

4 October 2016

Tim Liu
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By email: consultations@acnc.gov.au

Dear Mr Liu

2017 Annual Information Statement: Public consultation paper

Governance Institute of Australia (Governance Institute) is the only independent professional association with a sole focus on whole-of-organisation governance. Our education, support and networking opportunities for directors, company secretaries, governance advisers and risk managers are unrivalled.

Our members are all involved in governance, corporate administration and compliance with the Corporations Act 2001. Many of our members serve as officers of charities, or work for, or are involved with charities and are therefore involved in compliance with the requirements of the Australian Charities and Not-for-profits Commission (ACNC).

Governance Institute is itself a charity operating in the legal form of 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. We welcome the opportunity to provide feedback on the 2017 Annual Information Statement (AIS): Public consultation paper and commend the ACNC for its extensive consultation process which ensures that the sector is included in discussions about regulatory decisions that will affect their compliance obligations to the ACNC.

General comments

We support the decision by the ACNC to leave the core components of the 2017 AIS unchanged, and agree that this will provide stability for charities. The access to similar reporting by all charities operating in a similar field, as is currently provided for on the ACNC Register, allows Australians to make decisions easily as to which organisation they wish to connect to and be involved with and donate to. They can assess if the charities are being prudently managed, so that they can retain confidence that their donations and support are fostering and facilitating the 'mission' they wish to support. The ACNC Register thus provides stakeholders with comparability across reporting entities, to assist in the decision making of those who wish to support the activities of the sector.

Moreover, a centrally maintained national register of charities, which is free, online, credible and searchable achieves the objective of public accountability. National collection of data on the charities sector also ensures that its vital contribution to Australia can be recognised and policy decisions made about the sector can be properly informed and considered. Maintaining comparability from year to year is central to understanding the sector.

Notwithstanding the need to leave the core components of the 2017 AIS unchanged, we recognise the need to amend the AIS in response to uncertainty experienced by charities as to the intent of any particular question, which can lead to inaccurate responses, or to assist the ACNC in targeting compliance activities. We therefore support in principle further changes to the AIS 2017 that assist on these fronts.

Our more detailed comments on the proposed changes are set out in the following pages.

Kind regards

A handwritten signature in black ink, appearing to read 'J Fox', with a long horizontal stroke extending to the right.

Judith Fox
National Director, Policy & Advocacy

Detailed comments

1 Should the ACNC collect information on full-time-equivalent (FTE) staff instead of headcount figures?

Governance Institute notes that even large, resourced organisations struggle with the FTE concept, and can find it challenging to calculate FTE staff. We are of the view that the majority of charities will struggle with calculating their FTE staff, even if guidance is provided by the ACNC.

While we accept that the current questions can result in double counting in some instances, and that the ACNC is of the view that this information is required to allow it to conduct targeted compliance activities, we are concerned that FTE is a much harder figure for charities to calculate than headcount. **Governance Institute therefore recommends** that any guidance include:

- advice that charities aim for a reasonable estimate, that is, they will not be penalised for minor errors provided it is an honest estimate
- information on the type of calculation they can use, for example, use the ABS standard of 35 hours per week constitutes FTE
- worked examples, so that charities can assess how best to calculate the figures.

Moreover, we are of the view that this guidance needs to be embedded in the AIS, and not contained in a separate document which may, or may not be accessed by charities. Given that the AIS is an online form, it could contain pop-up boxes providing this guidance, so that charities can access it readily if they require it, but it does not expand the form itself.

We are also concerned that the collection of FTE staff will replace the current information on headcount that the ACNC collects. Governance Institute is of the view that the information on the total number of paid employees who work for a charity, whether they be full-time, part-time or casual, is of significant value. By collecting information on FTE staff alone, and no longer collecting information on part-time and casual employees, Australia loses this valuable information, which assists in highlighting the important work of charities in Australia, and driving better policy and decision-making for the sector. For example, this organisation consistently refers to the fact that the sector employs one million Australians when advocating for a fit-for-purpose regulatory regime for the sector, as it is a figure that we know has political impact.

Governance Institute is keenly aware of the challenges for the ACNC in managing the tension between the first object in its Act to maintain, protect and enhance public trust and confidence in the sector through increased accountability and transparency and the third object, which is to reduce unnecessary regulation for the charity sector. We realise that it would be adding to the regulatory burden to request both FTE staff numbers and headcount. Nonetheless, we are of the view that the importance of headcount is such that collecting this information as well as FTE staff numbers can be justified, should the ACNC decide to proceed with a question on FTE staff. While we are still in the process of fully understanding the sector, we should not lose this data.

Governance Institute recommends that:

- it is preferable to collect data on the number of paid employees, including full-time, part-time and casual employees than the number of FTE staff, but
- both data should be collected if the ACNC remains of the view, following public consultation, that it is important to collect the number of FTE staff in order to understand the number of hours worked by staff and to assist the ACNC to conduct targeted compliance activities.

2 (a) Should the AIS be used to ensure that charities provide up-to-date details for all responsible persons?

(b) If yes, which option do you prefer:

- **updating the details of responsible persons in the AIS**
- **preventing a charity from submitting the AIS unless they confirm that the details of the responsible persons are current and up to date**
- **showing charities a preview of the ACNC Register before submitting the AIS, giving charities the opportunity to amend any details.**

Governance Institute strongly supports the use of the AIS to ensure that charities provide up-to-date details of all responsible persons. We believe that members and stakeholders of all charities should have access to information as to who constitutes the governing body and what processes are in place to ensure the personal interests of directors do not override the interests of the organisation.

We recognise that the optimal outcome is that charities update the details in real time, thus illustrating that they understand their compliance obligations and the manner in which those compliance obligations enhance trust and confidence in the sector. However, we are also aware that a great many charities are under-resourced and largely volunteer-staffed, which can see people of good character involved in charitable work who wish to do the right thing but may need assistance and education to understand their compliance obligations. There can also be a high turnover of people involved in assisting a charity on a voluntary basis, and therefore organisational memory concerning compliance obligations can founder.

The AIS acts as a touchpoint for charities in relation to their compliance obligations. As such, it is an excellent opportunity to educate charities as to the need to ensure that the details of the responsible persons are updated on the ACNC Register. For those charities where there is turnover of volunteers, and knowledge of this compliance obligation may have been lost, it provides the opportunity to learn that the updating of these details is essential.

Governance Institute recommends that showing charities a preview of the ACNC Register before submitting the AIS, which gives charities the opportunity to amend any details, is the preferred option. The preview acts as a trigger to update details. By seeing the ACNC Register, the person completing the AIS sees how important it is to keep the details of the Register updated, as they can see what information about the charity is being shown to those who may wish to donate, or volunteer their time, or to financial institutions to which charities may wish to turn for financial support

Our concerns with the other two options are that:

- if charities update their responsible persons in the AIS, the opportunity for charities to see the ACNC Register and how their charity is presented to the world is lost. In turn, a valuable education opportunity for the charity to understand the importance of updating responsible persons on the ACNC Register as required is lost. While this is a one-stop process, whereas the option we support is a two-step process, we believe that the educational opportunity inherent in the two-step process is likely to bring more value to the sector
- if a charity is prevented from submitting the AIS unless they confirm that their responsible person details are current and up-to-date, while it requires the charity personnel to then update the ACNC Register, it is possible that they may forget to return to submit the AIS, or believe that the fact of updating the Register causes the AIS to be automatically submitted.

We also recommend that the AIS should contain guidance that updating the ACNC Register as a result of a prompt at the time of submitting the AIS will not attract any penalty, even if such updating occurs outside of the timeframe set by legislation. We are of the view that the ACNC has very successfully struck a balance between providing support and guidance and acting decisively where necessary to address non-compliance, and that further guidance and support

as to the value of updating responsible persons is the appropriate approach, rather than any enforcement action for non-compliance at an earlier time.

3 (a) Should the 2017 AIS include a question (or questions) on governance standards or should charities be asked to declare that they are meeting the ACNC governance standards before submitting the AIS?

(b) If you think the ACNC should ask a question (or questions), what/how should we ask?

Governance is the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled in organisations and encompasses the mechanisms by which charities, and those in control, are held to account. Governance Institute has long supported the governance standards which provide core governance principles that apply to all registered entities across the sector, with the charity able to decide how it will comply with them, which can differ according to the size of the entity.

We are concerned that some charities view the governance standards as 'nice to have' rather than 'must have', as this reveals a fundamental misunderstanding of the role of the governance standards. The standards go to issues of accountability, transparency, stewardship and ethical decision-making, which enhance trust and confidence in the sector by providing information to all those who interact with charities.

Governance Institute therefore strongly supports charities being asked questions concerning the governance standards in the 2017 AIS. This provides an opportunity to educate the sector that the governance standards constitute core compliance obligations, and for charities to educate themselves further as to why this is so and why disclosure of governance arrangements is important to stakeholders and central to trust in the sector.

We do not support the AIS asking a general question, as we agree with the analysis provided in the consultation paper that 'if the 2017 AIS asks a general question on governance standards, charities may still state that they have met the governance standards even if they have not.

Governance Institute supports targeted questions, but not in the form of a shopping list of different governance arrangements, such as whether a charity has been accredited with any funding bodies or if it has a policy for handling complaints.

Governance Institute recommends that the AIS ask a charity whether it can *demonstrate* to the ACNC that it:

- is not-for-profit and works towards its charitable purpose
- has taken reasonable steps to be accountable to its members, if it has members, and provide them with adequate opportunity to raise concerns about how the charity is governed
- has internal processes in place to ensure compliance with the law
- has taken reasonable steps to:
 - be satisfied that its responsible persons (such as board or committee members or trustees) are not disqualified from managing a corporation under the Corporations Act 2001 (Cth) or disqualified from being a responsible person of a registered charity by the ACNC Commissioner, and
 - remove any responsible person who does not meet these requirements
- has taken reasonable steps to make sure that responsible persons are subject to, understand and carry out the duties set out in the standard.

The response to each of these questions can be a Yes/No response.

Governance Institute is of the view that these questions provide the opportunity for a charity to reflect on whether it can demonstrate to the regulator that it complies with the governance standards. The questions are not asking the charity whether it meets the standards, but whether

it can *demonstrate* that it does, which demands a deeper reflection on the part of the organisation and its governing body. Governance Institute is of the view that this can only assist the sector in furthering its understanding of the importance of the standards, as the charity must consider whether it could provide evidence to the regulator as to how it meets the governance standards.

We recognise that charities could be fearful of providing a 'no' response. **Governance Institute recommends** that the targeted questions be accompanied by guidance noting that:

- the ACNC will strike a balance between providing support and guidance and acting decisively where necessary to address non-compliance, but will generally take the view in the first instance that further support and guidance could be required if the charity cannot demonstrate that a governance standard has not been met
- links have been provided to educational material and sources to assist the charity to improve its understanding of governance if so required.

Governance Institute also recommends that charities be encouraged to provide a governance statement, which could be included in a drop-down text box on the AIS, demonstrating how they meet the governance standards. The guidance from the ACNC could note that such a governance statement can:

- showcase the charity's good governance to donors, funders, volunteers and other stakeholders, and
- influence funding and donation decisions positively.

The governance statement would not be mandatory.

We recognise that some charities already include a governance statement in their financial report, and these charities should be encouraged to cross-refer to that statement rather than having to repeat it in the AIS. For those charities that have not included a governance statement in their financial report, it is an opportunity to embark on learning about the benefit that disclosing governance practice can bring, and/or the value that embarking on improving governance arrangements can bring.

We believe that until charities disclose their governance practices and frameworks, many are unlikely to consider their governance arrangements, and that the belief in the sector that compliance with the governance standards is a 'nice to have' rather than a 'must have' is evidence of this. The act of disclosure focuses the organisation on governance arrangements. We point to the success of the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* in this regard. The Principles and Recommendations have played a vital role in improving corporate governance in Australian listed companies since the release of the first edition in 2003. Their history is one of practical statements on governance which have brought meaningful change to governance practice and behaviour. The disclosures have also been insightful in ascertaining how seriously the governing body views governance matters.

We also recommend that guidance on a governance statement issued by the ACNC would clarify that the governance statement would be tailored as appropriate to the size and resources of the organisation. That is, any governance statement needs to be able to be completed by mums and dads sitting around the kitchen table, with a limited knowledge of accounting and legal principles, but who take responsibility for the charity. These matters are as relevant to a small single-purpose charity as they are to a large charity such as the Red Cross.

The guidance could note that it means identifying information that demonstrates how the charity meets the governance standards and provide some examples. Such a governance statement might constitute only one page for a small charity, while a larger charity might cross-refer to the annual report or provide a more detailed governance statement if the annual report does not include one.

4 Should charities have the option to upload their Annual Reports in the AIS?

Governance Institute strongly recommends that charities have the option to upload their annual report in the AIS, and commends the ACNC for suggesting this. We also support the proposal that uploading the annual report be optional rather than mandatory.

Allowing stakeholders to access the annual report on the ACNC Register makes it easier for stakeholders to be informed about the charities with which they interact, as the Register becomes a 'one-stop shop'. It also provides for ease of access to the governance statement in the annual report (should one exist) as recommended above. Providing stakeholders with easy access to information on a charity's activities and achievements for the year assists stakeholder interaction with the charity and increases trust and confidence in the sector.

5 Should the ACNC seek a further breakdown of the areas in which charities operate?

Governance Institute does not support the ACNC collecting a further breakdown of the areas in which charities operate by suburb or postcode.

We are of the view that charities would struggle to respond to this question. The first challenge would be identifying what is meant by 'operate'. Does this mean head office? Or all activities conducted by the charity? Or where funds are raised? Or where funds are applied?

The time that it would take for many charities to search for the postcodes of all areas where they conduct activities would be more than is currently required for completing the AIS. We believe this question would significantly add to the compliance burden of charities.

Charities could be encouraged to provide indicative information about the spread of location of their activities in their annual report.

Governance Institute recommends that the question on operating location remain the same as in the 2016 AIS.

6 Should the ACNC amend the question on beneficiaries so that its format is the same as the question on activities?

Governance Institute supports aligning the question on beneficiaries with the question on activities. We recognise that the ACNC has found that analysis of 2014 AIS data from responses to this question has been found to be of limited value and that the ACNC is seeking to collect more accurate data.

While we also recognise that alignment of the questions on activities and beneficiaries is likely to make it easier for charities to provide accurate data, we are of the view that without further guidance, the change may not achieve the outcome intended.

Governance Institute recommends that the ACNC provide guidance on what is being sought, with some examples to assist charities to complete their responses accurately. For example, the ACNC could note that some of this information is likely to be inherent in the constitution of the charity, as it will be linked to their purpose. The ACNC could also provide advice that it assists the ACNC to understand if the charity is fulfilling its purpose. This could in turn provide an opportunity for charities to assess whether there has been any 'mission drift'.

7 (a) Do you support the inclusion of sales and investment income in the income statement?

(b) Should sales and investment income be compulsory for all charities regardless of size?

Governance Institute supports asking charities to include sales and investment income in their income statement. We agree that this will allow charities to better classify what is included in 'all other revenue' and in turn provide more information about the elements that make up a charity's income and increase transparency in the sector.

While we recognise that the addition of these financial elements will add to the total number of questions in the AIS, we are of the view that the questions are not onerous or difficult to answer (provided guidance is issued) and that the provision of this information fills the gap in transparency that has been identified.

We note that, while the ACNC does not have the ability to transfer the information from financial reports into the AIS, medium and large charities that apply the accounting standards can use the data already collected to respond to these questions, including that utilising the National Standard Chart of Accounts.

We also are of the view that it should be optional for small charities to provide this information. While our preference is for even small charities to eventually have to provide basic financial information, as this enhances trust in the sector and also lifts capacity and standards in the sector to its overall benefit, we are of the view that for now it is best if this information is not mandatory for small charities.

Governance Institute recommends that:

- questions on sales and investment income be included in the income statement, and
- sales and investment income be compulsory for medium and large charities but optional for small charities.

We also recommend that the guidance on sales and investment income as set out in the consultation paper be included in the 2017 AIS to assist charities. We recognise that the ACNC may have to provide additional education and guidance to assist charities.

8 Do you support the removal of the question asking charities if they are up to date with their subtype(s), governing documents and responsible persons?

Governance Institute supports the removal of this question, given that the ACNC is proposing to use the AIS to ask charities to update their responsible persons.

9 Do you have any suggestions to improve the functionality of the AIS?

Governance Institute recommends that guidance on questions be embedded in the online AIS form, but that it be included as pop-up boxes or equivalent rather than additional text in the form itself. That is, charities would have the option to open up additional guidance as required.