



**2014 Annual Information Statement Public Consultation
Australian Charities and Not-for profits Commission**

**Submission by UnitingCare Australia
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1. Executive summary

UnitingCare Australia is the Uniting Church's national body supporting community services and advocacy for children, young people, families, people with disabilities and older people. The Uniting Church's commitment to community services is an expression of the Christian vision of inclusion and equality of opportunity for all people and communities regardless of age, gender, sexuality, ability, class, colour, creed or cultural origin.

We have been an active participant in the consultation processes to establish the Australian Charities and Not-for-profits Commission (ACNC) and the Commonwealth Government's wider not-for-profit (NFP) reform agenda.

This submission provides our assessment of the proposed 2014 Annual Information Statement (AIS) for entities registered with the ACNC^[1]. Our assessment has been made in consultation with the UnitingCare network and with regard to the Commonwealth Government's wider NFP reform agenda.

We believe that the AIS, particularly for medium and large charities, should be reworked to ensure that it better balances the competing needs and priorities of the sector, the regulator and the general public. Throughout the development of the *ACNC Act* we continuously raised the need to recognise that public trust and confidence in the sector was already strong and therefore the requirement was for a light-touch regulator to further enhance that standing. For UnitingCare Australia this means having a regulator that collects only information that is necessary to confirm that registered entities are meeting their compliance obligations under the *ACNC Act* and ensuring that the administrative impact of this process is minimal. The current AIS requirements do not achieve this.

Accordingly this submission makes a number of recommendations that we believe can help to better balance the needs and priorities of the sector, the regulator and the general public. Our key recommendations are:

- Re-working of the AIS to ensure it is fit for purpose and delivers against all three *Objects of the ACNC Act*; and
- All reporting entities complete the AIS for small entities, with medium and large entities providing their audited/reviewed end of year financial statement in addition to the AIS.

^[1] http://www.acnc.gov.au/ACNC/Contact_us/Pub_consult_comment/2014AIS/ACNC/Report/2014AISconsult.aspx accessed 11 April 2013

2. Introduction

UnitingCare Australia represents the network of UnitingCare community services operating nationally across more than 1300 sites in metropolitan, rural and remote Australia. Our network is one of the largest providers of community services in Australia and we make a strong contribution to the Australian economy by providing services to over 2 million people each year, with an annual turnover in excess of \$2 billion, employing 35,000 staff and 24,000 volunteers nationally. We employ a holistic approach to supporting individuals and communities to access the resources and opportunities needed to live a decent life. We partner with governments, other organisations, communities and people of goodwill.

UnitingCare Australia has been an active participant in the consultation processes for the establishment of the Australian Charities and Not-for-profits Commission (ACNC). We have been consistent in our position that the legislative framework underpinning the operation of the ACNC must respect the diversity of our sector and promote the ongoing accountability and transparency of the sector whilst simultaneously eliminating the unnecessary administrative, reporting, acquittal and compliance costs imposed by Government. These important principles have been enshrined within the *Objects of the ACNC Act* and are the parameters against which UnitingCare Australia has assessed the proposed AIS.

Accordingly we welcome this opportunity to contribute to the development of annual reporting for entities registered with the ACNC.

3. Overall assessment of the proposed 2014 AIS

In undertaking our assessment of the proposed AIS we have been mindful of the Government's commitment to reduce red tape for the NFP sector, as stated by The Hon David Bradbury MP, Assistant Treasurer and Minister Assisting for Deregulation:

“One of the key objectives of the ACNC is to reduce the regulatory burden currently imposed upon the NFP sector, which means ensuring that Australian charities don't have to provide the same information over and over again to Government”.^[2]

^[2]

<http://ministers.treasury.gov.au/DisplayDocs.aspx?doc=pressreleases/2013/024.htm&pageID=003&min=djba&Year=&DocType=0> accessed 8 April 2013

And the ACNC's commitment to deliver on red tape reduction for to the NFP sector, as stated by the ACNC Commissioner Susan Pascoe AM:

"The ACNC is committed to minimising red tape. This is important to charities and it is important to us"^[3]

Our assessment of the AIS has been made against the following parameters:

- Does the AIS ask for information that is already provided to government and/or is requested in another format by the ACNC;
- Will completion of the AIS bring additional compliance costs;
- Does the AIS meet the stated intention of "enabling recognised assessment activities, promote public trust and confidence and reduce unnecessary obligations"; and
- Will the AIS further the *Objects of the ACNC Act*.

Our assessment has also been informed by the findings of the Council of Australian Government's recently published Regulatory Impact Assessment (COAG RIA) of potential duplication of governance and reporting standards for charities^[4]. Although the COAG RIA did not specifically cover the AIS it identified that new reporting requirements imposed on the NFP sector by the ACNC will impose additional costs on the sector.

It is our view that the AIS should be reworked to better reflect the Government and ACNC's commitment to adhere to the principle of 'report once, use often'. At present we believe that the AIS is not sufficiently balanced to uphold each of the three Objects of the ACNC Act; with more weight given to the population of the ACNC register as a means to promote public trust and confidence than is given to the Objects covering red tape reduction and support for the sector's independence. The development of the AIS appears to underestimate the very significant role the establishment of the ACNC has in promoting public trust and confidence in the sector. It has been our view for some time that the very establishment of a regulator specifically focused on the charitable and not-for-profit sector does by its very existence significantly enhance public trust and confidence. Registration with a national regulator gives the general public an assurance that there is formal oversight and checking of the sector and, more importantly, that there is a formal mechanism for the public to raise any concerns they may have about a charity. Indeed there is already evidence to show that the public is using the ACNC to clarify the status of charities and to pursue complaints against specific entities where concerns are identified. This level of engagement with the

^[3] http://www.acnc.gov.au/ACNC/Comms/Med_R/MR_022.aspx accessed 9 April 2013

^[4] <http://www.coag.gov.au/sites/default/files/COAG%20Regulatory%20Impact%20Assessment%20of%20Potential%20Duplication%20of%20Governance%20and%20Reporting%20Standards%20for%20Charities.pdf> accessed 11 April 2013

ACNC is occurring now, before and without the publication of any information in relation to that contained in the AIS.

4. Specific comments on the Consultation Paper

4.1 Introduction – Annual Information Statements

The *ACNC Act* sets the requirement for all entities registered with the ACNC to comply with reporting standards subsequent to the *Act* itself. The Consultation Paper states that “much of this information will be published on the ACNC register (to promote public trust and confidence) and provided to government agencies (to reduce regulatory and reporting obligations on charities)”^[5]. While we welcome the role of the ACNC in helping to promote public trust and confidence in the NFP sector we believe that the proposed AIS for medium and large entities seeks unnecessary information and imposes unnecessary double entry of information from these entities. We believe that the proposed AIS does not give due regard to *Division 15-5(2)(b)(c) [the Objects]* of the *ACNC Act*, namely around safe guarding the independence of the sector and minimising unnecessary regulatory compliance obligation on the sector, something we believe the ACNC must address.

It is critical to note that there has been no crisis of public confidence and trust in the sector and that the creation of the ACNC was championed by many in the sector because of its potential to reduce red-tape imposed on the sector. The landmark 2010 Productivity Commission report^[6] on the contribution of the not for profit sector stated that:

NFPs are generally viewed as more trustworthy than government or business, and hence worthy of support.

That same Productivity Commission report also highlighted that poorly designed regulation imposes additional costs on the sector:

The current regulatory framework for the sector is complex, lacks coherence, sufficient transparency, and is costly to NFPs.

We believe that further effort is required to strike the required balance between collating information for the ACNC register and reducing red tape.

Further, while the question surrounding the imposition of unnecessary red tape is a critical one, underpinning our concerns about the AIS is how the information that is

^[5] http://www.acnc.gov.au/ACNC/Contact_us/Pub_consult_comment/2014AIS/ACNC/Report/2014AISconsult.aspx accessed 11 April 2013

^[6] <http://www.pc.gov.au/projects/study/not-for-profit/report> accessed 11 April 2013

collected will be used. The ACNC's Consultation Paper on the AIS is the first real opportunity the sector has had to consider what information the ACNC wishes to collect and what information will be put onto the information portal. While we recognise the importance of transparency of the sector, there is however an obligation on the ACNC to ensure that in pursuit of transparency it does not inadvertently undermine the public trust and confidence in the not-for-profit and charitable sector. Some of the concerns raised by members of the UnitingCare network relate specifically to how the AIS information will be contextualised for the public so as not to be misleading nor to create sensationalised league tables that fail to recognise the complexity and diversity of our sector.

To this end we caution the ACNC in its pursuit and publication of information about the sector. We believe that the information that is sought from the sector must primarily fulfil the ACNC's need to ensure that registered entities are compliant with the *ACNC Act*. The information to be provided on the searchable public portal however serves a different purpose to that of regulatory compliance. Accordingly, we see merit in developing a modified AIS, similar to that applicable to small entities, which would be applied to all registered entities regardless of size. Clearly the complexity of medium and large entities warrants additional information to enable that ACNC to do its compliance assessment of them. As such we believe that requiring medium and large entities to attach their audited/reviewed end of year financial statement to the AIS offers a safe but effective compromise to the proposed AIS reporting obligations outlined in the Consultation Paper.

4.2 Financial reporting within the AIS

The Consultation Paper states that care has been taken to request financial information that will be used by the ACNC for assessment activities as required by the *ACNC Act* to enable a risk-based approach to compliance. Although we support a risk-based approach to compliance we believe that there is merit in the ACNC better explaining the need and purpose of particular information requested in the AIS.

In pursuing a risk-based approach to the regulation of the sector it is important for the ACNC to recognise that many charities and not-for-profit entities, especially those classified as medium and large, already have strong management, governance structures and processes in place. Indeed many entities maintain sophisticated approaches to the management of their risk and have determined their appetite for risk in relation to their activities.

It is important that the ACNC does not extend the reach of the AIS through the collection of data which is used to "second guess" the financial and other decisions made by registered entities. While the ACNC's Governance Standards, which are yet to pass, recognise the ACNC's interest in prudent financial management of registered entities it must also be acknowledged that these standards put this responsibility on

the responsible entity. As such the ACNC should seek to satisfy itself that the responsible entity is carrying out its responsibilities in this area by ensuring the right policies and practices are in place. It is not for the ACNC to intervene in management decisions of charitable entities unless those decisions contravene the *ACNC Act*. This is an important principle which must be preserved if the ACNC wishes to respect the independence of the sector; a principle which is founded in the *Objects of the ACNC Act*.

Given that the AIS has been developed to be consistent with the National Standard Chart of Accounts (NSCOA) we wish to note that, although we support moves to standardise reporting for charities, NSCOA is a relatively new introduction for our sector and feedback from our network suggest that adoption is complex and timely. It is also worth noting that the Australian Accounting Standards Board (AASB) reporting requirements are not completely consistent with the NSCOA and that additional data manipulation will be required in order to satisfy the requirements outlined in the AIS.

More importantly however, the AIS for medium and large entities brings into play a number of subcategories which, although included in NSCOA, are not required by the AASB. For example the AIS requests a breakdown of government grants by Commonwealth, State and Local. This is not a requirement of the AASB. We see no justification for requesting a breakdown of information that does not help to illustrate compliance with the *ACNC Act* but instead imposes unnecessary manipulation of financial information that is already provided in a consolidated form within the audited/reviewed end of year financial statement. If it is the case that the ACNC has a requirement for this information, then it is not unreasonable for the ACNC to seek that detail from the relevant government agencies which already record this information.

A further example that we would like to highlight relates to the requirement to separate out salary sacrificing from general employee expenses. Again, we see little value in separating out this particular element of employee expenses. We do not understand the purpose of requesting this detail nor its value in helping to determine compliance.

5 Consultation questions

5.1 Related party transactions

The Consultation Paper states that financial statements and notes prepared by medium and large registered entities must give a true and fair view and, in most cases, comply with accounting standards including the disclosure of related party transactions. We are not against entities providing this information to the ACNC, but given that the majority of medium and large registered entities will already do so in their financial statement we see no justification for asking for it again within the format

of the AIS. We suggest that where entities provide financial statements to the ACNC they are exempt from providing this information in the AIS.

5.2 Business activity (small, medium and large)

We believe that it is necessary for the ACNC to provide further details as to how it will publish information on the business activities of any registered entity. It is important that this information is presented within the correct context to ensure it is not misunderstood by anyone accessing the ACNC register.

We are uncertain as to why the information provided at registration is not sufficient to enable the ACNC to assess whether a registered entity is a not-for-profit.

5.3 Reserves (medium and large)

Given that medium and large registered entities will generally include the purpose of their reserves and any restrictions on the use of assets in their annual financial reports we do not believe that it is necessary to ask for this information in the AIS.

Further, it is proposed to publish only three types of reserves on the ACNC register. We are concerned that publishing this information in isolation to a full financial report may mislead rather than educate the public as to the nature and use of accumulated funds.

5.4 Financial information for small charities

We believe that it will be necessary for the ACNC to provide significant support to enable small registered entities to meet the proposed financial information requirements of the AIS. As such we suggest a telephone helpline is established as many small entities will likely not have access to the ACNC's on-line resources.

5.5 Use of optional questions on the AIS

We do not support the principle of optional questions on the AIS to meet additional State, Territory and/or Commonwealth agency reporting requirements. This would not deliver a reduction in the reporting requirements imposed on the NFP sector but rather a move to report within the AIS additional information which is not required for the purpose of enabling ACNC assessment. And it may well lead to a lengthy AIS which all registered entities would need to read and digest before deciding which optional questions applied to them.

If the ACNC's negotiations with State, Territory and/or Commonwealth agencies are to truly deliver on the principle of 'report once, use often' there will need to be agreement

as to what information is a common requirement of all agencies and how registration and compliance with the ACNC can reduce the need for entities to report elsewhere.

5.6 ACNC Assistance with financial reporting

See 5.4

5.7 General comments

We do not see any justification as to why medium and large entities should provide additional financial reporting in the AIS over and above that which is required from small entities. Given that the additional information will be provided in annual financial reports the ACNC will be able to assess activity based on that report and use that data to populate the register.

6. The way forward

The *ACNC Act* is the cornerstone of the Commonwealth Government's NFP reform agenda. The core principles of which are to uphold the ongoing accountability and transparency of the sector whilst simultaneously eliminating the unnecessary administrative, reporting, acquittal and compliance costs. We believe that the development and implementation of reporting requirements for entities registered with the ACNC must uphold all of these core principles.

It is our view that the ACNC should carefully reconsider the requirements it has laid out for the AIS. The AIS is the first significant indicator of the ACNC's operating framework in relation to the regulation of the charities and not-for-profit sector. And to this end we recommend that the ACNC take a cautious approach in terms of the information that it seeks from the sector. We believe that there is merit in using the AIS developed for small entities for all registered entities - subject to removing the need to separate out Commonwealth, State and Local government grants. In addition to the AIS, the statutory obligations on medium and large entities will continue to provide the information necessary for the ACNC to ensure compliance obligations as outlined in the *ACNC Act*.

7. Conclusion

We believe that the AIS should seek to be a signpost for both the ACNC and the public.

Introduction of the AIS will increase the work of the sector and is just one element of the current raft of new regulatory and reporting requirements imposed on the sector by its new regulator. As such we believe that it is essential that the AIS does not increase

red-tape by asking for information already made available to the ACNC. Every effort must be made by the ACNC to include provision for the AIS to link to information that is already prepared by registered entities and which is in the government and/or public domain; in particular financial reporting to the ACNC.