



Catholic Social Services
Australia

Catholic Social Services Australia

Response to the ACNC's 2014 Annual Information Statement: Consultation Paper

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Overview

Catholic Social Services Australia (CSSA) appreciates the opportunity to comment on the 2014 Annual Information Statement (AIS) released by the Australian Charities and Not-for-Profits Commission (ACNC) for consultation.

CSSA is a supporter of NFP Reform with a particular focus on ensuring that objectives relating to red-tape and compliance reduction are achieved and independence of the sector is respected and maintained.

The draft 2014 AIS aims to collect information which CSSA believes goes beyond the base level required by the ACNC to ensure that it is appropriately balancing all objects of the ACNC Act including ensuring the independence of the NFP sector, trust and confidence in the NFP sector and reduction of red-tape compliance burdens on the sector.

CSSA believes that the combination of information that will be provided to the AIS through the 2013 AIS Statement and the financial statements (either audited or reviewed) will adequately support the ACNC's functions it seeks to achieve by using the AIS as its key tool to "enable recognised assessment activities, promote public trust and confidence and reduce unnecessary obligations".

Should questions arise bringing into doubt whether or not a NFP is eligible to be registered with the ACNC or not, the Commissioner has broad powers of review and inquiry available within her/his scope to make further requests for information should such review be deemed necessary.

Catholic Social Services Australia

CSSA is the national peak organisation representing 64 Catholic social service organisations. These agencies provide around \$700 million each year in quantifiable social services to the Australian community. The unquantifiable value of these services, taking into account the 'value add' nature of social services delivered by not-for-profit providers, would certainly be higher.

The majority of CSSA members are medium to large organisations.

In order to comply with various reporting and disclosure regimes, Catholic agencies report on their use of government and public funds to a selection of the following;

- Commonwealth government (including under corporations law), state governments and local government funders via a range of reporting requirements (even the same Departments sometimes require different reporting for different activities);
- Commonwealth, state and local government authorities in order to comply with various regulations and guidelines
- The various state and territory legislative requirements relating to fundraising
- A diverse range of funding bodies, philanthropic institutions and corporate sponsors according to the particular requirements of each
- Various Church governance bodies, trustees and owners, in relation to both compliance with civil law and conformity to Church law and ethos.

Members of CSSA employ 12,000 staff and are assisted in their work by around 4,000 volunteers. The CSSA members provide a comprehensive range of social services for the Australian Community.

The AIS

The AIS has been presented as the key tool to “enable recognised assessment activities, promote public trust and confidence and reduce unnecessary obligations”. CSSA supports use of a tool which collects such information as essential to verify compliance with the ACNC Act on the condition that its design and the processes linked to it demonstrate that reduced red tape will be achieved.

CSSA believes that the development of the AIS process has been accompanied by over-reach by the ACNC into the framework of decision-making processes by registered entities. Excluding cases where complaint processes may be activated or where a breach of the ACNC Act is identified, over-reach occurs where information is sought from registered entities about a range of management functions which are not essential to the compliance verification of an entity. The strict legal duties of Boards and managers to comply with other relevant legislation, including in relation to private benefit, does not appear to have been considered. Nor does the respect for the entity independence required in one of the three Objects of the Act appear to be reflected in the additional information sought in the 2014 AIS.

The 2014 AIS is the demonstration case for future administrative engagement with charities. Bearing in mind the points made above, the AIS needs to manifestly show that it reflects the Objects of independence and red tape reduction, as well as the Object related to public trust and confidence.

Pending progress in relation to the ACNC’s negotiations with all State and Territory jurisdictions, it is hard to see a convincing case for the assertion made in the ACNC’s AIS Consultation Paper where it is stated, “Asking charities to record this financial information in our AIS is the only way the ACNC will be able to deliver on the Charity Passport initiative.....”¹ CSSA’s view on this matter in no way affects our support for the Charity Passport which aims to achieve red tape reduction by minimising repetition and duplication of compliance/reporting regimes across Federal, State and Territory jurisdictions.

At this point in time, CSSA believes that a combination of audited or reviewed financial statements and the 2013 AIS responses should enable the ACNC to determine whether entities are compliant with the ACNC Act.

The Weighting of ACNC Objects

CSSA is concerned that the AIS reflects a re-interpretation of the balanced weighting among the three Objects of the ACNC. Both the AIS and consultative meetings with the ACNC point to a management shift to a dominant role for the ACNC’s interpretation of the community’s needs of public trust and confidence. Yet, there has been no sign of a decline in public confidence in the charitable sector since the 2010 Productivity Commission’s survey finding in its 2010 report. A combination of ongoing volunteering numbers, donations and the small number of public complaints received by the ACNC since its creation support this.

CSSA also notes that the ACNC may have under-estimated the extent to which the creation and early functioning of the ACNC itself has been a further positive factor in

¹ The Australian Charities and Not-for-profits Commission, “2014 Annual Information Statement: Public Consultation Paper”, 13 March 2013, page 5

public trust and confidence, not least through the ease with which citizens can verify the bona fides of registered entities and through its complaints mechanism.

The AIS in the Federal/State Context

The draft 2014 AIS is being finalised prior to agreement being reached with all jurisdictions about reporting requirements for registered entities. If such an agreement were in place, CSSA could support the collection of certain information beyond that which is necessary to verify entity compliance with the ACNC Act but the reasons for doing so would need to be clear and transparent.

Without such an agreement and having regard to the specific rationale provided in the Consultation Paper for seeking additional information, there are no grounds for the ACNC to now pursue such an ambitious regulatory agenda at this time. Moreover, given the COAG RIA finding that additional administrative costs will be incurred by entities simply to become registered with the ACNC, the ACNC needs to demonstrate through this AIS and other administrative processes that it is actually implementing the red tape reduction Object in the ACNC Act.

As stated above, CSSA certainly supports the development of a Charity Passport if this is the best mechanism by which to achieve streamlined reporting requirements across Federal, State and Territory jurisdictions. However, we do not support the assertion that collection of information being sought out in the draft 2014 AIS is 'the only way' for the ACNC to deliver on a Charity Passport.

Publication of Registered Entity Information

CSSA recognises the value of publishing most information provided by registered entities to the ACNC through its web portal and accepts the intent of the ACNC Act provisions related to this. CSSA endorses the public trust and confidence Object of the Act. We also note that the ACNC is working on the basis of a high level of public trust and confidence in charities. Rather than viewing the sector as being in a "trust deficit" with the Australian community, it will be important for the ACNC's publication strategy to be based on this starting point.

Given the extensive powers delegated to the Commissioner, CSSA believes that an explicit prudential principle is needed to assist the way in which ACNC implemented this Act. We recognise that the way in which such a prudential principle is applied would need to evolve during the ACNC's first year or two of operation and that it would be prudent for the Commissioner to seek input from the sector specifically on this matter.

Regrettably, ACNC responses on this question at several consultations over the last year point to a serious underestimation of the risks associated with publication of some information, especially where this information could inadvertently damage the interests of a registered entity. An example would be publishing information which could be expected to lead to the creation of misleading 'league tables' by media outlets. While ACNC managers have advised that they would always provide suitable caveats before releasing such information, it is unlikely that sufficient nuanced context would be provided in some, or many, cases to avoid damage to those entities involved.

An example of the media's appetite for such stories was an article published in The Australian on 21 March 2013. With the headline, "Some churches 'run more like

cults'², the article stated that the ACNC had received '62 referrals from the public and other regulatory bodies and 25 investigations were still open'. Whilst not dismissing or discounting the importance of the ACNC's role for ensuring compliance, even where there was only a need for investigation of several of those cases, the article certainly points to the media's capacity to highlight the more colourful aspects relating to charities and alleged fraud and misleading behaviour which provides an unfavourable skew on the substance of the article itself.

Specific Consultation Questions

Related Party Transactions (Medium and Large)

Q: 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?

A: For the reasons mentioned above, CSSA believes that questions about related party transactions should not be included in the AIS. The ACNC already has access to the type of information being sought via a combination of the audited or reviewed financial statements provided by entities and the information submitted by them in the 2013 AIS.

CSSA recommends that the ACNC take its time on this matter and consider various practical manifestations of such a reporting obligation in relation to third parties. After careful analysis and evaluation of the suitability of AASB 124, the ACNC could undertake the necessary consultation during 2014 or 2015.

CSSA also recommends the definition of related party for the purposes of this question should exclude charities that are related to each other.

Business Activity (Small, Medium and Large)

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

A: The Consultation Paper does not provide an adequate rationale for the ACNC to seek this information. CSSA understands that this question resulted from a request by the Australian Taxation Office. Whether or not this is the case, a cogent rationale is needed for seeking this type of information. The ACNC also has an imperative from one of the Objects of the ACNC Act to demonstrate that it is not moving beyond a requirement for essential AIS information.

Given the ACNC's concern to ensure that no private benefit should be gained by Board Directors or staff of entities, the strict obligation on Board Directors of incorporated associations not to allow private benefit to occur should be taken into account. Significant penalties can be applied to Board Directors and managers where this obligation is breached.

CSSA would support the ACNC pursuing questions of business activities in the event of matters arising from its complaints and investigations processes.

² Shand, Adam, The Australian, 21 March 2013, <http://www.theaustralian.com.au/national-affairs/treasury/some-churches-run-more-like-cults/story-fn59nsif-1226601968570>

Reserves (Medium and Large)

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

A: Information on entity reserves and their purpose is already available to the ACNC from the audited/reviewed financial statements of medium and large entities. There is no clear reason for additional information to be provided in the AIS format. The presentation by the ACNC of information about entity reserves requires very careful handling given the potential for such information to be easily misconstrued

Use of Optional Questions on the AIS (Small, Medium and Large)

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

A: Once all jurisdictions have become formally committed to shared reporting arrangements for registered charities, there may be a case for the inclusion for additional optional questions.

Conclusion

The ACNC Act and its Explanatory Memorandum make clear that the three Objects of that Act need to be pursued in a balanced way by the ACNC. The proposed 2014 AIS does not appropriately reflect that balance. Therefore, it is recommended that the AIS seek only essential information for assessment of entities in relation to the ACNC Act. That information should be available from audited or reviewed financial statements for medium and large size entities together with their annual reports and the information submitted in their 2013 AIS.

By adopting this approach, the ACNC would also demonstrate that, in this demonstration case, it is committed to minimising the compliance burden on entities.