

## Charities Alert

January 2014

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- An update on the Charities Act and the proposed tax law reform
- An overview of the present position with the Commonwealth's agenda for the not-for-profit reform

### Update on the Charities Act and the proposed tax law reform

#### Statutory definition of charities

The *Charities Act 2013* took effect on and from 1 January 2014. The *Charities Act 2013* sets out the legal meaning of charity for the purposes of all Commonwealth laws. Refer to our previous [Charities Alert – June 2013](#) for more details.

The *Charities (Definition of Government Entity) Instrument 2013* prescribes the types of Government entities established under a law by a State or Territory that are excluded from the definition of 'charity' for the purposes of all Commonwealth laws.

#### Update on tax law reform for NFPs

In the Government media release, 'Integrity Restored to Australia's Taxation System', dated 14 December 2013, the Government announced that it will no longer proceed with changes to the law dealing with:

- Taxing NFPs for conducting certain commercial activities (refer to our previous [Charities Alert – May 2011](#)). This decision will be welcomed by most Not-for-Profits (**NFPs**) because had the Government proceeded with these changes, it would have created considerable difficulties for those NFPs that conduct commercial activities to generate funds to advance their charitable objectives;
- The proposed new definition of 'not-for-profit' in the

tax law (refer to our previous [Charities Alert – May 2012](#)). We are sorry this is not proceeding. Had the proposed new definition of 'not-for-profit' in the tax law proceeded, it would have given a significant concession for groups of income tax exempt entities, as one entity in a group may have been able to distribute to its member (eg the controlling entity) in circumstances where this is not currently permitted. Therefore, the current restrictions on NFPs making distributions to a member remain in force.

The Government will proceed with some other changes to the law dealing with tax exemptions and concessions for charities (reforming the 'in Australia' requirements that apply to tax exempt entities) (refer to our previous [Charities Alert – May 2012](#)). [Click here](#) for media release.

Refer to the table on the following page for an overview of the status of the Commonwealth's agenda for the NFP reform.

#### Ancillary funds

The Australian Taxation Office (**ATO**) has updated the model trust deeds for ancillary funds in light of the enactment of the *Charities Act 2013*.

Also, funds that are currently endorsed by the ATO as Income Tax Exempt Funds (**ITEFs**) will be transitioned into new arrangements - ITEFs are funds that provide money, property and benefits to tax exempt DGRs, whether or not the DGR is charitable.

[Click here](#) to view the ATO's Non-Profit News Service No. 0407, for more detailed information and copies of the updated model trust deeds for ancillary funds.

## ACNC replacement

The Government has made plans for the Centre for Excellence to replace the outgoing Australian Charities and Not-for-profits Commission (ACNC). It is planned that the Centre for Excellence would act to support the not-for-profits sector, with regulatory functions of charities being undertaken by the ATO. It is still not clear to what extent the Commonwealth proposes ongoing control of the

registration of charities, their reporting and public availability of information about them.

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## Reforms for the NFP sector

An overview of the present position with the Commonwealth's agenda for the not-for-profit reform

Development Area	Status
<p><b>Taxing NFPs for conducting unrelated commercial activities</b></p> <ul style="list-style-type: none"> <li>• <i>Consultation Paper: Better Targeting of NFP Tax Concessions</i> was released on 27 May 2011. The previous Government sought public views on possible approaches to implement the Government's Budget announcement to better target NFP tax concessions to the altruistic activities of NFPs.</li> </ul>	<p>The Government announced that it will no longer proceed with these changes.</p>
<p><b>Restating and standardising the special conditions for tax concession entities</b></p> <ul style="list-style-type: none"> <li>• On 23 August 2012, the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 was introduced into parliament to restate and standardise the special conditions for tax concession entities.</li> <li>• It ensures that income tax exempt entities generally must be operated principally in Australia and for the broad benefit of the Australian community; and deductible gift recipients generally must be operated solely in Australia and for the broad benefit of the Australian community.</li> <li>• Broadly, it also requires income tax exempt entities to comply with all the substantive requirements in their governing rules, and to be 'not-for-profit' entities.</li> <li>• It standardises the term 'not-for-profit'.</li> </ul>	<p>The exposure draft legislation was expected in 2013. The proposed new law will apply to determine whether an entity is entitled to be or remain income tax exempt/DGR for income years following Royal Assent.</p> <p>The Government announced that it will proceed with these changes, other than the changes to the law dealing with the proposed new definition of 'not-for-profit' in the tax law.</p>
<p><b>Tax concessions for the NFP sector</b></p> <ul style="list-style-type: none"> <li>• The Not-for-Profit Sector Tax Concession Working Group Discussion Paper was released on 2 November 2012. It raises issues relating to tax concessions that the Group believed important to consider.</li> </ul>	<p>Submissions on the discussion paper were due 17 December 2012. The Working Group was expected to provide the final report to Government by March 2013. Exposure Draft was expected in 2013.</p>
<p><b>Australian Charities and Not-for-profits Commission (ACNC)</b></p> <ul style="list-style-type: none"> <li>• The Australian Charities and Not-for-Profits Commission Act 2012 and the Australian Charities and Not-for-Profits Commission (Consequential and Transitional) Act 2012 apply on and from 3 December 2012. The ACNC commenced formal operation on that date. These Acts establish the ACNC, set out the objects and functions of the ACNC, and provide a regulatory framework for charities and the NFP sector.</li> <li>• The <i>Australian Charities and Not-for-profits Commission Regulation 2013</i> was released. The regulation specifies governance standards which registered entities must comply with. It also specifies circumstances in which the ACNC Commissioner should withhold information on the ACNC register in certain circumstances. It specifies the requirements for annual financial reports.</li> </ul>	<p>The ACNC commenced operation on 3 December 2012. It determines charitable status, including public benevolent institution status, for all Commonwealth purposes, provides education and support to the sector, and administers a regulatory and reporting framework for the sector.</p> <p>The ACNC implements a general reporting framework and a public information portal.</p> <p>The Government has announced it will scrap the ACNC. It is still not clear to what extent the Commonwealth proposes ongoing control of the registration of charities, their reporting and public availability of information about them.</p>

Development Area	Status
<p><b>Statutory definition of charity</b></p> <ul style="list-style-type: none"> <li>The legislation for the statutory definition of charity - <i>Charities Act 2013</i> and <i>Charities (Consequential Amendments and Transitional Provisions) Act 2013</i> were assented on 29 June 2013 and 28 June 2013 respectively.</li> <li><i>The Charities(Definition of Government Entity) Instrument 2013</i> prescribes types of government entities established under a law by a State and Territory which, by virtue of its status as a government entity, will be excluded from the definition of 'charity' for the purposes of all Commonwealth laws.</li> </ul>	<p>The new legislation became effective on and from 1 January 2014.</p>
<p><b>Banning gag clauses</b></p> <ul style="list-style-type: none"> <li><i>Not-for-profit Sector Freedom to Advocate Act 2013</i> commences on and from 14 June 2013 to prohibit Commonwealth agreements from restricting or preventing not-for-profit entities from commenting on, advocating support for or opposing changes to Commonwealth law, policy or practice, and for related purposes.</li> </ul>	<p>The legislation applies to all Commonwealth agreements with the NFP sector, regardless of whether they were entered into before the commencement of the legislation.</p>
<p><b>Charitable fundraising regulation reform</b></p> <ul style="list-style-type: none"> <li><i>Charitable fundraising regulation reform - Discussion paper and draft regulation impact statement</i>, was released in February 2012.</li> </ul>	<p>Submissions on the discussion paper were due 5 April 2012. The latest ACNC's comment is that '(t)his project will be developed in the future'. However, there has been no further development to date.</p>
<p><b>Review of companies limited by guarantee</b></p> <ul style="list-style-type: none"> <li>The previous Government was working on a consultation paper on its review of the company limited by guarantee structure, and its continuing appropriateness for NFP entities.</li> </ul>	<p>The consultation paper was expected to be issued in mid 2013. However, there has been no further development to date.</p>

Current as at 28 January 2014

For further information, please [click here](#) to contact our national Charities team