

30 September 2016

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

via email: consultations@acnc.gov.au

Dear Mr Liu

2017 Annual Information Statement – Public consultation paper

The Australian Institute of Company Directors (AICD) welcomes the opportunity to provide comment on the *2017 Annual Information Statement – Public consultation paper* (Consultation Paper).

The AICD is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. Our membership of more than 38,500 includes directors and senior leaders from business, government and the not-for-profit sectors.

Further changes to the Annual Information Statement

The ACNC has explained that the intention behind the proposed changes to the Annual Information Statement (AIS) is to simplify and clarify the questions asked, and improve the collection process for charities. In principle, the AICD supports this intent.

Much of the rationale for change provided in the Consultation Paper relates to data collected for the 2014 reporting period. However, significant changes were made in the 2016 AIS (to both the questions and functionality) and the benefit of these changes have not yet had time to be fully realised by preparers of the AIS, the ACNC, researchers and the broader public.

The AICD considers that the sector need a period of stability to understand the impact of the changes made in the 2016 AIS, before meaningful consultation can be undertaken on further amendments. We also note that making frequent changes to the AIS is a source of regulatory burden for the sector as charities are required to change their procedures for reporting as the result of these changes.

Application of ‘recognised assessment activity’

In accordance with Section 60-5(3) of the *Australian Charities and Not-for-profits Commission Act 2012* (the Act), registered charities must provide information in the AIS when that ‘information relates to, or has the purpose of, enabling recognised assessment activities to be carried out in relation to registered entities’.

Recognised assessment activities’ are defined in the Act in Section 55-10 as:

- (a) an activity carried out by the Commissioner involving assessment of the entity’s entitlement to registration as a type of subtype of entity; or
- (b) an activity carried out by the Commissioner involving assessment of the entity’s compliance with this Act and the regulations; or
- (c) an activity carried out by the Commissioner of Taxation involving assessment of the entity’s compliance with any taxation law.

The AICD is concerned that not all the amendments proposed in the Consultation Paper relate to ‘recognised assessment activities’. We have identified these areas, where relevant, in each question below. The AICD does not consider that the ACNC has the power to require information from registered charities in the form currently proposed where it does not directly relate to recognised assessment activities.

Our further comments on specific questions in the Consultation Paper are included below.

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

The AICD does not support this proposal.

We acknowledge that collecting FTE data would be useful in order to undertake targeted compliance activities. Further, this data would provide a more fulsome indication of the sector’s labour capacity. However, asking for this information could be challenging from a data collection perspective for some NFPs, and may be the source of additional regulatory burden.

The current collection of headcount data is useful to illustrate the different working arrangements that exist within the sector (i.e. full time, part-time and casual), and the total number of people employed in the sector.

Instead of the proposal in the Consultation Paper, we suggest that FTE data could be asked in addition to the headcount numbers, but only on an optional basis. The AICD considers that, recognising the difficulty in calculating an exact FTE number for some charities, a clear indication should be given that a ‘best estimate’ will be acceptable for the purposes of this question.

We note that this question has only recently been changed in the 2016 AIS to ensure there is a clear distinction for casual employees with no duplication in categories.

2. Should the AIS be used to ensure that charities provide up-to-date details for all responsible persons? If yes, which options as outlined in the paper are preferred?

The AICD supports this proposal.

This will provide convenience for charities, assist them to be more compliant and also promote a greater awareness of a charity's representation on the ACNC Register.

Of the options outlined in the Consultation Paper, Option 1 'updating the details of responsible persons in the AIS' is the most desirable, because it is specific to responsible entities, therefore keeping the updating process simple and targeted.

Option 3 shows further detail from the ACNC Register (such as charity subtype and governing documents) which may dilute the impact of the initiative by placing responsible entities (which would in most cases need to be updated at least annually) alongside governing documents and charity subtype (which would need to be updated very infrequently).

The AICD does not support Option 2, as this could hold up completion of the AIS, if information (such as the date of birth of the responsible person) was not on hand at the time. Further, although it is an ongoing obligation for charities to keep the details of their responsible entities up-to-date, it may be the case that the AIS is submitted during the window between the change occurring and the obligation arising, creating an artificial earlier deadline for charities which is not within the intent of the Act.

Aside from the above comments, we consider that the collection of details about registered charities responsible entities does not constitute 'recognised assessment activities' and is therefore unacceptable as a mandatory question in the AIS.

3. 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?

The AICD strongly opposes this proposal for the following reasons:

- a) It is not realistic to expect charities to disclose non-compliance;
- b) Given that disclosures of non-compliance are unlikely, it would be difficult to make a sufficient case for such a question to be considered 'recognised assessment activities' and therefore may be outside the powers of the Act to include with the AIS;
- c) There are a wide variety of roles and authorities of people that sign off on the AIS, many of whom would not be in a position to make such a compliance declaration;
- d) The proposal imposes a significant burden through, in effect, requiring charities to undertake an internal audit to determine compliance with the governance standards at a point of time;
- e) The ACNC has not sufficiently demonstrated what the benefit of a significant new obligation would be to charities and to the Australian community; and
- f) AIS preparers are unlikely to have access to the information they need to make a declaration such as this which may interrupt the submission process, giving rise to errors and negatively influencing compliance.

Further, the ACNC has said publicly that it does not require charities to "submit anything to show that they meet the [governance] standards",¹ and this has been an important part of its regulatory approach in this regard. The AICD is concerned about the message that

¹ Australian Charities and Not-for-profits Commission, 'Meet governance standards', <http://www.acnc.gov.au/ACNC/Manage/Governance/ACNC/Edu/GovStds_overview.aspx>, accessed 29 September 2016

the ACNC would send to the charity sector if, shortly after a determination about its future has been made by the Australian Government, it made such a significant departure from its established regulatory approach. The AICD also notes that the existing approach has been the subject of extensive consultation and has the broad support of the sector.

The educational impact of a governance standards question

The AICD welcomes the ACNC's initiative in promoting a greater awareness of governance and its associated compliance obligations among charities. The AICD acknowledges that the AIS is a useful mechanism through which to raise the profile of the governance standards as mandatory obligations for all charities (except basic religious charities).

The AICD considers that there is scope to include a question on the governance standards which is educational in purpose and in nature. This question should be voluntary, visually distinct as an 'educational question' in terms of design, and supported by guidance explaining that the indication given in the question cannot be used against the charity in a compliance context.

The purpose of this question should be to identify charities as potential subjects for more detailed education on the governance standards. For example, if a charity answered no to a question such as 'are you aware of the need for your charity to comply with the ACNC governance standards?' an email could be automatically sent containing a detailed guidance note, or a call from an Advice Services staff member scheduled.

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

The AICD supports this proposal.

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

The AICD does not support this proposal.

The addition of this question would generate administrative burden for all charities through requiring them to identify and report on all of the locations in which they operate. This would particularly affect larger charities that may operate in many thousands of locations across Australia, or those charities whose areas of operation may change from year to year.

For charities that operate websites providing online resources or services that can be accessed globally, this question would be complex to provide a complete answer for and, as technology advances and becomes from commonplace, it will become a question with decreasing relevance.

Aside from the above comments, we consider that the collection of further detail on a charity's operating locations does not constitute 'recognised assessment activities' and is therefore unacceptable as a mandatory question in the AIS.

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

The AICD does not support this proposal for the following reasons:

- a) The rationale for changing this question is based on 2014 AIS data. However, this question has only recently been changed for the 2016 AIS reporting period and these changes have not yet had time to flow through to preparers of the AIS, the ACNC, researchers and the broader public. We consider the sector needs a period

of stability to understand such changes before further significant changes are introduced; and

- b) The 2016 AIS proposal was to provide a main beneficiary and to limit the selection of other to four only – these proposals were not supported broadly in the consultation process that was undertaken by the ACNC. It was determined to be too difficult to select a main beneficiary given that the categories listed in the AIS are not ‘mutually exclusive’.

Further, we consider the activity and the beneficiary information to be distinctly different, such that there is no need to have a similar format for these questions as recommended in the Consultation Paper.

7. Do you support the inclusion of sales and investment income in the income statement? If so, should this be compulsory for all charities regardless of size?

The AICD does not support this proposal for the following reasons:

- a) The rationale for changing this question is based on 2014 AIS data. However, this question has only recently been changed for the 2016 AIS reporting period and these changes have not yet had time to flow through to preparers of the AIS, the ACNC, researchers and the broader public. These changes related to adding more line items for small charities to distinguish between other revenue and other income, and adding more line items for medium and large charities to identify comprehensive income items. We consider the sector need a period of stability to understand such changes before further significant changes are introduced;
- b) Additional line items create burden for preparers of the AIS, as this involves re-keying of information already in the annual financial report (or for small charities, in their general ledger); and
- c) Naming the items as described as ‘sales’ will lead to more confusion as these items are not commonly understood as ‘sales’ by the sector and users of financial reports.

The Consultation Paper indicates that confusion exists between ‘other revenue’ and ‘other income’, with this identified as a rationale for change. This was noted as an issue in the 2016 AIS Consultation Paper and some amendments were made to the 2016 AIS to address this issue. If this remains an issue, the AICD considers that more education is required to categorise these appropriately.

Further, we recommend a minor adjustment to the current AIS to further address this confusion, in a manner consistent with that done for the ‘Other income’ line item in the 2016 AIS. We recommend that next to the ‘Other revenue’ line item in the financial area of the AIS, the following be inserted: ‘(for example, interest, dividends, sales, service and fundraising)’.

Aside from the above comments, we consider the collection of sales and investment income as part of the income statement does not constitute ‘recognised assessment activities’ and is therefore unacceptable as a mandatory question in the AIS.

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?

The AICD supports this proposal.

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

The AICD commends the ACNC for improving the functionality for the 2016 AIS.

We understand there are issues concerning the transparency of the financial information provided by the sector through the publicly-accessible online AIS data produced for research purposes. Further detailed information beyond the current AIS will unlikely be supported because of the need for the AIS to only collect data for 'recognised assessment activities'. Therefore, we strongly encourage the ACNC to move to a digital financial reporting platform, such as Standard Business Reporting, that will allow the ACNC extract digitally the financial information from the financial report without the charity or the ACNC re-keying the data.

If you would like to discuss any aspect of our views please contact Kerry Hicks, Senior Policy Adviser, on khicks@aicd.com.au or 02 8248 6635.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Louise', with a long horizontal flourish extending to the right.

LOUISE PETSCHLER
General Manager - Advocacy