

Bulletin

Thursday, 4 December 2008

The final word ... the High Court rules on the *Word Investments* case

The High Court of Australia has now handed down its judgment on the appeal in the *Word Investments Limited (Word)* case.

On 3 December 2008, the High Court of Australia upheld the decision of the Full Court of the Federal Court and dismissed the appeal of the Commissioner.

Word, a company established primarily to raise funds for Wycliffe Bible Translators (a charitable institution providing funds for overseas missionary and bible translating activities), has engaged in a number of business activities and distributed surpluses from those activities to Wycliffe and similar organisations.

The Commissioner of Taxation of the Commonwealth of Australia (**Commissioner**) refused to endorse Word as an income tax exempt charity as Word had been carrying on commercial activities.

The decision by the High Court is an important ruling for the charitable sector, as it confirms that entities within the sector can pursue commercial activities, where the purpose of those activities are charitable, and still be exempt from tax.



Four main issues were posed by the Commissioner in its appeal to the High Court.

1. Were Word's objects confined to charitable purposes?

The High Court found that where the objects of Word, as stated in its Memorandum, are read as a whole, each of them states a charitable purpose. The Commissioner contended that Word had a "*commercial object of profit from the conduct of its business*" which was an "*end in itself*" and not merely incidental or

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ancillary to Word's religious purposes. The High Court, however, found that "*Word endeavoured to make a profit, but only in aid of its charitable purposes*".

2. Can an institution be charitable where it does not engage in charitable activities beyond making profits which are directed to charitable institutions which do engage in charitable activities?

The High Court unequivocally found that an institution can in such circumstances be charitable. In coming to this conclusion one of the authorities upon which the High Court relied was *Inland Revenue Commissioners v Helen Slater Charitable Trust Ltd (Inland Revenue)* (a case decided by the English Court of Appeal) in which Oliver LJ stated that:

"I entertain no doubt whatever that, as a general proposition, funds which are donated by charity 'A', pursuant to its trust deed or constitution, to charity 'B' are funds which are 'applied' by charity 'A' for charitable purposes."

3. Was Word prevented from being a 'charitable institution' by reason of the fact that the institutions to which it gave its profits were not confined to the use to which they may put the funds distributed to them?

The High Court found that Wycliffe was not at liberty to spend the money as it liked but was entitled to select any method it chose for the purpose of effectuating

translations of Christian Scriptures. The High Court also again relied upon *Inland Revenue* which stated that where a charitable corporation transfers money for charitable purposes to another corporation established exclusively for charitable purposes, in such a manner so as to pass the transferee corporation full title to the money, the transferor corporation has applied such money for charitable purposes "*unless the transferor knows or ought to know that the money will be misapplied by the transferee*".

4. Could Word be prevented from being a 'charitable institution' on the ground that it cannot be said that it "*has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia*"?

After an examination of the relevant sections of the *Income Tax Assessment Act 1997* the High Court found that section 50-50(a) "*does not impose a prohibition on distributing to other charitable institutions. Nor does it require the money, when ultimately expended by Wycliffe and the other institutions, to be expended in Australia.*" Word itself made all decisions (to pay monies to other institutions) within Australia, the payments were made in Australia and the payments were made to Australian organisations. For these reasons (among others) the High Court found that the issue posed by the Commissioner could not be answered in the affirmative.

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