

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.



ILLAWARRA RETIREMENT TRUST ACN 000 726 536 v COMMISSIONER FOR ACT REVENUE [2021] ACAT 56

Australian Capital Territory Civil and Administrative Tribunal, Senior Member G. Lunney SC, Senior Member M. Sinclair, 25 June 2021

Whether property purchased and being developed for a retirement living site was a rateable property

Key words: Key Words: Charity, Australian Capital Territory, Rateable Property, Retirement facilities Operated By Charity, Charitable Uses, Ancillary Purposes

1. The applicant, Illawarra Retirement Trust (IRT), operates retirement villages and residential aged care facilities in the Australian Capital Territory, New South Wales and Queensland. It is registered as a benevolent institution and charitable organisation under state, territory and commonwealth legislation.
2. In the ACT it operates Kangara Waters in Belconnen which contains a co-located retirement village and aged care facility. It also operates a catering business which services most of its facilities, as well as some third-party aged care providers.
3. In December 2018, IRT purchased property in a newly developing suburb in Canberra called Denman Prospect. The property was designated for a retirement living community. Duty pursuant to the [Duties Act 1999](#) on the transfer was exempted for IRT on the basis that it was a charitable organisation.
4. On 25 January 2019, the respondent issued a rates notice for the period 8 November 2018 to 30 June 2019 totalling \$382,677.95. This was on the basis that the land was used for commercial purposes. Certain correspondence was entered into, but on 16 September 2019 a rates notice was issued for the 2019-20 year totalling \$611,495.98. This assessment was also on a commercial basis. Further correspondence ensued.
5. On 10 December 2019, the applicant applied for apportionment of rates for the block between commercial and residential bases without prejudice to the outcome of these proceedings. That application was approved, apportioning the land 1.644% for commercial purposes and 98.356% for residential purposes. Two amended assessments were issued which resulted in a significant reduction in the total amounts of rates payable – for 2018/2019 to \$40,469.87 and for 2019/2020 to \$64,235.36 The applicant objected to these assessments on the ground that [section 8\(1\)\(b\)\(iii\)](#) of the [Rates Act](#) applied. That section provides:

rateable land—

- (a) means all land in the ACT, including Commonwealth land; but
- (b) does not include—

...

(iii) land leased to charitable organisations and used **exclusively** for religious, educational, benevolent or charitable purposes... (emphasis added)

6. The applicant's contention was that all its activities associated with the land were 'uses' of the land. All planned activities were charitable. The construction of a retirement village and aged care facility and its operation were clearly charitable. Other activities, for example, café, hairdresser, physiotherapist, and child-care centre were ancillary to the primary charitable purposes and were thus also charitable. All planning and preparation activities on and associated with the land were 'uses' of the land.
7. The applicant's objection was disallowed. The respondent took the view that preparatory activities were not uses of the land, and that in any event, the ancillary uses were not charitable. The applicant then lodged this application.
8. The Tribunal considered the plans for the retirement complex, and held that on the evidence available, it was not satisfied that during the relevant rating periods, the applicant was using the land in compliance with [section 8\(1\)\(b\)\(iii\)](#) due to its planning activity to incorporate a child care centre into the development.
9. All the other commercial adjuncts to the development - café, beautician, physiotherapist, hairdresser and convenience store - were for the benefit of residents, and were clearly services and facilities expected by potential clients of the applicant. To have them available to the public merely increased the opportunities for interaction with the community for the residents, and increased the likelihood of commercial viability where operated by third-parties. There could be no doubt that all parties would benefit from active, successful enterprises within the retirement development.
10. However, the inclusion of a child-care centre was not such as case. Its inclusion would not benefit resident, so that, overall, the land was not being used exclusively for charitable purposes because of the exclusivity requirements of [section 8\(1\)\(b\)\(iii\)](#). The land was rateable.

IMPLICATIONS



Retirement village operators and promoters of residential aged care facilities often include many adjunct activities in their properties. High quality care in the sector necessarily involves the offering of services such as hairdressers, cafes, medical services, gyms, swimming pools and other sporting facilities. Whether to also open these often extensive facilities to the surrounding public is a question which operators in the charity sector have to consider with care.

VIEW THE CASE



This case may be viewed at <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/act/ACAT/2021/56.html>

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