

Issue 2, 2011

Dear Subscriber,

The Honourable Wayne Swan, Treasurer of Australia, presented the 2011-2012 Federal Budget to Parliament on 10 May 2011. It contained a number of issues relevant to the not-for-profit sector. We will explore these issues in this edition of the Not-For-Profit Law Notes so that you know what to keep track of in the coming months and into the future!

The new “Unrelated Business Income Tax”

The Government plans to restrict its not-for-profit tax concessions so that they only apply to profits generated by unrelated commercial activities that are directed back to a not-for-profit entity to carry out its altruistic work. In other words, not-for-profit entities will pay income tax on profits from their unrelated commercial activities that are not directed back to their altruistic purpose.

The tax will affect new unrelated commercial activities that commence after 10 May 2011, and will commence on 1 July 2011. This tax will not “initially” apply to existing unrelated commercial activities. The Government does plan however to apply the tax to existing unrelated commercial activities over time.

It is unclear why the Government has decided to enact this tax, or to what the tax will apply. There is a concern that the tax will only cause uncertainty and may lead to not-for-profits spending more on their legal and accounting advisors in order to structure their affairs to avoid the tax. If this is the case, the Government will not receive much revenue from a tax which serves only as a burden upon the not-for-profit industry. The Government will release further details about the implementation of this tax as 1 July 2011 approaches. We recommend that you keep abreast of these developments so that you know how they may affect your organisation.

An “Australian Charities and Not-for-Profit Commission”

There has been much discussion in the last few years about a possible “one-stop shop” for all not-for-profit organisations to report to. As you know, reporting requirements in the not-for-profit sector are often quite frustrating and inefficient, as

a not-for-profit organisation may need to produce the same information numerous times to different agencies. In response to this state of affairs the Government has announced that an Australian Charities and Not-for-Profit Commission will be established to commence on 1 July 2012 to resolve these issues.

This new Commission has the potential to be either a great boon or burden for the not-for-profit sector. Much will depend upon the nature of its implementation. Not much is known at this stage other than it will be independent of the Australian Tax Office. This new initiative will be followed with great interest.

A new statutory definition of “charity”

The question of what constitutes a charity has vexed not-for-profit organisations, legal practitioners and governments for centuries. The situation in modern Australia is not helped by the fact that different agencies within Australia have adopted different definitions of “charity”. In this budget the Government has announced that a statutory definition of charity will be introduced to be applicable to all Commonwealth agencies to come into effect on 1 July 2013. While it will be based on the 2001 Report of the Inquiry into the Definition of Charities and Related Organisations, its final form is not yet known.

The potential benefits of this development are again dependent upon its application. While it may go some way towards providing certainty within the not-for-profit sector, if the definition is too narrow it may have devastating effects on some organisations. If it is too broad it may devalue the notion of what it means to be a not-for-profit organisation. Finally, regardless of the nature of the definition, it will not resolve the fact that there will still be State agencies using different definitions of charity.

A new definition of charity may be very helpful for the not-for-profit sector if it is clear and comprehensive and applied throughout Australia at the local, State and Federal levels. It remains to be seen whether this goal is in fact achievable.

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