

26 April 2013

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

By email: consultations@acnc.gov.au

Dear Australian Charities and Not-for-profits Commission

Thank you for the opportunity to provide comments on the draft 2014 Annual Information Statement for registered charities (**draft AIS**). PilchConnect welcomes the opportunity to submit our views. We have been a strong supporter of the establishment of the Australian Charities and Not-for-Profits Commission (**ACNC**) and are pleased to continue a dialogue as the ACNC develops its regulatory approach.

PilchConnect is an independent not-for-profit (**NFP**) legal service for community organisations - a service of the Public Interest Law Clearing House (Vic) Inc. We provide free and low cost legal assistance to NFPs in Victoria, and draw on empirical evidence and practical examples from our work with small 'public interest' groups in our law reform submissions. The reduction of red tape and smarter regulation of the NFP sector are key priorities for our advocacy work.

We have provided brief responses to each of the the Consultation Paper's questions below.

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?

We generally agree that charities should separately disclose transactions where a private benefit is obtained by individual members. However, we submit that the draft AIS question in its current form is unlikely to achieve this purpose.

We anticipate that many charities will consider that they have engaged in what may broadly be considered a related party transaction under the guidelines provided by the ACNC, albeit the types of transactions the ACNC is not seeking to capture (such as donations from one charity to another, legitimate arms length purchases and sales of goods to other charities or individual members). It is likely, then, that many charities will answer 'yes' to the question posed. The AIS does not require this response to be qualified or further articulated. In our view, this will render the AIS an ineffective filtering tool for the ACNC to identify those charities actually providing private benefit to individual members.

Furthermore, the terminology used is likely to be confusing, particularly for charities unfamiliar with the relevant Accounting Standard. Without clarification or (at the very least) clear guidelines, charities are likely to err on the side of caution and state that they have engaged in a related party transaction - if for no other reason than a misunderstanding of the question, and a fear of falling foul of the ACNC.

We would strongly encourage the ACNC to clarify precisely the type of information it is seeking to collect from charities, and revise the question accordingly. As it stands, it is unlikely to be an effective filter or useful tool in identifying those charities using the activities of the organisation to provide private benefit to the individual members.

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 have some concerns about the need for (and potential difficulties with) asking about a charity's business activity.

In our view, the Consultation Paper does not adequately explain the need for charities to separately disclose information specific to their business activities in the draft AIS. The apparent purpose, as outlined in the supporting material, is to help the public understand the nature of the activities conducted by a charity. However, we note that the 2013 AIS already requests that charities provide information relevant to their 'activities' more generally. In light of this potential for duplication, if the ACNC requires that business activities be addressed separately, a clear policy rationale should be provided.

We understand that the collection of information relevant to the business activity of a charity is unrelated to the Treasury's earlier proposal for 'better targeting of not-for-profit tax concessions' and, in particular, the scoping of an unrelated business income tax (UBIT). In our role working with charitable organisations, we can confirm the sector's ongoing anxiety around the introduction of a UBIT. We would encourage the ACNC to appreciate that charities may be sceptical about the need for and use of this information.

In the event that the ACNC considers it necessary to obtain specific information relevant to the business activities of a charity, we anticipate there will be an increase in charities seeking clarification around what activities are reportable for the purposes of the AIS. While we appreciate the draft Guidance Note which attempts to clarify 'business activity', our experience with small charitable organisations is that this is an area of significant confusion. This is evidenced by the large number of inquiries PilchConnect receives from Victorian incorporated associations seeking assistance with determining whether certain activities are considered to be 'carrying on business' as described in Part 5B.2 of the *Corporations Act 2001* (Cth).

In the event the ACNC considers it necessary to collect information relevant to the specific business activities of an organisation, we encourage the ACNC to:

- clearly outline why the information is being collected (noting the sector's anxiety about the potential UBIT); and
- produce clear guidelines for charities around the definition of 'business activity', including examples that are explicitly relevant to the charitable sector (for example, hosting fundraising events, or delivering incidental fee-for-service activities).

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?

Currently, the reporting of accumulated funds occurs amongst many medium and large welfare-based charities through the publication of annual financial statements. While we have no issue with this practice being formalised through the AIS and disclosed via the ACNC register, it is critical that charities are afforded the opportunity to provide narrative to accompany the figures.

While the form of the ACNC register is not yet known, the anticipated ability for the general public to directly compare and scrutinise accumulated funds across analogous charities creates both opportunities and challenges. Without an appropriate outlet for charities to provide narrative to their reserve levels, we are concerned that reported figures may be misused or distorted, to the detriment of the sector more broadly. Some charities may have no need for

reserves, while others may have excess reserves. The potential for negative perceptions arising from each of these circumstances has previously been highlighted by the Charity Commission for England and Wales:

The issue of holding, managing and explaining reserves has long been a target for media criticism. The charity that appears to be hoarding large sums of money which could be spent on its current beneficiaries, and the charity brought to the brink of collapse by failing to plan and set aside money for the unexpected, are equally likely to be portrayed in a negative light.¹

Of course, the ability to narrate or justify reported reserve amounts is no guarantee that figures will not be taken out of context, however it provides at least some outlet for charities to bring transparency to their reserves policy. This transparency is critical to preserving public trust and confidence in the sector, and we urge to ACNC to consider this approach if it has not already done so.

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?

We support the approach of requiring all registered charities to have some level of reporting, and acknowledge that while many small charities have not had reporting obligations before, the AIS in its current form is not overly onerous, provided comments made in this submission have been picked up by the ACNC. In our view, the critical aspect of a draft AIS for small charities is to ensure that reportable financial information is aligned with other financial reporting obligations these organisations are likely to have, at least in the short term. Anything less is likely to raise questions about the ACNC's goal of reducing red tape, and the policy reasons for additional obligations must be clearly justified.

For example, when compared with the current reporting obligations for small charitable Victorian incorporated associations, the draft AIS is likely to require charities to provide data that is not currently reportable, such as a breakdown of donations made within/outside Australia. These additional reporting areas can be significant for small, resource-poor charitable organisations, and while the Consultation Paper indicates that these proposals are required for the success of the charity passport initiative, we feel that further detail of this justification is required before we can confidently endorse this approach.

We also refer back to our above response to Consultation Question 2, where we query the policy rationale for seeking information about a charity's 'business activity' and note that this is likely to raise a number of additional questions, particularly for small charities. We do not support the inclusion of this question in the draft AIS without further justification (especially for small charities). However, if it is to remain, we again stress the importance of the ACNC providing practical guidance and support for organisations.

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?

PilchConnect is in favour of the proposal to introduce 'optional questions' for state-registered entities, at least until there is agreement amongst the states and territories on a single, transferable set of reporting requirements.

¹ See RS13 - *Tell It Like It Is: The extent of charity reserves and reserves policies*, available at <http://www.charitycommission.gov.uk/Publications/rs13.aspx#4.1>

In our experience working with small to medium charities in Victoria, there is significant frustration at the possibility of having to report similar information to two separate regulators. We appreciate the ACNC is working to create a 'report once, use often' approach and are encouraged by policy decisions of both South Australia and the ACT to work towards this outcome. We urge the ACNC to continue working towards this outcome for other jurisdictions.

While a single reporting regime is ideal across all charities of comparable size regardless of legal structure, we endorse an interim approach of optional questions that will remove the need for charities to report to multiple regulators. Such an approach is consistent with the ACNC's aim of reducing red tape and we support initiatives designed to achieve this end goal.

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?

We commend the ACNC for its information and support services to date, and support the extension of its current approach to sector-wide assistance in supporting charities throughout the AIS process.

Ongoing support for the sector, by way of accompanying explanatory material, plain language information and guidance publications, and the continuance of the existing ACNC advice and email service line will all be critical forms of assistance as charities come to terms with the new reporting framework.

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.

PilchConnect is supportive of the approach that requires all registered charities to provide some form of annual statement to the ACNC, and that appropriate levels of information on registered charities are made publically available.

While there is likely to be some disagreement on the type and volume of data requested by the ACNC, we hold the strong view that where requests exceed existing reporting requirements, the onus will be on the ACNC to provide charities with justification for those requests. We feel that the Consultation Paper is at times lacking in this justification, and recommend that where additional reporting obligations are retained, the sector is provided with clear guidance as to why this has been requested.

Thank you for the opportunity to contribute to this consultation. We would be happy to elaborate on any of the issues raised in this submission on request.

Yours sincerely



Nathan MacDonald

Acting Director

Phone: (03) 8636 4423

nathan.macdonald@pilch.org.au



Phoebe Duggan

Lawyer

Phone: (03) 8636 4429

phoebe.duggan@pilch.org.au