

ENFORCEABLE UNDERTAKING SUMMARY

This is a summary of the undertaking accepted by the Australian Charities and Not-for-profits Commission as given by Yipirinya School Council Incorporated, dated 16 January 2015, inclusive of a variation to the undertaking dated 29 July 2016.

On 16 January 2015, an undertaking was accepted by the Australian Charities and Not-for-profits Commissioner from Yipirinya School Council Incorporated (ABN 54 904 801 140) (the Council) for the purpose of Division 90 of the *Australian Charities and Not for profits Commission Act 2012* (the Act). This summary was published under s.40-5(f)(iii) of the Act.

The undertaking seeks to address the matters of concern raised with the Council in regards to the following provisions:

1. Section 55-5(1) of the Act requires that registered charities must keep written financial records that correctly record and explain its transactions and financial position and performance and enable true and fair financial statements to be prepared and to be audited so as to enable any recognised assessment activity to be carried out in relation to the registered charity. Recognised assessment activity is provided for under section 55-10 of the Act.
2. Section 45.10(2) of *Australian Charities and Not for Profits Commission Regulation 2013* (the Regulation) requires that a registered charity that has members must take reasonable steps to ensure that it is accountable to its members and that its members have an adequate opportunity to raise concerns about the governance of the registered charity.
3. Section 45.25(2) of the Regulation provides that a registered charity must take reasonable steps to ensure that its responsible entities are subject to and comply with, amongst others, the following duties:
 - a. to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a responsible entity of the registered charity (subparagraph 45.25(2)(a) of the Regulations);
 - b. to act in good faith in the registered charity's best interests and to further the purposes of the registered charity (subparagraph 45.25(2)(b) of the Regulations);
 - c. to disclose perceived or actual material conflicts of interest of the responsible entity, where a perceived or actual material conflict of interest that must be disclosed includes a related party transaction (subparagraph 45.25(2)(e) of the Regulations); and
 - d. to ensure that the registered charity's financial affairs are managed in a responsible manner (subparagraph 45.25(2)(f) of the Regulations).

The undertakings:

The Council undertakes to address the above provisions (within a specified timeframe) and improve its financial record keeping and financial and operational governance by reference to the following:

- enhance financial accountability by putting in place internal controls and financial accountability mechanisms, including in relation to Deductible Gift Recipient donations and related party transactions;
- ensure all responsible persons receive appropriate governance training, including training as to legal duties and responsibilities;
- establish an Advisory Committee as provided for in the Council's constitution;
- implement policy and procedures for the disclosure and management of conflicts of interest;
- improve the running of Management Committee meetings by developing and implementing policies and procedures to facilitate its effective operation;
- develop and implement a complaints handling policy and procedure(s) and for this to be communicated to members; and

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- ensure sufficient notice is given of an Annual General Meeting so that all members have an opportunity to attend.

Variation

On 26 June 2015, the Council requested a variation to the enforceable undertaking. The ACNC Commissioner agreed to the variation and subsequently removed the undertaking that the Council “establish an Advisory Committee as provided for in the Council’s constitution”.

Response from the Council

Between 10 April 2015 and 27 May 2016, the Council provided information to the ACNC to demonstrate the Council’s compliance with the undertakings outlined in the enforceable undertaking (as varied by its 26 June 2015 request).

The ACNC Commissioner accepted the Council’s response, and considers Yipirinya School Council Incorporated has complied with the requirements of the enforceable undertaking.