

# Not for Profit Alert – The Henry Tax Review

May 2010

## A Time Saving Guide to Dr Henry's Report

*(Or how to appear well-read on the Australia's Future Tax System Report and its effects on Not-for-Profits)*

### ***Not-for-Profits are good for Australia***

Dr Henry affirms the "highly valued contribution of not for profits to community welfare" (page 43) and makes some constructive suggestions for reform. The recommendations are set out below.

### ***Do no harm to Not-for-Profits says Mr Rudd***

[The Prime Minister's response](#) says that the government will not change the tax system to harm the not-for-profit sector including removing tax concessions, raising the gift deductibility threshold or changing income tax arrangements for Clubs

Net result? Business as usual for not-for-profits with potential for "good changes only". There must be votes in charities in an election year.

## OUR SUMMARY

- Henry recommends modest changes and phasing out of (some) FBT concessions.
- Rudd rejects harmful changes.
- Commercial activities for not-for-profits are affirmed.
- We need a Charities Commission to continue the work of tax reform for Not-for-Profits (in a kindly way).

### ***What you should read***

Go to [www.taxreview.treasury.gov.au](http://www.taxreview.treasury.gov.au) and download the [Overview](#).

## EXECUTIVE SUMMARY

At page xv think about the expectations for the next 40 years identified by Henry and how they will affect your organization:

- Ever deepening international integration – a new world economic order means you have to think globally
- Our lives will be transformed by technology
- Ageing will cost us
- High demands for economic infrastructure, education and social infrastructure spending
- Environmental issues
- Stress on housing affordability and urban amenity

### ***Dr Henry's Prescriptions***

Go to page 79 of the overview and skim the 138 recommendations pausing at the following which have relevance to Not-for-Profits:

**Recommendation 13** – gift deductibility to be retained with the threshold raised from \$2 to \$25

**Recommendation 41** – we need a national charities commission to streamline Not-for-Profit tax concessions, gift deductibility and to modernise and codify the definition of charity.

**Recommendation 42** – Not-for-Profits to retain current income tax and GST concessions including for commercial activities

**Recommendation 43** – FBT

- (a) Capped concessions phased out over 10 years
- (b) Concessions replaced with direct government funding

**Recommendation 44** – the principle of mutuality survives but clubs with large trading activities may be concessionally taxed over a high threshold

**Recommendation 109** – user-directed funding to provide choice of care and support in the aged care sector – a voucher system

### ***Advanced Reading***

For more details, go to [Part 2: Detailed analysis - Chapter B: Investment and entity taxation - B3. Tax concessions for not-for-profit organisations - Australia's Future Tax System: Final Report](#).

## **MOORES LEGAL COMMENTARY**

### ***Gift deductibility***

Henry recommended that the gift deductibility threshold be raised from \$2 to \$25. Henry says this will make it easier for Not-for-Profits (we agree) and donors (dubious) not to have to worry about the administration of rats and mice donations. Although recommendation 11 suggests a “standard deduction” for work related expenses and personal tax administration it would not extend to charitable giving.

Rudd summarily rejected this sensible change.

### ***Charities Commission***

We applaud the recommendation to establish a national charities commission to monitor, regulate and provide advice to all Not-for-Profit organisations. In our view the government should not continue to ignore this demonstration of support and encouragement for the sector and the sector ought to press for this reform.

It would also provide a gateway to examine the unnecessarily complex and inconsistent system of taxation arrangements for Not-for-Profits undertaken by State and Federal governments. For example, inconsistencies in law and practice re payroll tax, stamp duty, land tax and municipal rates.

Rudd says no harmful change. We urge that this change would be good for the sector and ought not be rejected (again).

### ***Commercial Activities***

Since the ATO commenced its attack on commercial activities of Not-for-Profits in 2005 through Tax Rulings 2005/21 and 2005/22 the wheel has come full circle. Henry confirms that income tax concessions for commercial activities are not distortionary. He is in good company. See High Court in [Word Investments](#) (2008), Productivity Commission [Contribution of the Not for Profit Sector](#) 2010, [Industry Commission report](#) 1995 and [Inquiry into the Definition of Charities](#) 2001.

### **Fringe Benefits Tax**

Capped benefits be phased out over 10 years. We doubt if this will be necessary or politically expedient. Why not just wait for inflation to do the job, making capped fringe benefits insignificant? We are sceptical about replacing the value of fringe benefits with government grants. Many organisations may be ineligible for substitute funding.

Henry makes no mention of uncapped exempt benefits such as those for ministers of religion. An interesting omission given the unknown extent of this concession to religious organisations.

By implication Rudd will make no change.

### **Mutuality**

When the Henry consultation paper foreshadowed dealing with mutuality, some assumed that the solution was to get rid of the distinction between mutual and non-mutual income by extending full income tax concessions to mutual organisations. This has not occurred. Henry's recommendations are directed to dealing with apparent unfairness between club and commercial hospitality, gaming and accommodation arrangements.

Rudd explicitly rejects this recommendation.

### **Child care, housing assistance and aged care**

These are not directly dealt with in the recommendations for the Not-for-Profit sector but the policy directions in these areas will be of particular interest to Not-for-Profits involved in these fields. See pages 65 – 68 of the Overview.

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#### **The Moores Legal Not for Profit Team**

We have a range of practitioners who are able to assist with any minor queries or major issues you may have. If you require further information, please contact a member of our Team

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