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Commercial Law e-alert

Charity (reform) begins at last

Addressing the Charity Law Association annual conference in Melbourne on 23 September 2011, Assistant Treasurer and Minister for Financial Services and Superannuation Bill Shorten reconfirmed the Government's commitment to charity and not-for-profit ("third") sector reform as announced in this year's Federal Budget.

The process toward reform of the sector has kicked off, but there is still a very long way to go, not least because real reform, as in so many other areas of Australian law, will depend eventually on persuading all State and Territories to cede their regulatory powers to a new federal regulator.

The kick off:

1. The proposed new federal regulator for the sector, the Australian Charities and Not-For-Profits Commission (ACNC), is to be established from 1 July 2012. The taskforce that is charged with its implementation by that date has also been asked to open up dialogue now with the States and Territories about its eventually taking over the regulation of the sector from them, but in the meantime the Commission will be restricted to a short list of limited activities including determining not-for-profit status for all Commonwealth purposes.

2. The government has announced that from 1 July 2013 there will be a new statutory definition of "charity", which will be used by the ACNC in place of the existing common law definition. It is important to note however that the consultation process on the development of this definition has yet to commence, and the question of how "charity" should be defined for today's purposes is undoubtedly a very big question, which is why we have made do with the 400 year old common law definition to date.
3. The proposed new third sector tax, on unrelated business income, was intended to have effect as soon as possible after the budget announcement, but it too is still in the consultation phase and we do not have draft legislation for it yet. Indeed, the Minister referred in his address to beginning "the process of developing exposure draft legislation" so it would seem that the first blow is still yet to be struck in this regard.
4. The reforms will apply to all not for profit organisations, big and small, ranging from companies limited by guarantee and incorporated under the *Corporations Act 2001 (Cth)* to associations incorporated under state legislation.

We have a number of third sector clients and are keeping an eye on developments in this space.

Please let us know if you need help or advice in participating in the dialogue with government concerning this major reform.

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