden if they could tick just one box on the AIS rather than multiple boxes in order to report this.

Section D: Question 19

CSA understands that, in aggregating this information, the ACNC is seeking to reduce the compliance burden on charities.

However, we note that by aggregating the responses to this question, it is not possible for the ACNC to provide data to the Federal Government and the Council of Australian Governments (COAG) on how much time charities spend reporting to state and territory regulators. Given that COAG recently consulted on how best to reduce red tape for charities, CSA believes that it would be more useful to disaggregate this information, so that empirical data becomes available as to the impact on charities of the duplication of compliance obligations.

Further to this, we note that ASIC has already 'switched off' some reporting obligations, with charities registered with the ACNC now reporting to it on changes in names, address and persons on the governing body.

However, we also note that, while the ACNC provides information on its website that these reporting obligations are now to the ACNC, without a 'letter of comfort' from ASIC on its website in relation to whether a company limited by guarantee has met its obligations under the Corporations Act by reporting such changes to the ACNC, many charities that are companies limited by guarantee are reporting to both the ACNC and ASIC at present. CSA is in discussion with ASIC concerning the need for such a 'letter of comfort' to be made publicly available, but we note that aggregating this dual reporting to two Commonwealth regulators with reporting

required to states and territories disguises the additional compliance burden being experienced by charities that are companies limited by guarantee.

CSA strongly recommends that this question ask charities to estimate separately how much time they spent completing reporting obligations at a state, territory and Commonwealth level. CSA is of the view that this data may provide evidence to support an argument for a referral of powers, which would provide for all incorporated associations to be regulated nationally. CSA is of the view that, for any regulatory reform of the NFP sector to succeed, it is essential that the sector be granted the same national context as the private sector. This will ensure that charities in the first instance (and the entire NFP sector in time) have to respond to only one set of compliance obligations that operate nationally.

Declaration

CSA is unclear if the 'responsible person' who can complete the declaration on the AIS is the same as a 'responsible entity' or if this term refers to a broader category of persons.

CSA is of the view that the similarity of these terms has the potential to confuse users.

CSA recommends that the ACNC:

- provide an explanation on the AIS as to who is a responsible person, or
- use the term responsible entity if this is the person who is meant to fulfil the role of responsible person.

Completing the AIS online

We note that the 2013 AIS (sample) states that charities are to 'Print clearly, using a black pen only'. From this, we infer that the AIS cannot be completed online. While we recognise that a charity could then scan in the AIS and submit it electronically, this is not the same as completing the form online. CSA also notes that ASIC provides for the online lodgement of many of its forms.

While we recognise that online lodgement may be subject to budget restrictions at this time, **CSA recommends** that the ACNC plan for online lodgement of the AIS and other relevant documents in future, and that a note be included with the 2013 AIS that it is under consideration.

2014 Annual Information Statement — small charities

1 Consultation question: 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?

CSA strongly supports the disclosure of related-party transactions in the AIS. Charities are frequently staffed and administered by those who act, at least in part, out of their dedication to a cause. Often, the officers and the governing bodies that give them strategic direction come to their roles through various paths and, as a result, they may need guidance on core governance issues. Managing conflicts of interest and maintaining the reputation and the support of funders, donors and the public are of vital importance. Therefore, the basic principles of balancing stakeholders' needs and the need for directors and governing bodies to act in the interests of the organisation as a whole remain constant, as does the need for transparency as to related-party transactions.

Conflicts of interest may not be wrong in themselves, but such conflicts must be disclosed and effectively managed. If the conflict is not properly managed, the board decision about a matter where a director may be conflicted may be open to challenge. This can be particularly true of payments to directors or those on the governing body of a charity. It is sound practice for all organisations making payments, or in-kind services, to their directors and officers to disclose the details of such payments in their annual report and accounts.

However, not all stakeholders will read the financial statements.

CSA therefore strongly recommends that the disclosure of related-party transactions be included in the 2014 AIS. The benefits far outweigh any compliance burden, as disclosure of such transactions:

- encourages the governing body of the charity to consider the issue of conflicts of interest, which is a core governance issue — in turn this could lead to further education and training for those on the governing body, and the development of a conflicts of interest policy
- enhances the transparency of the management of conflicts of interest, so that funders, donors and the public may retain confidence in the charity
- ensures that any related-party transactions are at arms' length and that related parties are not receiving private benefits.

CSA also supports the ACNC having the capacity to investigate further in relation to related-party transactions by assessing the information provided. The transaction may or may not have been handled appropriately. If it has not been handled appropriately, the ACNC has the power to decide what action it may take.

However, while we appreciate that the question includes a reference to AASB standard 124 to ensure consistency of definition of related party transaction, CSA is of the view that it would be less confusing to charities if this cross-reference is not included in the question.

CSA recommends that the ACNC include a cross-reference to the AASB standard in the guidance note explaining related party transactions, to enhance its explanation.

CSA also recommends that the ACNC further develop its guidance note by not only setting out a definition of related-party transaction, but also including examples to illustrate how such transactions can occur, and that this guidance note be numbered.

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

We note that Questions 7 and 11 on the 2013 AIS (sample) are very clear in delineating the difference between the charitable purpose and the activities of a charity. However, the consultation paper introduces a new term, 'business activity', which is intended to apply in the 2014 AIS. We note that the consultation paper defines 'business activity' as involving 'some form of commercial risk' and that the guidance note on p 20 notes it may be carried out in the 'form of a business; nature of a trade; or form of regular or continuous grant of a lease, licence or interest in property'.

Notwithstanding this explanation, CSA is of the view that the term 'business activity' has the potential to confuse charities. We note that:

- charities will have business activities that are linked to the charitable purpose and other commercial activities that are not linked to the charitable purpose but which provide

funding to foster the charitable purpose, as noted in the consultation paper, and we think it likely that charities will be unclear if the term refers to all activities that the charity undertakes or only some of them

- charities are likely to understand the term 'business activity' to refer to 'carrying on a business with the intention of making a profit', as in the private sector, and they are likely to respond to this question with a belief that they do not run a business, but deliver services — as a result they could ignore this question
- charities can undertake multiple activities and may be unclear if this refers to each activity they undertake (such as major fundraising) or whether it is a more general term covering all of their activities (for example, each sausage sizzle or trivia night), as the term 'activity' is used in Questions 7 and 11 on the 2013 AIS (sample).

CSA recommends that the ACNC refine this question to ask: 'What are your major sources of funding?', as this question will be much clearer to charities and also provide the information that the ACNC seeks. However, we also recommend that a charity may need further guidance as to how to answer the question, for example, a guidance note (numbered) could provide some indicative responses, such as:

- Commonwealth grant: 50%
- state grant: 30%
- donations: 10%
- revenue from operations: 10%
- other (eg, bequest): 0%

3 Consultation question: Reserves (medium and large)

What information, if any, should medium and large charities be required to provide about reserves in the AIS? Why?

CSA notes that, under the Accounting Standards, an entity is entitled to create any number of reserves. CSA agrees with the proposal that only three types of reserves should be disclosed, as this will aid transparency and simplicity. However, CSA is of the view that a fuller explanation is required as to why the ACNC is only seeking disclosure of three types of reserves, particularly in circumstances where those three reserves may not comply with accounting standards.

CSA is also of the view that the consultation paper's reference to reserves suggests a liquidity/solvency perspective (see para 45 on p 11, which states that information about reserves 'will also be used by the ACNC to assess compliance with governance standards, for example in relation to a charity's ability to utilise funds to meet debts').

However, CSA is of the view that reserves are not necessarily a liquidity/solvency indicator. The current wording provides the opportunity for the financial statements of a charity to indicate that the charity is in good financial health when in fact it may be insolvent if, for example, the reserves may not be able to be accessed and are not available for general use.

While we are of the view that the information the ACNC may be seeking relates to asset revaluation reserves, funds subject to restricted uses, and unrestricted funds respectively, CSA believes that these terms will be very confusing for non-accountants. Moreover, asking questions in this way could also then make it necessary for a charity to identify on the asset side of the balance sheet any assets not available for general use. Again, we believe this will be very confusing for the majority of charities, particularly those without accountants on staff.

If the intention is to determine solvency, **CSA recommends** that the question be reframed to ask:

1. What is the level of your total reserves?
2. How much of these reserves is restricted and not available to fund the general business? (That is, what funds are available to meet general creditors or the liabilities of the business?).

4 Consultation question: Financial information collected for small charities

Based on the current proposal in Attachment (iii) is there any additional financial information that you believe should be collected (or not collected) from small charities. Why?

CSA notes that the level of sophistication in relation to financial accounting will be variable in small charities. For example, small charities using a chequebook will keep a ledger on received and paid monies, but are unlikely to have a balance sheet.

However, CSA is of the view that preparing a balance sheet for such charities is a straightforward exercise, if the ACNC is prepared to assist such charities as they engage with this practice.

CSA recommends that small charities should be able to ask the ACNC for assistance on preparing a balance sheet on a no-names basis.

5 Consultation question: Use of optional questions on the AIS (small, medium and large)

Do you have any comments on the proposal to include optional financial questions in the AIS that charities can complete so they can meet any specific requirements of state, territory or Commonwealth agencies that also apply to them?

CSA supports the option for small, medium and large charities to elect to provide financial information on the AIS that discharges their reporting obligations to state, territory and Commonwealth agencies.

CSA is of the view that this would take the reporting obligation to the ACNC one step closer to being a 'one-stop-shop' reporting obligation, and that it would be of benefit to small charities to disclose this information at one time, on one form, to one regulator/agency.

As noted in the consultation paper, charities that decide not to answer the optional questions on the AIS would continue to report the information directly to the state, territory or Commonwealth agencies on separate forms provided by those agencies.

CSA recommends a note on the AIS highlighting the benefit of not having to report elsewhere if charities elect this option.

**6 Consultation question: ACNC assistance with financial reporting
What types of practical assistance (if any) would you like to receive from the ACNC to help your charity meet its financial reporting obligations to us?
When would you like to receive this assistance?**

CSA recommends that charities be able to seek assistance from the ACNC in relation to financial reporting on a no-names basis. This should be an option for a charity.

7 Consultation question: General comments

Are there any other comments you wish to make about the proposed additional questions or financial information in this consultation document? Please be specific.

Penalties for non-compliance

CSA recommends that guidance be provided on the AIS as to the penalties for non-compliance.

Payment of directors

CSA recommends that an additional question be included on whether the directors of the charity are:

- paid
- reimbursed for expenses
- unpaid/ pro bono.

CSA does not recommend disclosure of the quantum paid to directors, if they are paid, but only that disclosure be provided as to arrangements in place concerning payment or otherwise.

Attachment (i): The proposed 2014 AIS additional questions for small charities

CSA is of the view that the proposed financial information for small charities is appropriate and not onerous for the charities to meet their compliance obligations.

Attachment (ii): The proposed 2014 AIS additional questions for medium and large charities

2 Audit/review

CSA is of the view that the use of the term 'modify' may not communicate clearly to the management of some charities, even though this term is used in accounting/auditing standards.

Most people are familiar with the concept of an audit qualification but they may not be able to distinguish this in a review, particularly if the reviewer is outlining the scope of the review. It therefore may be necessary to provide a guidance note specifying what is required in a review and what constitutes a modification. It is likely that the reviewer may have to provide guidance to the charity and hence it is desirable that such a person holds a practising certificate to ensure they have the appropriate knowledge base and are bound by a code of ethics.

CSA recommends that the ACNC provide a numbered guidance note setting out:

- what needs to appear in a review letter
- what would constitute a modification/qualification.

CSA understands that the ACNC does not have the resources to ask each charity to attach a copy of its review/audit statement, and then examine each statement to assess if a modification/qualification has been expressed.

However, CSA is of the view that if a charity answers 'Yes' to Question 2(ii), asking the charity to paraphrase the modification/qualification not only imposes a further compliance burden on the charity but is also likely to lead to statements that could be misleading or confusing or both.

CSA believes that, if a charity answers 'Yes' to having received a modification/qualification, it should attach the review/audit statement. Such documents should not be so numerous that the ACNC cannot examine them to assess if further investigation on its part is required.

CSA recommends that the wording of Question 2(iii) be amended to read:

(iii) If you answered yes to question (ii), attach the audit/review statement.

Attachment (iii): The proposed additional question guidance notes in the 2014 AIS

CSA is of the view that each guidance note should be provided as a separate guidance note (with each appended to the AIS and also with clear links to where they can be found on the ACNC website), and also be numbered.

CSA recommends that all guidance be provided in the form of guidance notes that are numbered for ease of reference.

Attachment (iv): National Standard Chart of Accounts

CSA has been following the development of the National Standard Chart of Accounts with interest for some time.

However, it is unclear from the consultation paper as to how mandatory this will be for charities registered with the ACNC.

CSA recommends the National Standard Chart of Accounts being made available to registered charities as a good guide. **CSA strongly opposes** it being made mandatory. We note that many charities will already have in place comprehensive accounting systems which are in compliance with accounting standards, but may not align with the National Standard Chart of Accounts, and they should be left free to report as they currently do.