

15 May 2018

## UNDERTAKING SUMMARY

### **This is a summary of an undertaking accepted by the Australian Charities and Not-for-profits Commissioner from The Returned and Services League of Australia (New South Wales Branch)**

The Commissioner of the Australian Charities and Not-for-profits Commission (**Commissioner**) has accepted an undertaking from The Returned and Services League of Australia (New South Wales Branch) (ABN: 78 368 138 161) (**RSL NSW**) under section 90-10 of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**) on 14 May 2018.

This is a summary of the undertaking published in accordance with section 40-5(1)(f)(iii) of the ACNC Act.

#### **The Charity**

RSL NSW is a corporation established by section 3 of the *Returned and Services League of Australia (New South Wales branch) Incorporation Act 1935* (NSW). RSL NSW has been registered as a charity with the Australian Charities and Not-for-profits Commission (**ACNC**) since 3 December 2012 (i.e. on commencement of the ACNC). RSL NSW is also registered with the subtype of advancing social or public welfare. As per the Charity's objects, the Charity promotes the interests and welfare of current and former Australian Defence Force members and their families, and provides assistance and other relevant services.

RSL NSW's financial statements report that its revenue was over \$10 million and its total assets were in excess of \$60 million for the financial year ended 31 December 2017.

#### **Why the matter arose**

Charities registered with the ACNC must meet the governance standards under the ACNC Act to remain registered with the ACNC. There are five governance standards that set a core, minimum standard of governance. A charity is required to have appropriate and proportionate systems in place such as policies, processes and procedures, to ensure compliance with these standards.

In October 2016, the ACNC commenced an investigation of RSL NSW's compliance with the ACNC Act and the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) (**ACNC Regulation**). The investigation was prompted by concerns that RSL NSW former State President,



Mr Don Rowe had misused charitable funds. Furthermore, the ACNC held concerns that several members of the RSL NSW's State Council (RSL NSW's governing body) were receiving consultancy payments from an entity controlled by RSL NSW, RSL LifeCare Limited, which placed them in a conflict of interest. The ACNC's investigation focussed on RSL NSW's governance in relation to financial management and conflicts of interest.

In August 2017, RSL NSW was subject to a Public Inquiry headed by former NSW Supreme Court Justice the Honourable Patricia Bergin SC. The ACNC contributed substantial facts and evidence to the Inquiry and undertook to await the outcome of the Inquiry prior to finalising the investigation.

In February 2018, the Report of the Inquiry under the Charitable Fundraising Act 1991 (the **Bergin Report**) was publicly released. The Inquiry found that RSL NSW had not complied with its fundraising authority. Additionally, consistent with concerns identified by the ACNC, key findings included that:

- RSL NSW former State President Mr Rowe had engaged in substantial misuse of charitable funds;
- State Councillors holding office at the time had issued false and misleading statements about the circumstances surrounding Mr Rowe's resignation; and
- Those State Councillors had disregarded faulty mechanisms of approving Presidential expenses and did not conduct a wider investigation into Mr Rowe's use of his credit card or refer his conduct to the NSW Police Force.

### ***Response by RSL NSW***

Since the commencement of the ACNC investigation, RSL NSW has supplied information to the ACNC upon request and has acknowledged publicly the systemic issues with its governance and accountability, including inadequate financial controls and contradictory policies and procedures. RSL NSW has acknowledged that its State Councillors had been ignorant of their duties as directors and of fundraising law, and that they had engaged in a "cover up" regarding the reasons for Mr Rowe's resignation. RSL NSW requested the resignation of State Councillors who had served during the consideration of Mr Rowe's conduct and who still held positions on State Council, resulting in a largely refreshed State Council.

RSL NSW is in the process of taking remedial steps to address the ACNC's concerns. For example, RSL NSW is taking steps to implement a new expense management system, improved credit card policies and procedures, and a conflict of interest policy. The Charity has also commenced initiatives to increase the competencies of its State Councillors, and has appointed a Company Secretary as well as a General Counsel, and has taken external specialist advice regarding issues of conflicts of interest. RSL NSW was also taking steps to effect cultural change within the organisation including the implementation of a Whistle Blower hotline and adopting a zero-tolerance approach to fraudulent and criminal behaviour.



### ***Regulatory action – enforceable undertaking***

Pursuant to subsection 90-10 of the ACNC Act, the Commissioner may accept a written undertaking given by a registered entity that is a federally regulated entity.

Once accepted by the Commissioner, the Commissioner may apply to a designated court for orders in relation to the Charity under s 90-15 of the ACNC Act, including an order directing the Charity to comply with the undertaking.

In November 2017, RSL NSW proposed to the ACNC that it enter into an enforceable undertaking with the ACNC to address the concerns identified. In March 2018, following the conclusion of the Bergin Inquiry, RSL NSW proposed a form of undertakings for the ACNC's consideration. The Commissioner has accepted an undertaking from RSL NSW to take specific actions to comply with the following governance standards and obligations:

1. **Governance standard 5** which requires a charity to take reasonable steps to ensure its responsible persons are subject to, and comply with, their duties under governance standard 5 (section 45.25(2) of the ACNC Regulation) including the duties:
  - i. to exercise the responsible person's powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a responsible person of the registered charity (section 45.25(2)(a))
  - ii. to act in good faith in the registered charity's best interests, and to further its purposes (section 45.25(2)(b))
  - iii. to ensure that the registered charity's financial affairs are managed in a responsible manner (section 45.25(2)(f)).
2. **Governance standard 1** which requires a charity take reasonable steps to comply with its purposes and character as a not-for-profit entity (section 45.5(2)(c) of the ACNC Regulation)
3. **Operational record-keeping** obligation which requires that a charity keep certain operational records (section 55-5(2) of the ACNC Act)

In summary, the undertaking requires RSL NSW to:

#### Governance

1. Ensure that all State Councillors (RSL NSW's responsible persons) complete a course with the Australian Institute of Company Directors within six months of their appointment, or within six months of entering into the undertaking (whichever is later).
2. Develop a State Council induction document outlining the obligations and duties of State Councillors, which will be provided to all State Councillors appointed after RSL NSW enters into the undertaking.



3. Implement and adopt, within 60 days of entering into the undertaking, a policy that all State Councillors shall familiarise themselves with specific ACNC guidance materials within one month of their appointment.
4. Continue to employ a suitably qualified executive management team which includes a General Manager/Chief Executive Officer, Company Secretary and at least one employed Legal Counsel.

#### Conflicts of interest

5. Maintain a conflicts of interest policy that addresses the declaration and management of perceived or actual conflicts of interest involving RSL NSW's State Councillors or arising from State Councillors having roles with any entity, trust or organisation that is related to or affiliated with RSL NSW.
6. Include declarations of conflicts of interest as a standing agenda item on all State Council meeting agendas.
7. Maintain a Conflicts of Interest register.
8. Create, within 60 days of entering into the undertaking, and maintain a register of related party transactions.

#### Transparency

9. Maintain an externally managed whistle blower hotline, with a link to the hotline contact details on RSL NSW's website.
10. Publish details of expenditure incurred by State Councillors for the purposes of RSL NSW on RSL NSW's website.
11. Develop, within 90 days of entering into the undertaking, and adopt the following:
  - a. a Code of Conduct for all responsible persons and employees;
  - b. a Fraud Prevention Policy;
  - c. an internal complaints handling procedure, which will include reporting and escalation procedures;
  - d. a risk management policy; and
  - e. a risk register.

#### Financial management and accounting

12. Maintain a significant contracts register.
13. Implement, by 30 December 2018, and maintain a financial accounting system that accurately records the source of all funds received, including by separately identifying funds received from charitable fundraising appeals, and accurately records how funds received from particular sources are distributed or spent.
14. Maintain expenses policies and procedures that:
  - a. Regulate the reimbursement of expenses incurred by State Councillors and employees of RSL NSW for the purposes of RSL NSW;
  - b. Regulate the use of credit cards issued to State Councillors and employees for expenditure incurred for the purposes of RSL NSW;



- c. Require State Councillors and employees to keep records of their expenses and in exceptional circumstances where no record is kept, to provide a statutory declaration describing the nature of the expense; and
  - d. Ensure that all expense reimbursement claims and credit card expenses are properly reviewed and verified as falling within RSL NSW's expenses policies.
15. Maintain a financial delegations matrix that clearly identifies limits and policies in relation to expenditure incurred by particular State Councillors and employees.

The undertaking aims to ensure that RSL NSW does not contravene its obligations under the ACNC Act and ACNC Regulation in future. The undertaking covers a three year period and requires RSL NSW to provide quarterly reports to the ACNC regarding its compliance with the undertaking during the first 12 months, and provide annual reports for the remainder of the undertaking. RSL NSW shall include in the reports:

- a. Copies of all policies, procedures and other documentary evidence specified in the undertaking;
- b. Relevant extracts of meeting agendas and minutes of State Council or Committee meetings;
- c. Details of any material non-compliance with the policies and procedures adopted by the Charity and any steps taken to address that non-compliance; and
- d. An evaluation of the effectiveness of the remediation steps in addressing the ACNC's concerns.

The Commissioner considers that the above actions are appropriate to address the Commissioner's concerns with RSL NSW's compliance with the above-mentioned governance standards and record keeping obligations taking into account:

- the serious and complex nature of governance issues identified;
- that the majority of RSL NSW's leadership has been replaced since the issues were brought to light; and
- RSL NSW's commitment to taking remedial actions to ensure future compliance.