



28 February 2018

Principal Advisor
Individuals and Indirect Tax Division
The Treasury
Langton Crescent
PARKES ACT 2600

Submitted electronically: ACNCReview@treasury.gov.au

AUASB Submission on the *Review of Australian Charities and Not-for-profits Commission (ACNC) legislation*

Introduction

The Australian Auditing and Assurance Standards Board (AUASB) is pleased to have the opportunity to comment on the Treasury's *Review of Australian Charities and Not-for-profits Commission (ACNC) legislation*.

The AUASB is responsible for developing, issuing and maintaining auditing and assurance standards in Australia and contributing to the development of a single set of global auditing and assurance standards for world-wide use. Our mandate requires us to develop standards and associated guidance that have a clear public interest focus and are of the highest quality, covering both financial statement auditing and other assurance services. Our standards are applied by a broad population of auditors who perform audits and assurance engagements across the spectrum of Charities and Not-for-profit entities, including small/medium practitioners (SMPs) and public sector auditors.

All auditors and assurance professionals are already required to apply the AUASB's standards in accordance with the current ACNC legislation. Our submission and its associated recommendations therefore focus on what we consider to be the areas where the ACNC's legislation could be streamlined and enhanced to improve or clarify the auditor's responsibilities when performing an audit or review of an ACNC registered entity.

Our submission has been developed based on targeted stakeholder outreach and input from AUASB Technical Staff and Board Members. The submission prepared focusses on two elements of the review:

- Element 1 – Assess the effectiveness of the provisions and the regulatory framework established by the ACNC Acts to achieve the objects; and
- Element 2 – Consider whether any amendments to the ACNC Acts are required to enable the achievement of the objects and to equip the ACNC Commissioner to respond to both known and emerging issues.

Our overall comments and specific recommendations are presented below.

Overall comments

Review of the audit and assurance requirements in the ACNC Acts

In our submission, we have specifically highlighted three areas of inconsistency and/or duplication between sections of the ACNC Acts and the requirements of applicable assurance standards relating to:

- Providing an independence declaration;
- Forming an opinion over operational records; and
- The registered entity's requirement to provide the auditor/reviewer with information and assistance.

In addition, we recommend that the sections of the ACNC Act that address audit and assurance requirements are holistically reviewed to further clarify other inconsistencies and duplication of requirements with the auditing standards. Such a review would improve the coherence and clarity of the assurance requirements and 'future proof' the Act against subsequent updates made to the audit and assurance standards. This exercise would ensure ongoing compliance with s60-35 in the ACNC Act ("*Audit or review to be conducted in accordance with the auditing standards*") and clarify how additional statutory reporting requirements (e.g. the *Corporations Act 2001* disclosures) should be applied.

The AUASB would be pleased to assist in this review, working with other relevant stakeholders to develop assurance requirements in the ACNC legislation that are clear, complement the auditing and assurance standards and meet the needs of the Charities and Not-for-profit sector.

Additions to the ACNC Acts to be considered

We have heard feedback from assurance practitioners in the sector that a mechanism similar to s311 and s601HG of the *Corporations Act 2001*, which requires auditors to notify ASIC of contraventions of the Corporations Act should be considered for inclusion in the ACNC Acts.

Reporting Framework

The AUASB sees value in a wider conversation about the reporting requirements of registered charities. The AUASB is supportive of the ACNC, AASB and AUASB continuing to work together, and consulting with the sector, to develop a suitable reporting and assurance framework for charities, with the aim of ensuring that reporting and assurance is proportionate and consistent according to the size of the entity.

Whilst we consider the existing assurance standards are flexible and robust enough to provide assurance on different subject matters (including financial and non-financial information) and can be tailored to meet the needs of stakeholders, greater clarity and consistency of reporting requirements across the sector will also lead to improved stakeholder outcomes when it comes to the auditing and assurance requirements of these entities.

Recommendations

The AUASB's detailed recommendations accompany this letter as Attachment 1.

Should you have any queries regarding this submission, please do not hesitate to contact me or Matthew Zappulla at mzappulla@auasb.gov.au

Yours sincerely,



Professor Roger Simnett AO
Chair

ATTACHMENT 1

Page 3

Element 1 – Assess the effectiveness of the provisions and the regulatory framework established by the ACNC Acts to achieve the objects

Forming an opinion over operational records s60-30

Overview of issue

Division 60 section 60-30 (3) & (4) of the ACNC Act requires, in the case of an audit or a review respectively, for the assurance provider to form an opinion/conclusion as to whether the registered entity has kept other records as required by this part. Further to this, s60-45 requires the auditor to report any contraventions of s60-30 in their audit opinion and s60-50 requires the same of a reviewer's report.

The record keeping required by that Part of the ACNC Act includes written financial records as well as operational records. However it is not clear what the operational records consist of, therefore making it difficult for the assurance practitioner to determine whether there have been any deficiencies, failures or shortcomings in relation to keeping of operational records.

Recommendation

We recommend that assurance practitioner **should not** be required to form an opinion over the operational records. However, if this requirement is retained in the Act, further clarification of what constitutes operational records and when it is considered that there have been deficiencies, failures or short comings in the records is needed.

Independence requirements s60-40

Overview of issue

Division 60 section 60-40 of the ACNC Act covers the need for a registered entity to obtain from its auditor or reviewer an independence declaration. The section does not clearly outline the format of the independence declaration, mainly whether it is a separate statement or whether a statement within an audit opinion or a review conclusion is sufficient. Paragraph Aus 28.1(c) of ASA 700 *Forming an Opinion and Reporting on a Financial Report* requires a statement of independence to be included within the audit opinion, often resulting in a duplication of this requirement for an independence declaration.

Recommendation

To remove this duplication for auditors and assurance professionals we recommend the review panel amend the wording of the Act to clearly state a separate independence declaration is only required if it does not form part of the audit opinion or review conclusion.

Auditor or reviewer to be provided with information and assistance s60-55

Overview of issue

The requirements outlined within this section of the ACNC Act are inconsistent with the requirements in paragraph 6 of ASA 210 *Agreeing the Terms of Audit Engagements*. This paragraph requires the auditor to obtain agreement from management that it acknowledges and understands its responsibilities which includes access to all information relevant to the preparation of the financial statements; additional information requested and unrestricted access to persons from the entity which have been determined by the auditor as necessary to obtain audit evidence. Whilst these conditions are similar to that of s60-55, the assurance standards go above and beyond the requirements, particularly because s60-55 is restricted by a request for information needing to be 'reasonable', which is not defined.

Recommendation

We recommend that the ACNC Act is amended to align with the requirements of management within the auditing standards or removed altogether as it is already an explicit requirement in the auditing standards and a precondition for an auditor to accept an audit or review engagement.

Reporting Framework

Overview of issue

The AUASB sees value in a wider conversation about the reporting requirements of registered charities. The AUASB is supportive of the ACNC, AASB and AUASB continuing to work together, and consulting with the sector, to develop a suitable reporting and assurance framework for charities, with the aim of ensuring that reporting and assurance is proportionate and consistent according to the size of the entity.

Whilst we consider the existing assurance standards are flexible and robust enough to provide assurance on different subject matters (including financial and non-financial information) and can be tailored to meet the needs of stakeholders, greater clarity and consistency of reporting requirements of across the sector will also lead to improved stakeholder outcomes when it comes to the auditing and assurance requirements of these entities.

Recommendations

Further work to be undertaken by the ACNC and AASB in consultation with the sector to develop a suitable reporting framework for registered charities, with the AUASB to participate in a similar exercise to determine the appropriate assurance requirements using the current assurance framework once the reporting framework has been finalised and agreed.

Overall review of assurance requirements of the ACNC Act

Overview of issue

As noted above the AUASB have identified three key areas of either duplication or inconsistency within the assurance sections of the ACNC Act.

Retaining duplicative or inconsistent assurance requirements creates unnecessary confusion for practitioners, and may result in inconsistencies between the requirements of the ACNC Act and the assurance requirements as the assurance standards are updated.

Recommendation

We recommend that the sections of the ACNC Act that address audit and assurance requirements are holistically reviewed to further clarify other inconsistencies and duplication of requirements with the auditing standards. Such a review would improve the coherence and clarity of the assurance requirements and ‘future proof’ the Act against subsequent updates made to the audit and assurance standards. This exercise would ensure ongoing compliance with s60-35 of the ACNC Act (“*Audit or review to be conducted in accordance with the auditing standards*”) and clarify how additional statutory reporting requirements (e.g. the *Corporations Act 2001* disclosures) should be applied.

Element 2 – Consider whether any amendments to the ACNC Acts are required to enable the achievement of the objects and to equip the ACNC Commissioner to respond to both known and emerging issues.

Auditor requirement to notify the ACNC of ‘significant’ contraventions of the ACNC Acts

Overview of issue

Under s311 and s601HG of the *Corporations Act 2001*, auditors are obliged to notify ASIC where they have reasonable grounds to suspect there have been contraventions of the *Corporations Act 2001*. There is no such provision within the ACNC Acts.

Recommendations

We recommend the inclusions of provisions similar to the *Corporations Act 2001*, requiring the appointed auditor to notify the ACNC of significant contraventions of the ACNC Act. However, the requirement to notify the ACNC of contraventions should be ‘significant’ contraventions only, with sufficient explanation of what is considered significant.

The need for only ‘significant’ contraventions is important, particularly if auditors or reviewers are required to report on operational records, which presently do not have clear guidance over what is considered an appropriate level of documentation.

Associated with this recommendation we would request that, if enacted, the ACNC produce guidance for auditors and assurance practitioners that provides clarity on what would be considered a ‘significant’ contravention of the ACNC Act, as ASIC have done in relation to the equivalent requirement under s311 of the *Corporations Act 2001*.