

# ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



## JOHN XXIII COLLEGE V COMMISSIONER FOR ACT REVENUE [2016] ACAT 152

**ACT Civil and Administrative Tribunal, Presidential Member, Symons, 21 December 2016**

ANU residential faith-based college was not charitable for the purposes of the Duties Act 1999 (ACT).

**Key words: Taxes and Duties, Stamp Duties, Exemptions, Conveyance or Transfer on Sale of Real Property, Other States and Territories**

1. The applicant operates a fully catered men's and women's residential college affiliated by Statute and Rules with the Australian National University (ANU) which stands on land controlled by the ANU. The applicant purchased land at O'Connor in the ACT (the property) in August 2015. In September 2015 the applicant lodged the contract and related transfer with the respondent together with documents from the Australian Charities and Not-for-profits Commission (ACNC) and a copy of the applicant's constitution. The applicant submitted that the duty charged on the contract under the *Duties Act 1999* (ACT) (the Act) should be \$20 as the applicant taxpayer is a charitable organisation.
2. The respondent assessed ad valorem duty on the transfer of the property to the applicant at \$60,850 on 7 October 2015. Thus, the duty concession under the Act (section 64(2)) applicable to a charitable organisation was not granted. The applicant objected to this decision by letter dated 2 December 2015. On 1 June 2016 the respondent informed the applicant's solicitors that it had disallowed the objection because John XXIII College was not a charitable organisation.
3. A sublease operates between the Dominican Fathers, operators of the College, and the ANU. The applicant is a not for profit organisation registered with the ACNC and is listed on the Australian Business Registry as a charitable organisation. It has as its objects:
  1. to conduct the residential college presently known as John XXIII College which is affiliated with the ANU and which is sponsored by the Dominican Fathers (a religious congregation of the Roman Catholic Church in Australia)...;
  2. to provide for the students of the ANU and other eligible persons, whether as residents or non-residents, the facilities and encouragement for study and research and for them to obtain pastoral support and religious, educational, cultural, social and recreational opportunities;

3. to promote the Dominican charism and the Catholic identity of the College generally; and
  4. to use the College facilities, premises and accommodation for residential and non-residential conferences, seminars and similar functions and activities.
4. Was the College a charitable organisation within section 64(2) of the Act? Charitable organisation is defined in section 4 of the Act as follows:
- “Charitable organisation” 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.
5. The applicant contended that it was such an organisation, citing its religious and educational characteristics. The respondent argued that the applicant was carried on for the primary purpose of providing on-campus residential student accommodation at ANU, and that the applicant did not satisfy the definition of charitable organisation in the Act as it was not carried on for either a religious purpose or an educational purpose, or for a benevolent purpose or a charitable purpose.
6. There was no doubt that the College was ‘an organisation’. But was it charitable? The general legal meaning of charity applied. The Tribunal held that there was a religious purpose attached to the College, but that it co-existed with the provision of accommodation. Thus, the religious purpose identified was not the college’s main purpose (at [76]). Similarly, the educational purpose was obvious, but not the college’s main purpose (at [102]):
- ...even if the Tribunal was satisfied that the applicant had an education purpose and/or a religious purpose both of which are charitable as main purposes and also had a main purpose, accommodation, which is not charitable... an organisation does not become charitable simply because one of its objects being charitable, is called the main object of the institution.
7. The main purpose of the College was to provide accommodation, and this was not a charitable purpose. The application was dismissed.

## IMPLICATIONS



This is another case where an organisation that is registered as a charity with the ACNC is not regarded as charitable under a State taxing statute. Harmonisation of the definition of charity would be required to avoid this outcome. Another example is *Victorian Women Lawyers' Association Inc v FCT [2008] FCA 983*. <https://wiki.gut.edu.au/display/CPNS/Victorian+Women+Lawyers%27+Association+Inc+v+Commissioner+of+Taxation>

## VIEW THE CASE



This case may be viewed at: <http://www.austlii.edu.au/au/cases/act/ACAT/2016/152.html>

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