

UNIVERSITY RESIDENTIAL COLLEGE – CHARITABLE?

For the purposes of the Duties Act (Australian Capital Territory) the Australian Capital Territory Civil and Administrative Tribunal (“the Tribunal”) on 21 December 2016 decided that a university residential college was not a “charitable organization”.

The case was [John XXIII College v Commissioner for ACT Revenue \(Administrative Review\) \[2016\] ACAT 152](#). John XXIII College (“the College”) is a residential college located on the grounds and affiliated with the Australian National University (“ANU”). The College purchased land near but not on the ANU in August 2015. The College submitted the contract and transfer with evidence that the College was registered with the ACNC as a charity and a copy of the College’s Constitution. The College claimed that it was a charitable organization and therefore the duty pursuant to section 64(2) of the Duties Act was only \$20.

The contract was assessed at ad valorem duty of \$60,850. The College objected to the assessment but the objection was disallowed. In disallowing the objection the Commissioner advised:-

“.....because John XXIII College is not a charitable organization under the Duties Act 1999 and so is not entitled to a duty concession on the purchase of [the property]”

The College then appealed the decision by the Commissioner on the objection to the Tribunal.

At the time the Contract and Transfer were lodged by the College with the Commissioner (on 1 September 2015) subsection 64(2) of the Duties Act then provided:-

“64. Transfer of land in certain authorities and other bodies

.....

(2) Duty of \$20 is chargeable in respect of a grant or transfer of land to a hospital, school or charitable organization or to trustees in trust for a hospital, school or charitable organization.”

Charitable organization was defined in section 4 of the Duties Act as follows:-

“Charitable Organization” means an association, society, institution or body carried on for a religious, educational, benevolent or charitable purpose, other than one carried on for the purpose of securing pecuniary benefits to its members.”

The legislation has since been changed but is unlikely to give the College any comfort if the transaction were to occur under the amended legislation.

The Tribunal examined the College’s Constitution, activities, its lease with the ANU and the Residential Colleges Affiliation Statute. The College was created by the Catholic Order of the Dominican Fathers and was constructed at the cost of the College on ANU land pursuant to a Memorandum of Lease. The Residential Colleges Affiliation Statute imposed certain obligations on the operation and students of the College, one of which was academic progress of students.

The College, argued that it was a charitable organization pursuant to the Duties Act as it was carried on for a religious purpose and for an educational purpose.

The Commissioner argued that the College was carried on “for the primary purpose of providing on campus residential student accommodation at ANU”.

The Tribunal agreed with the Commissioner and stated:-

“.....that the connection between providing residential accommodation and religious pursuits are mutually exclusive and need not co-exist. In other words the provision of residential accommodation need not have any religious affiliation; it can exist without one as is the case with other residential accommodation at the university without any religious affiliation”

The Tribunal noted that even if the College had 2 or more main purposes *“and one, namely religion, was charitable, and the other, accommodation, was not charitable,an organization does not become charitable simply because one of its objects being charitable is called the main object of the institution.”*

Interestingly, the Tribunal referred to the Colleges ACNC registration which described the college as “Charity” and the sub-entity type as “advancing education”. This is another instance of where mere registration with the ACNC was not conclusive for a Tribunal or Court.

The Tribunal concluded that the College did not have a main purpose of religion nor a main purpose of education but rather its main purpose was the provision of residential accommodation. The Tribunal's decision is considered and lengthy. However, we think that the Tribunal placed too great an emphasis on activities and perhaps did not fully give effect to the High Court's decision in [Commissioner of Taxation of the Commonwealth of Australia v Word Investments Limited \[2008\] HCA 55](#) which stated:-

“That is, it is necessary to examine the objects and the purported effectuation of those objects in the activities of the institution in question.”

It also appears to us, that the College did not argue its “main”, “predominant” or “dominant”, purpose but perhaps took an “each way bet” with both religion and education.

One thing that appears certain is that ascertaining “main purpose” remains a challenge and the extent that “activities” determine purpose appears to be alive and well.

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