

## **Case Note prepared by Myles McGregor-Lowndes**

Justice Nettle of the Victorian Supreme Court has handed down his decision in an appeal from the Victorian Civil and Administrative Tribunal concerning the charitable status of Central Bayside Division of General Practice Ltd.

Central Bayside Division of General Practice Ltd claimed that it was not liable to payroll tax on the basis that wages were paid “by a charitable body” to a person during a period in respect of which the body satisfies the Commissioner that the person is engaged exclusively in the work of a body of a charitable nature.”(s10(1)(bb) Of the Payroll Tax Act 1971 (Vict).

### **Tribunal Decision**

The Tribunal found that the Division is a body which plainly exists for the purposes of the community, but the Division was too close to being an arm of government or a part of the bureaucracy to be an organisation whose objects come within the concept of charity revealed by the Preamble to the Statute of Elizabeth.

The Tribunal found that the Division was a nonprofit organisation and existed for purposes beneficial to the community (improve health care delivery), but that the services provided by the Division were provided in substance at the expense of the Federal Government and most importantly as an integrated part of a scheme of national health management presided over by the Federal Government. It was not just an ally of government, but an essential part of it and an organisation which is an integrated part of a national scheme regulated by the Federal Government to provide for the delivery of health care. The result was that the Division was too close to being an arm of government or a part of bureaucracy to be an organisation whose objects come within the concept of charity.

The Tribunal had considerable evidence placed before it about the activities, funding agreements, nature of outcomes based funding and internal and external reviews. It found that about 93% of the Division’s income was by way of grants and 43% of that funding was by way of outcomes based funding. The Tribunal noted, “It is one thing for the Salvation Army to be an integral part of our provision for the relief of poverty; it is another thing for an organisation to be an integrated part of a national scheme regulated by the Federal Government to provide for the delivery of health care.”

### **Appeal Decision**

The appeal dealt with two main issues, was the Division “for purposes beneficial to the community” and “did the degree of government involvement deprive the Division of its charitable status”?

#### *Purposes Beneficial to the Community*

The appeal noted with the Commissioner of State Revenue did not dispute that the Division was for purposes beneficial to the community. However, the appeal found

that the Division's main purpose was "to protect and advance the interests of its members" after a detailed analysis of the evidence such as Commonwealth Department of Health and Aged Care Publications, Annual Activity reports and Core Funding agreements. The Appeal particularly made mention of the language used in the Division's annual report such as "our members", saying,

"Based upon that information, my impression of the Division is one of an organisation of which the activities are directly principally to serve the interests of its membership, by the provision of continuing professional education and specialist development, accreditation resources and practice development with a particular emphasis on information management and technology development, albeit with the result of thereby developing and enhancing the standard of patient care provided by members. I have difficulty equating that sort of organisation to a charitable body."

#### *Arm of Government*

It was established that the Division was not some semi-government agency. The Division could decide not to apply for grants and the Commonwealth has no control over its activities except "to the extent that the Division chooses to agree with the Commonwealth that will undertake programs which are approved by the Commonwealth." It was found that the Commonwealth had no greater control over the affairs of the Division than the power of the purse.

However, the appeal noted that the question "is in the end as much dependent upon what the organisation does in fact as it is upon what the organisation's constituent documents permit it to do." So, "to ascertain the main purposes in that period the material facts and circumstances which should be examined include the body's constitution, its activities, its history and its control. For the reasons already expressed, the practical reality of the Division's activities, history and control, is that of an organisation formed under the aegis of the Commonwealth's 1992 general practice initiative to carry out government sponsored health care programs as part of the Commonwealth national health care strategy."

#### *Decision*

The appeal came to the conclusion that "having regard to the constitution, activities, history and control of the Division, and in particular, to the extent to which the Division's activities of providing services to its members are funded and thereby controlled by the Commonwealth, I am not persuaded that the Division is sufficiently analogous to any recognised charity or is otherwise to be regarded as within the equity of the Statute."

#### **Further References**

The website of the Central Bayside Division of General Practice Ltd is <http://www.centralbayside.com.au/> and the Australian Divisions of General Practice is <http://www.adgp.com.au>

My search of the Australian Business register reveals that Central Bayside Division of General Practice Ltd is endorsed as a deductible gift recipient from 1 July 2002. Search <http://www.abr.gov.au>

Note the Draft Charities Bill 2003 sections 3, 4(f) and Draft Explanatory Memorandum para 1.17- 1.24 (available from <http://www.taxboard.gov.au>) and Charities Definition Inquiry Report at Chapter 28 (Government Bodies), Chapter 12 (Dominant Purpose vs activity) and Chapter 23 (other purposes beneficial to the Community).

The appeal decision will eventually be available from <http://www.austlii.edu.au>.

Central Bayside Division of General Practice Ltd. Commissioner of State Revenue No. 8719 Of 2002 (Victorian Supreme Court) on appeal from Central Bayside Division of General Practice Ltd. V Commissioner of State Revenue No. 2002/137 (Victorian Civil and Administrative Tribunal)

The AustLII link to the case is at:  
<http://www.austlii.edu.au/au/cases/vic/VSC/2003/285.html>