

Bulletin

Wednesday 11 May 2011



A New Regulator - A New Tax

The Devil will be in the detail

The Gillard Government announced a range of budget measures last night (10 May 2011) that will have an impact upon the Charities and Not-For-Profit sector.

The Government has promoted these significant changes on the basis that they will make dealings with the Federal Government easier and reduce red tape. However, it is by no means certain that these measures will reduce red tape – rather than increase it!

The main announcements are as follows:

Australian Charities and Not-For-Profits Commission

The Government will establish a new statutory authority to be known as the Australian Charities and Not-For-Profits Commission (**ACNC**). The ACNC will be operative from 1 July 2012 and will initially be responsible for determining charitable, public benevolent institution and other NFP status for all Commonwealth purposes. We understand that it is likely that the Australian Taxation Office will provide back of office support to the ACNC in carrying out its role.

In addition to taking responsibility for determining the status of charities and NFPs, the ACNC will be responsible for implementing a “*report–once use–often*” general reporting framework for charities and NFPs which if successful is likely to provide significant benefits to those in the sector who are required to report to a number of different Government agencies. Support by State agencies in accepting this form of reporting would provide even greater benefits to the sector.

The ACNC will also be responsible for establishing a public information portal (by 1 July 2013), undertaking reviews of companies limited by guarantee, NFP fund raising and governance obligations appropriate for NFP entities. These issues were identified in the recent scoping paper issued by the Government.

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Statutory Definition of Charity

The Government is determined to introduce a statutory definition of “charity” applicable across all Commonwealth agencies from 1 July 2013.

Currently, whether an NFP is entitled to endorsement as a charity is determined by the application of laws developed over 400 years through judgments handed down in the Courts. Over this period of time, there is, in our view, a sufficient level of certainty around the definition.

As was evident when the Government looked to implement a statutory definition of charity in 2001, there are winners and losers out of any attempt to codify common law provisions particularly principles that have developed over a long period of time. The imposition of a statutory definition of charity is likely to be controversial.

The Government has, however, indicated that it will take into account the findings of recent judicial decisions including the *AID/Watch Incorporated v Commissioner of Taxation* decision which included some advocacy based organisations within the definition of charity.

New Income Tax Arrangements

Probably the most controversial of the announcements is that the Government will be looking to impose taxation on certain entities which currently qualify for income tax exemption as “charities”. These changes are being dressed up as “better targeting of Not-For-Profit tax concessions”.

NFP entities will pay income tax on profits from their unrelated commercial activities that are not directed back to their altruistic or charitable purpose, ie earnings retained in their commercial undertaking rather than the charity itself. An example provided by the Government is that the Seventh Day Adventists will have to use all of Sanitarium’s profits for charitable purposes otherwise Sanitarium will be subject to income tax.



The Government has indicated that these reforms will not affect the use of tax concessions to further an NFP’s altruistic purpose even where the charitable operation is conducted commercially. Examples of this type of related commercial activity include Not-For-Profit hospitals, op shops that sell second hand household items and clothing at discount prices to those in charitable need, NFP childcare centres and businesses whose purpose is to provide meaningful employment to disabled persons.

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Similarly, the reforms are not intended to affect NFP entities carrying out small scale and low risk fund raising activities such as lamington drives, school fetes and the casual leasing of church halls.

These new arrangements will commence on 1 July 2011 and will initially affect only new unrelated commercial activities that commence after 7:30 pm (AEST) on 10 May 2011. They will be phased in for pre-existing activities.

These new tax arrangements are likely to have some sting in their tail. It is quite probable that unrelated commercial activities undertaken by charities will require the charities to obtain significant and regular legal and tax advice which was not previously required to ensure that they comply with appropriate accounting standards and legal requirements. These entities will need to pay particular attention to any amounts retained by them in the unrelated commercial

structure and may find themselves liable to tax in respect of reserves which the Board of that entity consider prudent to be retained for the future financial security of the entity.

These announcements generally sound positive for the sector and the Government has expressed a view that these changes are intended to make it easier for the Not-For-Profit sector to deliver vital assistance to Australia's most vulnerable people.

Notwithstanding these intentions, the devil will be in the detail and time will tell whether these changes in fact reduce red tape or have the effect of increasing red tape and administration.



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