

THE PROMOTION OF BUSINESS IS NOT CHARITABLE IN SOUTH AUSTRALIA

Written by Victor Hamit

The South Australian Supreme Court (Full Court) has handed down an interesting unanimous decision in [*South Australian Employers' Chamber of Commerce and Industry Incorporated v Commissioner of State Taxation \[2019\] SASCFC 125 \(16 October 2019\)*](#).

The South Australian Employers' Chamber of Commerce and Industry Incorporated ("the Chamber") appealed a decision against a judge of the Supreme Court to the Full Court of the South Australian Supreme Court seeking recognition that the Chamber was exempt from payroll tax under the charitable exemption contained in [*section 48 of the Payroll Tax Act 2009 \(SA\)*](#). There are similar provisions in other State jurisdictions.

The Commissioner of State Taxation ("the Commissioner") had originally disallowed the claim and was successful in the Supreme Court when the Chamber appealed against the objection. The Commissioner was again successful in the full Court in this decision that the Chamber was not charitable and was therefore not exempt from payroll tax.

In essence, the Chamber argued that its activities were undertaken "for the purpose of promoting trade and commerce in Australia which is a recognised charitable purpose". Whereas, the Commissioner argued that the "activities were conducted for the purpose of benefitting members or alternatively business and employers in South Australia" which are "not recognised as charitable purposes".

The Full Court affirmed the decision of the Supreme Court that the "interests of business" is much narrower and not synonymous with the term "trade and commerce". Further, where an organisation carries on many diverse activities, they need to be considered in groupings and then holistically as to whether they constitute charitable purposes. "Business is only one of several groups that participate in trade and commerce", and an "activity that promotes the interests of business may not necessarily advance trade and commerce".

Accordingly, the Chamber did not qualify for exemption from payroll tax because it did not evidence charitable purposes.

The case considers a wide range of decisions across Australian Federal and State jurisdictions on the question of charitable purpose. In particular [Chamber of Commerce and Industry of Western Australia \(Inc\) v Commissioner of State Revenue \[2012\] WASAT 146 \(18 July 2012\)](#) was distinguished.

It is worth noting that whilst in recent years many organisations have sought to extend the reach of the meaning of charitable purpose, only a few have been successful. In our view, the presentation of the evidence and proper preparation is critical to establish charitable purpose. In Victoria, the case of [Law Institute of Victoria v Commissioner of State Revenue \[2015\] VSC 604](#) also failed to establish that the Law Institute of Victoria was of a charitable purpose.

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