



**CHARTERED SECRETARIES  
AUSTRALIA**

*Leaders in governance*

27 February 2012

ACNC Implementation Design Discussion Paper  
ACNC Implementation Taskforce  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [acnctaskforce@treasury.gov.au](mailto:acnctaskforce@treasury.gov.au)

Dear Treasury

***Australian Charities and Not-for-profits Commission:  
Implementation Design***

Chartered Secretaries Australia (CSA) is the independent leader in governance and risk management. As the peak professional body in Australia delivering authoritative accredited education and the most practical training and information in the field, CSA is focused on improving organisational performance and transparency.

Our members are all involved in governance, corporate administration and compliance with the *Corporations Act* (the Act). Many of our members serve as officers of not-for-profit (NFP) organisations, or work for or are involved with companies limited by guarantee. CSA itself is a company limited by guarantee, formed to serve the interests of its Members, who are governance professionals.

CSA welcomes the opportunity to comment on the *Australian Charities and Not-for-profits Commission: Implementation Design* discussion paper (the discussion paper) and draws upon the experience of our Members in formulating our submission.

***General comments***

The importance of the NFP sector to Australia and the inefficiencies of the current dual regulatory NFP regime, with state and territory-based associations' legislation co-existing with the national regulation of companies are well recognised. Equally, it is well recognised that the reporting framework for NFP entities has been onerous and uncoordinated. The development of a coherent reporting framework, therefore, is integral to ensuring confidence and trust in the NFP sector, while also reducing the red-tape burden that many NFP entities must contend with and which requires them to expend effort on matters other than their 'mission'.

While CSA strongly supports the establishment of the Australian Charities and Not-for-profit Commission (ACNC), CSA has concerns about how the proposed reporting framework outlined in the discussion paper will interact with the suite of consultations released on 8 and 9 December 2011, namely the:

- consultation paper for review of not-for profit governance arrangements, and
- exposure draft legislation to establish the ACNC.

At present it is unclear how the various separate consultations will interact to provide a final coherent governance and reporting framework. Each of the consultations separately deals with a variety of issues, many of which overlap. For example, the exposure draft mixes legislation that is specific to the formation of the national regulator with legislation that relates to the duties and operation of the bodies that the ACNC will regulate, which is also the subject of the governance arrangements paper and dealt with in the ACNC discussion paper. CSA notes that the reporting framework discussion paper itself comments that 'matters raised in this paper should be considered within the context of Treasury's broader policy and law development consultations.'<sup>1</sup>

CSA is most concerned that the lack of clarity about the interaction of the three current consultation documents, and the lack of clarity that stakeholders have as to the coordination between the three separate organisations involved in the consultation process, that is, the ACNC, Treasury and the Australian Taxation Office (ATO), makes it very difficult for stakeholders to comment in an informed manner. The piecemeal approach which has given rise to such lack of clarity also means it is less likely that the reform process will achieve the objective of improving and streamlining governance in the NFP sector. We appreciate that the public consultations being undertaken by the ACNC are intended to address this concern as well as to provide a forum for NFP entities to raise any issues which they have with the reform process, but given the large numbers of NFP entities attending these forums and the limited time available, the forums are only able to provide a very high level overview of how each consultation and the liaison process combine.

The confusion is exacerbated by the pace of the reform process which the government has pursued in order to ensure that the ACNC commences operations on 1 July 2012. At present, the NFP sector is contending with consultations on the definition of charity; the exposure draft of the ACNC legislation; the governance framework for the NFP sector; the design of the reporting framework to the ACNC; better targeting of NFP tax concessions measures and fundraising. Consultation on companies limited by guarantee, a legal form chosen by many NFP organisations, is due soon. Some jurisdictions are themselves in the midst of a reform process. For example, in Victoria, incorporated associations are also dealing with significant changes in the *Associations Incorporation Act*, due to take effect on 1 July 2012.

The discussion paper notes that from 1 July 2012, the ACNC will be responsible for determining the legal status of entities seeking to be registered as charitable status entities, as well as implementing a 'report-once, use-often' reporting framework and providing education, guidance and governance frameworks for the NFP sector.

While CSA welcomes the proposed registration framework and supports the intention of the reporting framework and overall NFP reform, CSA is strongly of the view that an integrated approach to reform at a more measured pace would reap better results in the longer term. CSA believes that an optimal outcome can be achieved while simultaneously allowing the government to meet the expectations it has expressed to the NFP sector that it will provide a new regulatory framework that eases the compliance burden.

As noted in our submission to Treasury on the Exposure Draft — Australian Charities and Not-for-profits Commission Bill, CSA recommends that the bill should focus entirely on the establishment of the ACNC, its regulatory powers and how it operates. Legislation relating to the duties and operation of the bodies which the ACNC will regulate should be dealt with separately. This will allow the ACNC to be established by 1 July 2012, while consultation continues on other relevant issues at a measured pace, and the ACNC itself can be a stakeholder in those consultations. CSA is firmly of the view that this will result in a better outcome as it will ensure a more carefully considered new regulatory framework and also provide time for consideration of the changes by the NFP sector. To do otherwise risks imposing new and potentially unnecessary compliance costs on an already overburdened sector.

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<sup>1</sup> Australian Charities and Not-for-profits Commission: Implementation design Discussion Paper, pg 1, available from [http://acnctaskforce.treasury.gov.au/content/communityengagement/downloads/Discussion\\_Paper.pdf](http://acnctaskforce.treasury.gov.au/content/communityengagement/downloads/Discussion_Paper.pdf)

If the legislation is introduced in its current form, it will impose reporting and auditing obligations (the subject of this discussion paper) on charities that will see them required to report under the new law by 1 July 2013. For accounting purposes, that sees their financial year start on 1 July 2012. In practice, this means that such organisations will have four months in which to make the multiple changes required to meet the new legislative and reporting requirements — given that the legislation has not yet gone before parliament and it is unknown what its final form is, the time to make the changes to meet the new compliance obligations will be even less than four months.

CSA notes that most charities will simply be unable to make this deadline, will not have the resources to be able to do so, or will have to devote resources to attempting to comply (thus diverting them from other matters). While the ACNC has expressed the view in public forums that charities will not be required to make substantial changes to meet any new reporting obligations, CSA takes a different view. Many charities will need to:

- implement changes to their accounting methodologies and systems should they find themselves subject to IFRS where previously they were not subject to these complex accounting standards
- introduce new accounting software to manage their new reporting obligations
- face the expense of an audit where previously they were not subject to an audit requirement, and
- turn the attention of senior members of staff to meeting their new compliance obligations which will divert them from attending to their responsibilities to provide charitable services.

The proposed approach and timeframe is in fact more onerous than was required of the private sector. Comparative corporate law reform in the private sector was introduced over a decade or so. To expect NFP entities, who tend to be less well resourced, to be able to adapt to swift regulatory reform within a short time is unreasonable, particularly in light of the importance of this sector to the Australian economy and its contribution to the community. Indeed, changes to the superannuation and financial planning industry are also proceeding at present, but at a much slower pace, in recognition of the internal resourcing and system changes that will need to be put in place within these industries to ensure they meet their new compliance obligations. CSA is very concerned that the NFP sector is being treated in a less favourable manner than other sectors, with fundamental changes being introduced without sufficient time to properly assess their impact.

The pace of the reform and the likely consequences for an under-resourced and largely volunteer-staffed sector appears to create a real risk that the reform process will in fact fail to meet its objective, and in particular fail to reduce the onerous compliance burden on the NFP sector. CSA understands that the government is keen to progress reform for the NFP sector, as after multiple inquiries the sector has clearly expressed a need for reform. However, CSA is of the view that it is more important to ensure that the reform is appropriate and will assist the NFP sector than to meet an arbitrary deadline.

The ACNC has already noted that incorporated associations, should they be charities, will be subject to a dual reporting regime after 1 July 2012, with obligations to both the ACNC and the relevant state department in their jurisdiction. These organisations are the least well equipped to be able to manage dual compliance and to oblige them to do so is at odds with the intent of the reform process.

CSA notes that a fundamental aspect of the reform process is for the states to agree to refer powers to the Commonwealth to provide for all incorporated associations to be regulated nationally. The ACNC has noted in public forums that this will bring savings to the states. However, the process of national and state agreement on legislative reform can be slow. Indeed, CSA notes that even when there is agreement between the states and the Federal Government,

as occurred with the harmonisation of OH&S legislation, states can withdraw from the process, thus delaying implementation. CSA notes that it would be preferable to have state agreement on the national regulation of incorporated associations before subjecting them to reporting obligations to the ACNC and is willing to advocate for this with the states.

**CSA recommends**, therefore, that the reporting obligations for charities be deferred until 1 July 2014. This would mean that charities are afforded an extra year in which to implement new accounting systems, with the reporting period to begin on 1 July 2013. It will also mean that the NFP sector has more time to agree on the duties, obligations and governance arrangements of those entities to be regulated by the ACNC, and provide the regulator itself 12 months in which to develop comprehensive guidance and educational documents to assist charities understand their governance and compliance obligations. In line with the discussion paper's comments that 'education, guidance and general advice' will form the core role of the ACNC<sup>2</sup>, CSA firmly recommends sufficient time be allowed for this process to be undertaken effectively.

CSA also notes that there is considerable confusion among NFP entities about which entities the national regulator will actually be responsible for. As the ACNC will be aware, there are some 600,000 NFP organisations (excluding body corporates) within the Australian NFP landscape, of which 56,000 are charities, just a touch more than 10 per cent of the sector. However, within the NFP sector also reside associations (CSA is one such association), hospitals, community services, universities, sports clubs, religious groups, day care centres, recreation clubs, environmental groups, job-training centres, family counselling agencies, and many more.

The government has stated that the proposed reporting framework, exposure draft legislation and governance arrangements target only charities. In previous submissions, CSA has noted that other NFP entities could be caught up in the governance and reporting changes, as the draft legislation is unclear as to its reach. If it is the intention of the ACNC to also regulate the NFP sector, then more time and effort needs to be expended to understand how the regulatory landscape which is being put in place for charities will affect other types of NFP entities which may, eventually, fall under the ambit of the ACNC.

CSA has previously recommended that the national regulator should be designed to regulate all NFP organisations regardless of size, whether they receive government funding, or whether they access tax concessions, and CSA continues to support this position. It would be a grave misrepresentation of the sector and its contribution to the Australian community and economy to make any reforms to the regulatory framework based on the particularities of charities alone.

**CSA recommends** that the ACNC should be responsible for the regulation of the entire NFP sector, rather than just charities. CSA encourages the government to clarify that the ACNC will, in time, be the regulator for the entire NFP sector and not just charities. At present no such clarity exists.

With this in mind, **CSA strongly recommends** that more time be taken to consult with the sector before implementing any changes to governance and reporting systems. This will not affect the establishment of the ACNC or the process of having existing charities automatically registered with the ACNC or new charities obliged to register with the ACNC as of 1 July 2012.

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<sup>2</sup> Ibid, pg 21

With these considerations in mind, CSA provides the following submission addressing the options provided in the consultation paper.

We would welcome the opportunity to discuss any of our views in greater detail.

Yours sincerely

A handwritten signature in black ink that reads "Tim Sheehy". The signature is written in a cursive, flowing style.

Tim Sheehy  
CHIEF EXECUTIVE

## **Consultation questions**

### **1 Do you think that the introduction of the *Charity Passport* would reduce reporting obligations to government? What are the obstacles to achieving one-stop shop reporting on the basis of the data being collected by the ACNC?**

CSA supports the idea of the *Charity Passport* (the passport) as it represents a coherent and centralised way of identifying and interacting with charities in Australia. Ideally, the passport can also provide a method by which a charity's information is not duplicated or double handled, and CSA believes that this has the potential to reduce their reporting obligations to government.

However, there are currently obstacles to achieving this one-stop shop reporting.

While the intention is that the government will mandate that information requested by the ACNC should only be collected by other Commonwealth agencies from the ACNC, CSA notes that it would be preferable to agree this formally with other Commonwealth agencies — for example through written undertakings from other Commonwealth agencies not to request this information separately. Importantly, where other Commonwealth agencies are responsible for providing funding to a charity, the charity will need to comply with the conditions imposed by the agency. The reform in relation to the collection of information by the ACNC will be effectively negated if the government funding agreements at both the state and Commonwealth level are not also simplified and made consistent. The current lack of consistency continues to place an unreasonable financial reporting burden on NFPs.

This situation will be compounded by the fact that incorporated associations will still have dual reporting obligations to both the state within which they reside and the ACNC. This represents a significant deterrent for these types of charities and will certainly lead to administrative double handling and onerous compliance requirements. History has already demonstrated that the 'referral of power' process will be complex and politically charged — CSA points to the recent problems associated with occupational health and safety harmonisation, which have yet to be resolved, as one example of how drawn out such agreement can be.

Furthermore, CSA reiterates our concerns that the pace of reform will impose onerous and burdensome commitments on many charities, particularly given the short time frame currently being envisaged for the reforms to come into force. This presents a significant barrier for many charities. In the first instance; they may be required to implement new systems to meet the ACNC requirements. CSA Members note that it can take up to six months and significant diversion of resources for an organisation to change its accounting system. Secondly, the lack of clarity about the transitional integration of the ACNC means that some charities will be uncertain of their reporting obligations, particularly if they are used to reporting only to a state agency. It is therefore particularly important that proper guidance is provided by the regulator. The timing of the reform exposes a focus on big charities, with little recognition that a small charity, particularly one which has deductible gift recipient (DGR) tax exemption status, will either have to incur the allocation of precious time resources or costs in order to have their financial accounts reviewed, as is proposed under the tier 2 annual information statement form.

In line with this concern, **CSA recommends** that the reporting obligations for charities be deferred until 1 July 2014. This will allow time for the ACNC to develop guidance and education materials, for charities to update their systems and for the ACNC to address some of the obstacles which may afflict one-stop shop reporting.

CSA is also cognisant that the framework which has been set up to apply to charities will also be applied to other NFP entities, when they are folded into regulation by the ACNC. It is vitally important, therefore, that the systems which are set up for charities are equally applicable to other NFP entities. CSA does not believe that this has been properly considered. We reiterate our concerns that the pace of reform and the manner in which the reform process has been

undertaken does not instil confidence that the ACNC will have the right framework to regulate the entire NFP sector. For example, CSA notes that the charities registration form requires the disclosure of the charities' bank account details. While the disclosure of bank account details will be relevant to charities who are the recipients of government funding, the provision of bank account details for charities who do not receive funding, and other NFP entities, is inappropriate. No organisation not in receipt of government funding should be obliged to disclose bank account details to the ACNC.

**CSA recommends** that the registration form be amended to provide that those charities in receipt of government funding must disclose their bank account details, while any other charity not in receipt of such funding need not disclose their bank account details.

CSA notes that the charities registration form also requires information which details the qualifications of the officers of the charity.

CSA has noted in our submissions on the NFP governance arrangements and the draft legislation establishing the ACNC that we strongly oppose officers of NFP entities being required to hold particular qualifications or have particular experience or skills. We noted that even the directors of public listed companies in Australia are not required to hold particular qualifications or have particular experience or skills, and it would be highly prejudicial to the NFP sector should responsible individuals in charities be subject to more onerous obligations than officers of companies.

Members of the particular charity are best equipped to judge whether candidates are suited to the role of responsible individual, given the nature of the organisation and the skills of others involved in its governance. Implementing a standard requirement fails to recognise the diversity of the objectives of NFPs and the benefit to society of encouraging people of good character and dedication to a cause to take on responsibilities. Rather, it would place barriers on participation.

**CSA recommends** that the requirement for the qualifications of officers be removed from the registration form.

CSA is pleased that the ACNC is cognisant of the potential issues which arise from the disclosure of information related to charities. Unlike corporations which owe often clearly defined duties to their shareholders, many charities have differing purposes. For example, as noted by the ACNC in public forums, it would be inappropriate to disclose the names of the directors of a women's refuge or the address of the refuge. However, the boundaries are not clear on this issue, and CSA looks forward to more guidance being issued by the ACNC as to how an organisation can meet any criteria to not have required information publicly displayed.

While CSA recognises the benefits of a quickly established registration system, particularly as it offers the public a window into the essential financial information and governing body of charities, CSA has real concerns with the time frames proposed to implement the reporting framework. The passport provides an excellent opportunity for charities to interact with the public; however, it will be an onerous administrative burden on many charities if some of the hurdles, particularly dual reporting obligations, are not appropriately addressed.

## **2 Will the information collected by the annual information statement be adequate for the purpose of achieving the appropriate level of transparency and accountability to the public?**

CSA commends the ACNC for providing mock-ups of the annual information statement forms which charities will be required to submit after 1 July 2013.

CSA notes, as discussed in response to question one, that we have concerns about the obligation for all charities to disclose their bank account details. The collection of information in relation to the regulation of the NFP sector must be made in wider interest of the sector and must

show a specific purpose. CSA Members do not believe that NFP entities other than charities who receive government funding should be required to disclose their bank account details.

CSA believes that the information collected by the annual information statement form does not fully capture all of the information required for the purpose of achieving transparency and accountability to the public.

The tier two annual information statement collects insufficient governance information. While CSA supports the requirement that tier two and tier three charities be required to disclose that they have risk management plans, we note that governance is more than simply risk management. Full governance disclosure would include:

- the statement of objectives of the NFP organisation
- the amounts and sources of funding for the activities that the fundraising supports
- the expenditure of the funds (which would assume a portion of the funding going to administration and marketing, as well as to the fulfilment of the objectives of the NFP organisation)
- the processes in place, including the risk management processes, to ensure the proper management of all fundraising, activity support and expenditure on staff and volunteers
- details of directors and secretary(s) or other relevant responsible individuals and their remuneration (including information on whether non-executive board members are paid and whether there are board committees or equivalent), and
- disclosure of all related-party interests.

CSA notes that this information is already supplied by tier three charities in their annual reports, but tier two charities may not currently be issuing annual reports.

CSA also queries whether residential addresses are required for directors, given that this information will be publicly displayed. CSA recommends that a charity be given the right to provide the charity's address for each director for public display, while residential addresses will be required to be supplied to the regulator not for public display but for the purposes of being able to pursue enforcement activity should that be required.

CSA notes that corporate entities are required to update any change to directors (for example, the appointment of a new director or the resignation of a director) to the Australian Securities and Investments Commission (ASIC) if and when that information changes and **recommends** that this also apply for charities.

However, CSA would not support an obligation on charities to update the ACNC register on a continual basis in relation to financial or other information, as this would be a higher compliance burden than is currently required in the private sector. **CSA recommends** that the disclosure of information to the ACNC mirror that required of companies limited by guarantee in relation to disclosure to ASIC.

**CSA recommends** that greater clarity be provided to charities as to which information will be publicly displayed and which information will be retained by the ACNC for the purposes of enforcement and research.

### **3 Is there any additional information that should be collected and provided to the public?**

CSA believes that members and stakeholders of all NFP organisations should be able to have access to information that allows them to know:

- the financial position of the organisation
- that the organisation is being managed prudently
- that the allocation of resources is aligned with the values and objectives of the organisation as set out in its constitution

- who constitutes the governing body and
- what processes are in place to ensure the personal interests of directors do not override the interests of the organisation.

These are issues of accountability, transparency, stewardship and ethical decision making and constitute good governance. These matters are as relevant to the local football club for under-18s as they are to a large NFP such as the Red Cross.

CSA believes that this kind of governance report should be required of all charities and NFP organisations. As noted previously, the tier two annual statement does not require full governance disclosure, which should include:

- the statement of objectives of the NFP organisation
- the amounts and sources of funding for the activities that the fundraising supports
- the expenditure of the funds (which would assume a portion of the funding going to administration and marketing, as well as to the fulfilment of the objectives of the NFP organisation)
- the processes in place, including the risk management processes, to ensure the proper management of all fundraising, activity support and expenditure on staff and volunteers
- details of directors and secretary(s) or other relevant responsible individuals and their remuneration (including information on whether non-executive board members are paid and whether there are board committees or equivalent), and
- disclosure of all related-party interests.

**CSA also recommends** that all charities should be required to report the ratio of administrative costs to total funds raised/grants/revenue received in order for the public to judge the performance of the charity and to compare it with other charities. The Australian Accounting Standards Board is in the process of issuing a standard on performance reporting of NFP entities and the charities should be required to comply with such standard.

#### **4 Should the annual information statement give charities the option of providing narrative descriptions of the outcomes achieved?**

CSA supports charities having the option of providing narrative descriptions of the outcomes they have achieved in their annual information statements.

In recognising the fluidity of charitable organisational costs and expenses, as well as the availability of government funding and the certainty of charitable donations, it is possible that charities may have variable results from year to year. CSA believes that the narrative option provides the charity with a chance to present their story and provide a context for the financial information, as well as offering a chance to promote their objectives to the public.

**CSA recommends** that the provision of a narrative by a charity be optional rather than mandated.

#### **5 Is the SBR taxonomy an appropriate basis for the reporting of financial items to the ACNC?**

CSA supports the implementation of the SBR taxonomy as an appropriate basis for the reporting of financial items to the ACNC.

However, it is important that the process of incorporating the SBR taxonomy into the systems of charities not impose additional costs or the need to expand resources. As an extremely diverse sector, the NFP sector has within it many different types of organisations and the breadth of the sector means that there are many different accounting systems being used.

CSA notes that while the ACNC's regulation relates only to charities in the first instance, it is important that the wider NFP sector is considered. Whatever reporting requirements are set during this initial phase must be useable by other NFP entities.

The imposition of the SBR taxonomy should not impose further costs by requiring the outlay of expenditure to purchase either SBR-compliant software, having a person trained to use the software, or forcing small charities and other NFP entities to engage accountants. An important consideration is the resourcing implications of implementing SBR-compliant software, as the financial costs do not always equate to the costs in time spent in bedding down new software and changing internal systems to accommodate it.

**CSA recommends** that the ACNC should align any data received with the SBR taxonomy and not require a charity to submit its information in that form.

**CSA also recommends** that the data should align with the Standard Chart of Accounts as well as the SBR taxonomy.

## **6 Is the proposal for information collected through the annual information statement and financial report appropriate for each tier (see Attachments B, C and D)**

CSA understands the philosophy that charities that are afforded DGR tax exemption status should have a higher level of accountability than other NFP entities.

The three tiers are substantially similar to those proposed under the amendments to the *Victorian Associations Incorporation Act*, although slightly stricter than the tiers for small and large proprietary companies reporting under the Corporations Act.

CSA notes that the proposed reporting framework will require a small charity which would otherwise be classified as a tier 1 charity, due to the consolidated gross income not exceeding \$250,000, to report as a tier 2 entity if the charity has also attained DGR tax exemption status. In effect, this means that the charity will have increased costs associated with maintaining its annual information statement and financial reporting requirements.

All charities and NFP organisations start as small entities. It is to be hoped that they will develop and be successful and become large entities. However, it is important that all small charities and NFP organisations be given the chance to develop and not be burdened with complex reporting.

Regardless of whether a small charity has DGR status, it should be exempt from complex reporting. The new regulatory framework should not be more burdensome to small charities than the present system. CSA would be very concerned if the reform process, which is intended to reduce red tape, was used to impose more compliance burdens on small charities simply because they have DGR status.

CSA notes that existing reporting requirements under that *Corporations Amendment (Corporate Reporting Reform) Act 2010* provide that all NFP entities with DGR status with less than \$1m turnover are required to report under tier 2.

**CSA recommends** that a charity with less than \$250,000 in consolidated gross income and with DGR tax exemption status should only be required to report as tier 1 charity. That is, such small charities with DGR status should be exempt from the more complex reporting requirements currently envisaged. This would require changes to the Corporations Act. This further demonstrates the need for a time frame for proper consideration of changed reporting requirements for NFP entities, as well as alignment with state legislation, otherwise the aim of 'one-stop shop reporting' will not be achieved

CSA also notes that the definition of 'accounting standards' differs in the discussion paper from that set out in the draft legislation. **CSA recommends** that the definition be consistent and that the definition used in the draft legislation should be the one used.

Furthermore, there is confusion between the use of the term 'special purpose report' which is being used by Treasury and the term 'special purpose financial report' which is allowed for under the Australian Accounting Standards. Many organisations prepare and lodge 'special purpose financial reports' in accordance with the Corporations Act and this should not change due to the introduction of a new term.

**CSA recommends** that size should be the sole determining factor in deciding which tier of reporting a charity is subject to.

**7 The ACNC Commissioner has the discretion to vary an accounting period. Under what circumstances should the Commissioner allow for an alternate accounting period?**

CSA supports the ACNC Commissioner having the discretion to vary an accounting period but **recommends** that the circumstances in which that discretion is applied need not be specified. The ACNC Commissioner should be able to exercise the discretion on a case-by-case basis. Notwithstanding this, any charity or NFP entity seeking such a variation must present a strong argument to the ACNC Commissioner.

**8 Do the ATO practice statements provide an appropriate guide?**

CSA supports the ATO practice statements being used as a guide subject to their review and acceptance by the education and policy team at the ACNC.

**9 Are the transitional arrangements clear for new and existing charities?**

CSA believes that the transitional arrangements are not clear for new and existing charities. Further, CSA does not consider that the transitional arrangements are clear for the entire NFP sector. There is still confusion among NFP entities as to whether or not they will be regulated by the ACNC either initially or in the future.

CSA has previously recommended that the national regulator should be designed to regulate all NFP organisations regardless of size, whether they receive government funding, or whether they access tax concessions, and CSA continues to support this position.

It is clear that the current reform agenda focuses particularly on the regulation of charities; however, the short lead-in time for reporting against the new framework is likely not only to sustain high levels of confusion but also impose onerous compliance burdens on charities.

**10 What assistance could the ACNC provide to support the sector's use of online engagement?**

CSA strongly supports the information portal as a central repository of information about charities and NFPs in Australia. The portal offers the chance for further research about the sector to be undertaken, while also providing the wider Australian public with a designated place to find out information about NFP organisations to which they may wish to donate, or volunteer their time.

However, CSA would again emphasise the importance of appropriate guidelines being published to indicate to charities what information will be made publicly available. CSA notes that the registration forms and annual information statements are unclear as to whether all the information supplied would be made publicly available and charities will need to know these conditions at the time of registration.

CSA notes that many NFPs are under-resourced and have difficulty in understanding and complying with the provisions covering assessment, granting and monitoring of concessional tax treatment. Therefore, any initiative that streamlines and simplifies the process online is likely to improve understanding and reduce dependence on consultants and reduce compliance costs.

The use of online engagement otherwise provides a useful and integrated way to engage with the wider public, while also providing charities with the opportunity to interact with potential donors, recipients and stakeholders. As noted above, it also ensures a comprehensive research database on the sector, which is of use to Australian society overall.

However, the information contained in the portal is only of use to the public if it is provided free of charge. CSA is of the view that the best way to ensure that NFP organisations remain focused on service delivery is to have information on them made freely available. The public should not have to pay to engage with charities or the NFP sector generally.

CSA is of the view that it is reasonable to require NFP organisations to pay a small fee as a contribution to the costs of the national NFP regulator, with Treasury reviewing the fee annually. Provision should be made for reduced fees to be paid by small NFPs.

CSA notes that, currently, the fees that ASIC charges for registration, reporting and accessing information go into general revenue. That is, ASIC generates revenue for the government. CSA is strongly of the view that it is inappropriate to have the national NFP regulator generate revenue for the government.

CSA further notes that there should also be education and guidance offered to smaller charities, particularly those with no web presence, as to the value of supplying information and keeping it up-to-date. If the online engagement tools are complex or require the use of special software, this would hinder online engagement by charities and NFP organisations. The online tools must be compatible with a variety of hardware and software.

#### **11 Are there barriers to online reporting or registration? How can the ACNC ensure that it is effective?**

CSA reiterates that it is important that the process of incorporating the SBR taxonomy into the systems of charities not impose additional costs or the need to expand resources.

**CSA strongly recommends** that any charity be allowed to lodge documents in hard copy and not be forced to only lodge online, as not all small charities will necessarily have access to computers.

#### **12 Are there barriers to the AUSkey as the ACNC online authentication tool?**

CSA does not believe that there are barriers to the use of the AUSkey as the online authentication tool for charities engaging with the ACNC.

CSA notes that the AUSkey is currently in use by companies limited by guarantee when they engage with ASIC. Given that any charities that are companies limited by guarantee already have an AUSkey the question arises as to whether they will be required to hold two AUSkeys or only one. This goes to the heart of the bigger issue as to whether charities that are companies limited by guarantee will have dual reporting obligations to the ACNC and ASIC. CSA believes that the process should be managed to ensure that this duplication does not occur.

**CSA recommends** that companies limited by guarantee that are also charities only be required to hold one AUSkey.

#### **13 Are these proposed principles guiding the ACNC's role in providing an education function appropriate?**

CSA agrees strongly with the ACNC's core role being the provision of education, guidance and general advice. The value of the educational as well as the compliance initiatives managed by a new national regulator is critical to the success of a dedicated regulatory regime for the NFP sector. The compliance and enforcement role should not overtake the educational role.

CSA also strongly supports the principles of accessibility, diversity and efficiency as guiding objectives in seeking to implement an educational function.

#### **14 What should be the scope of the ACNC's education role?**

The educational role of the ACNC should include the provision of:

- fact sheets
- checklists
- case studies to illustrate compliance and breaches of compliance
- model rules
- podcasts
- YouTube videos
- online forum (this can provide an alternative opportunity for dialogue by like-minded individuals in the sector as well as a means for the regulator to canvass and understand the everyday challenges the sector will be dealing with)
- a help line.

CSA accepts that the ACNC is a regulatory body and requires powers to enforce the law, but given the strong commitment from the government that the ACNC should also undertake an educational role, CSA is strongly of the view that the ACNC also needs the discretion to respond to breaches of the law according to the size and circumstances of the particular NFP entity.

The ACNC should also have the discretion to issue instructions or provide relief in approved circumstances, or to facilitate compliance while also providing ongoing education to the NFP sector. If the ACNC is granted this power, it will have the discretion to allow for the diversity in the sector and take account of what would be reasonable for the responsible individuals and the entity itself of a particular size and dominant purpose.

Accordingly, **CSA recommends** that the ACNC be provided with a discretionary power to apply certain aspects of the regulations and modify as necessary.

#### **15 Is it appropriate for the ACNC to endorse education and guidance material provided by other entities (for example, peak bodies)?**

CSA believes that it is appropriate for the ACNC to direct charities and NFP entities to education and guidance material provided by other entities. However, CSA is concerned that endorsement could be problematic, as the ACNC has no control over the materials produced by the external parties or the governance of the external parties. CSA notes that the NFP sector could also find it confusing to differentiate between the external parties and the ACNC under the endorsement model.

Currently ASIC provides a wealth of information for the private sector in relation to company and officer obligations, but directs them to a range of professional associations that provide education and training to the private sector. For example, CSA provides education and training on subjects ranging from directors' and officers' duties and financial analysis for officers and directors to meeting ASIC requirements and how to deal with minutes and meetings of directors and members. The ASIC letter welcoming new office holders to their position notes that office holders should ensure they are cognisant of their duties and refers to bodies such as CSA, among others, as a source of such education and training. However, ASIC does not endorse external education and training.

CSA recommends that the ACNC should also refer the office holders of NFP organisations to professional associations such as CSA for education and training. The ACNC website should also contain links to organisations such as CSA which hold a wealth of useful information on governance and risk management for NFP organisations.