



## THE TAX INSTITUTE

THE MARK OF EXPERTISE

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4 October 2016

Mr Tim Liu  
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](mailto:consultations@acnc.gov.au)

Dear Tim,

### **2017 Annual Information Statement – Public Consultation Paper**

The Tax Institute welcomes the opportunity to make a submission to the Australian Charities and Not-for-profits Commission (**ACNC**) in relation to the *2017 Annual Information Statement Consultation Paper* (**Consultation Paper**).

We also thank you for meeting with us on 15 September 2016 to discuss this matter. Our submission below follows on from those discussions.

### **Discussion**

We address a number of specific issues below following the Consultation Paper.

#### **1. Clarification for the reason certain information is being requested**

The Tax Institute queries why certain information is being asked in the Annual Information Statement (**AIS**) and in particular the reason for certain changes being made for the 2017 AIS.

In our discussion on 15 September 2016, the ACNC clarified that the information being requested ties back to the three objects of the ACNC contained in section 15-5(1) of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth). Questions included in the AIS are filtered through the three objects. This assisted us to understand the motivation behind the inclusion of certain questions.

The ACNC also advised that the changes relate to compliance and 'assessment activity'. It would be useful for the ACNC to point this out to charities so they are aware that the information will be used for 'assessment activity'.

## 2. Collecting information on full-time equivalent employees (Consultation Question 1)

The concept of full-time equivalent (**FTE**) employees will be an unfamiliar concept to many charities as this concept is likely to not be familiar to persons outside the public service.

We understand the purpose of the ACNC requesting this information in the AIS is to try to draw out information regarding the provision of private benefits to employees of charities. We question whether the benefit of this requirement is outweighed by the confusion that will be caused by requiring charities to calculate FTE. Moreover, because of the complexity of such a calculation, we question the accuracy of the information that will be provided.

In our discussion with the ACNC on 15 September 2016, we considered a number of ways information about what is considered to be 'full-time equivalent' work could be collected by for example, setting a standard for the number of hours (though it was discussed that this will vary between States particularly in the education sector), whether a tool such as a calculator should be included, whether an annual average figure should be used and so on. We recommend the ACNC reconsider the need for charities to provide FTE's on their AIS unless a simple calculation method is provided.

## 3. Confirming compliance with the ACNC's governance standards (Consultation Question 3)

We understand that the purpose of including this declaration in the AIS is to draw charities' attention to the governance standards. The Tax Institute is concerned that the declaration is very broad in its nature and not entirely appropriate for the form. It may also cause certain charities, particularly smaller ones, to inadvertently make a misleading declaration to the ACNC that they have or have not complied with the governance standards.

We consider that there may be a better way to raise awareness of the governance standards than via including a declaration in the AIS. Our suggestions for alternative questions for the ACNC's consideration are:

- 'Are Board members comfortable there are processes in place to meet the governance standards?' – this option would suit larger, more sophisticated charities;
- 'Are you aware of the governance standards?' – this would suit smaller, less sophisticated charities;
- 'All registered charities must comply with the governance standards and you should regularly review whether you are complying with them. In the last 12 months, has your organisation reviewed its compliance with the governance standards?';

- ‘All registered charities must comply with the governance standards. Would you like the ACNC to send you further information about the governance standards and how to ensure your organisation is complying with them?’ – this could then prompt the ACNC to provide further educational material, rather than prompting compliance action.

We also suggest the AIS include links or references to where the governance standards can be found on the ACNC website in the AIS. Given the ACNC is also focused on education, we suggest the ACNC may like to consider conducting a training and education program (that may, for example, include webinars or face-to-face sessions) targeted at the smaller charities who advise the ACNC that they are not aware of the governance standards.

#### 4. Grant-making charities and their beneficiaries (Consultation question 6)

Some of the questions in the draft AIS may need to be modified for grant-making charities such as private and public ancillary funds (**PAF**). For grant-making entities such as PAFs, Question 6 as currently proposed may have limited application. For example, a PAF makes a grant to Charity A. Should the PAF be required to disclose to the first level of beneficiaries (i.e. Charity A) or to the next level of beneficiaries (i.e. the beneficiaries of Charity A)? Currently (as in the 2016 AIS), most PAFs would likely select the ‘General Category’.

Any amendment to this question should include specific questions for grant-making charities, for example, a requirement to list the name of the organisations to which grants were made. Otherwise, it may be unclear as to which ‘beneficiaries’ the PAF is, or should be, referring to – that is, the charities who receive grants from the PAFs or the next level down, being the beneficiaries of the charities that have received a grant from the PAFs (however, this level may be difficult to identify and may increase compliance costs for grant-making charities).

#### 5. Addition of sales and investment income to the income statement (Consultation question 7)

The Tax Institute is concerned there may be some duplication of information by requiring charities to provide sales and investment income information in the AIS, particularly where they will have already provided an Annual Report. In our discussions, the ACNC acknowledged the potential duplication issue particularly for larger charities that also provide an Annual Report.

However, it was noted that smaller charities do not need to provide an Annual Report. It was also noted that due to a lack of advanced software, the ACNC is not able to extract this information from financial statements and Annual Reports provided by charities and therefore needs to ask for it separately. We acknowledge that the ACNC may not be able to extract the information they require from smaller charities and therefore do need to ask for this information separately via the AIS.

We are concerned that the concept of 'sales' will not be readily understood by charities (eg sponsorship and licencing fees would not traditionally be considered 'sales'). In our view, the onus is on the ACNC to be very clear about exactly what information they are trying to draw out, otherwise the quality of the data the ACNC is likely to receive will be of questionable value.

If you would like to discuss any of the above, please contact either me or Tax Counsel, Stephanie Caredes, on 02 8223 0059.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Arthur Athanasiou', with a stylized flourish at the end.

**Arthur Athanasiou**  
President