

15 May 2018

UNDERTAKING SUMMARY

This is a summary of an undertaking accepted by the Australian Charities and Not-for-profits Commissioner from RSL LifeCare Limited

The Commissioner of the Australian Charities and Not-for-profits Commission (**Commissioner**) has accepted an undertaking from RSL LifeCare Limited (ABN: 43 000 048 957) (**RSL LifeCare**) under section 90-10 of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**) on 9 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 LifeCare is a company limited by guarantee incorporated in New South Wales under the *Corporations Act 2001* (Cth) and 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 LifeCare was established in 1911 as a home for returning war veterans, and operates villages and services throughout New South Wales and the Australian Capital Territory for both younger and older veterans and other deserving persons in need.

RSL LifeCare is a subsidiary of The Returned and Services League of Australia (New South Wales Branch (**RSL NSW**)), with the directors of RSL LifeCare being appointed by RSL NSW. The members of RSL LifeCare are each of the entity's directors and RSL NSW. RSL NSW is the sole corporate member of RSL LifeCare and has certain class voting rights under the RSL LifeCare constitution.

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 LifeCare'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, which were reported in the media, that directors were receiving consultancy payments in breach of its constitution. The scope of the ACNC's investigation at the outset was to determine the appropriateness of these payments and whether RSL LifeCare had sufficient governance arrangements in place to manage any actual or perceived conflicts of interest arising from the consultancy payments.

In August 2017, RSL LifeCare 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, with key findings including that:

- RSL LifeCare had failed to comply with its fundraising authority under the *Charitable Fundraising Act 1991* (NSW).
- RSL LifeCare directors had approved their own consultancy contracts and approved increases in their own consultancy fees, placing them in a conflict of interest and resulting in a breach of their obligations to RSL LifeCare.
- RSL LifeCare had paid attendance fees for directors, staff, residents and partners to attend functions facilitated by the Liberal Party of Australia for local Members of Parliament in the electorate in which RSL LifeCare is located or surrounding electorates without due consideration on each occasion as to whether such attendance was compatible with RSL LifeCare's charitable purposes.

Response by RSL LifeCare

Since the commencement of the ACNC investigation, RSL LifeCare has supplied information to the ACNC upon request and has acknowledged the deficiencies in its governance. RSL LifeCare outlined the remedial steps it was taking to address the ACNC's concerns. These steps include that RSL LifeCare ceased making consultancy payments to its Directors in October 2016; RSL LifeCare advised that none of its current directors has been recipients of consultancy fees. RSL LifeCare has adopted a Conflict of Interest Policy and Conflict of Interest Register, and Conflicts of Interest is a standing item on the agendas of board meetings.

In December 2017, RSL LifeCare amended its constitution to permit the payment of director remuneration for a director's ordinary service as a director and provides mechanisms to manage any conflicts which have the potential to arise. RSL LifeCare established an Independent Remuneration Panel external to the Charity, and has adopted a Director Remuneration Policy to ensure that decision making functions relevant to the setting and payment of remuneration to directors are made independently and at arm's length from the Board.

Regarding attendance at functions hosted or attended by local members of Parliament and facilitated by the Liberal Party of Australia, RSL LifeCare recovered funds from the Liberal Party of Australia it had paid for attendance at relevant political fundraisers. RSL LifeCare adopted a Political Advocacy Policy in February 2017, which restricts attendance at fundraising events which are primarily political



fundraisers. The policy requires all employees, directors and personnel to consider and establish alignment with RSL LifeCare's charitable purposes and obtain approval from the Chair/CEO prior to attending such events. This policy will be further reviewed and, if required, updated during 2018.

RSL LifeCare is conducting an on-going governance review, and has implemented a range of measures to enhance its focus on a comprehensive risk and compliance framework, including the procurement and implementation of an enterprise Governance Risk Management, Compliance Platform. The Charity has commenced providing tailored corporate governance training to the Board in relation to the Charity's obligations under the ACNC Act and in relation to its fundraising activities and further relevant training opportunities will be identified to the Board.

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 August 2017, RSL LifeCare proposed to the ACNC that it enter into an Enforceable Undertaking with the ACNC to address the concerns identified. In March and April 2018, following the conclusion of the Bergin Inquiry, RSL LifeCare provided details of proposed undertakings for the ACNC's consideration. The Commissioner has accepted an undertaking from RSL LifeCare to take specific actions to ensure compliance with the following governance standards:

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 disclose perceived or actual material conflicts of interest of the Charity (section 45.25(2)(e))
 - 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)).
 - iv. 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))



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)

In summary, the undertaking requires RSL LifeCare to:

1. Review, develop and adopt (as applicable) within 60 days of the undertaking:
 - a. A revised Code of Conduct which applies to its responsible persons
 - b. A revised Risk Management Framework which includes a Risk Management Policy
 - c. A revised Director Induction Programme
 - d. A Director Professional Development Policy that requires the Charity to identify to the Directors at each Board meeting relevant training opportunities
2. Monitor and evaluate the effectiveness of, the remediation steps that have been implemented (or are in the process of being implemented), including:
 - a. The implementation and ongoing compliance with governance policies including Political Advocacy, Conflicts of Interest, Related Party Transactions, and Risk Management
 - b. Risk management and compliance reporting (including the Risk Management Matrix and Administrative Compliance reporting)
 - c. Reviewing ongoing governance training by the Responsible Persons
 - d. The functions of the Independent Remuneration Panel
 - e. The implementation of the Director Remuneration Policy
 - f. The review of Board performance (to include a review of Directors' education and training and conference attendance to ensure both general governance skills and specific industry skills)
3. Provide updates to the ACNC regarding the steps taken to implement recommendations from an on-going governance review by an independent consultant
4. Notify the ACNC of any material non-compliance with any of the policies.

The undertaking aims to ensure that RSL LifeCare takes the required action to ensure it is fully compliant with its obligations under the ACNC Act and ACNC Regulation. The undertaking covers a three year period and requires RSL LifeCare to provide quarterly reports and supporting evidence to the ACNC regarding its compliance with the undertaking during the first 12 months, and provide annual reports with supporting evidence for the remainder of the undertaking.

The Commissioner considers that the above actions are appropriate to address the Commissioner's concerns with RSL LifeCare's compliance with governance standards 1 and 5, taking into account:

- the serious and complex nature of governance issues identified;
- that all directors who received a consultancy fee have left the Board since the issues were brought to light; and



- the significant remedial action implemented by the Charity since the ACNC investigation commenced and the Charity's commitment to ongoing remedial actions to ensure future compliance.