

19 February 2018

DIRECTION SUMMARY

This is a summary of the direction issued by the Australian Charities and Not-for-profits Commission to The Returned & Services League of Australia Limited

The Commissioner of the Australian Charities and Not-for-profits Commission (**ACNC**) has issued a direction to The Returned & Services League of Australia Limited (ABN: 63 008 488 097) (**RSL National**) under section 85-5(1)(b)(i) of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**) on 14 February 2018.

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

Why the matter arose

The ACNC commenced an investigation of RSL National's compliance with the ACNC Act and the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) (**ACNC Regulation**). The scope of the investigation included a review of gifts made by RSL National to the outgoing RSL National President in June 2016. The items gifted to the former National President were a vehicle at an approximate value of \$27,434 and a set of books at a purchase price of \$3,600. Based on the investigation findings, the Commissioner reasonably believes that the Charity has not complied with the following obligations:

1. **Governance standard 1** (section 45.5(2)(c) of the ACNC Regulation) – A registered charity must comply with its purposes and its character as a not-for-profit entity;
 - i. The Commissioner considers that gifts made by RSL National to the former RSL National President as identified in the ACNC investigation is inconsistent with RSL National's not-for-profit character and therefore a breach of governance standard 1.
2. **Governance standard 5** (section 45.25(2) of the ACNC Regulation) – A registered charity must take reasonable steps to ensure that its responsible persons are subject to, and comply with, the following duties:
 - to exercise the responsible person's powers and discharge the responsible person's duties with the degree of care and diligence that a reasonable individual would exercise if they were a responsible person of the registered charity;
 - i. In the Commissioner's view, RSL National did not take reasonable steps, proportionate to its size and complexity, to ensure its responsible



- persons exercised this duty as it applies to financial decision-making; and
- ii. In the Commissioner's view, RSL National did not take reasonable steps to ensure its responsible persons had an adequate and consistent understanding of their responsibilities and expectations as responsible persons.
- to ensure that the registered charity's financial affairs are managed in a responsible manner.
 - i. In the Commissioner's view, RSL National did not take reasonable steps to ensure compliance by its responsible persons with regards to financial decision-making; and
 - ii. In the Commissioner's view, RSL National did not take reasonable steps, proportionate to its size and complexity, such as implementing tailored financial management policies, procedures and financial delegations, to ensure all expenditure is properly considered, authorised and documented in line with RSL National's Constitution and not-for-profit character.

Response by RSL National

During the course of the ACNC investigation, RSL National has supplied the ACNC with information requested and has taken some steps towards addressing the ACNC's concerns. For example:

- RSL National initiated an independent review of the circumstances surrounding the gifts to the former RSL National President;
- RSL National obtained financial restitution for the full disposal value of the vehicle and return of the books; and
- some work has commenced on the development of key governance documents.

Further, on 1 February 2018 the ACNC informed RSL National of the investigation findings, outlining the assessed non-compliance with the relevant governance standards and the intention to issue a direction, and provided RSL National with an opportunity to respond prior to a decision being made to issue a direction.

On 7 February 2018, RSL National responded to the ACNC's above-mentioned correspondence to advise that the Board will comply with the direction as outlined.

Regulatory action - Direction

Under section 85-5 of the ACNC Act, the Commissioner may give a charity a written direction if the Commissioner reasonably believes that the charity has contravened or not complied, or it is more likely than not will contravene or will not comply, with a provision of the ACNC Act or a governance standard. The Commissioner can direct a charity to act or not to do a particular act that is necessary to address the contravention or non-compliance or to prevent the likely contravention or non-compliance. The failure to comply with a direction is an offence under the ACNC Act.

In response to the ACNC investigation findings, the Commissioner has directed RSL National to take specific action to address the non-compliance with the above-mentioned governance standards.



Specifically, the Commissioner has directed RSL National to:

1. Select a Governance Expert who has the necessary experience and knowledge of not-for-profit entities to conduct the following in accordance with a scope of works specified by the Commissioner:
 - a. A Board Review;
 - b. A Governance Review; and
 - c. Prepare a written report in consultation with RSL National, outlining an Action Plan to be implemented based on the Board and Governance Review findings.
2. Request written approval from the Commissioner to engage the Governance Expert selected by RSL National, which must include an overview of the Governance Expert's experience and qualifications for the Commissioner's assessment.
3. Within 4 months from the date of engaging the Governance Expert, the Charity must submit an Action Plan, prepared with the Governance Expert and approved by the Board, to the Commissioner for approval.
4. RSL National is to pay all costs associated with engaging the Governance Expert.

The Commissioner considers that the appointment of a Governance Expert as summarised above is necessary to address the non-compliance with the above-mentioned governance standards, taking in to account the complexity and number of governance issues identified, RSL National's inadequate response to date to take action to ensure it is fully compliant with its obligations under ACNC legislation and the ongoing risk of further non-compliance with possible regulatory consequences for RSL National.