

NFP Alert

9 June 2009



Brian Herd



Joanne O'Brien

This Issue

- * Update
- * Word Investments
- * Victorian Women Lawyers
- * ATO Views

Brisbane Office

Level 10
193 North Quay
Brisbane Q 4000
T: 07 3236 2900
F: 07 3236 2907
E: bherd@crhlaw.com.au
W: www.crhlaw.com.au

Rockhampton Office

Level 6
34 East Street
Rockhampton Q 4700
T: 07 4921 2775
F: 07 4921 0611

Update

In our last NFP Alert, we reported on the High Court decision in the *Word Investments* case. The ATO has now released its response to that decision as well as the Federal Court's decision in a case involving the Victorian Women Lawyers' Association. Both responses provide insight into how the ATO will deal with not for profits and their entitlement to tax exemptions.

Word Investments Case

Word Investments ran businesses and paid all of the profits from those businesses to an organization which was an endorsed charitable institution.

The High Court found that even though the commercial activities were not charitable, they were carried out in furtherance of the company's charitable objects and therefore the company was entitled to be endorsed as a charitable institution and the resulting tax exemption.

ATO View

The ATO's view is that, in each case, it will have to look at the objects of the entity and how those objects are achieved through its activities. In all cases, the main objects must be charitable. It will not be enough if the charitable purposes are only incidental to the main purpose which is not charitable.

This decision effectively allows charitable organizations to operate commercial activities with tax advantages not available to other businesses. The government has included this issue in the Henry Review of the tax system and we await expectantly its recommendations on this issue.

Victorian Women Lawyers (VWL) Case

The main object of the VWL was the advancement of women in the legal profession. The ATO asserted it was not a charitable institution as its purposes were not beneficial to the community as a whole, but only to a small section of the community. The Federal Court disagreed on the basis that the existence of sex discrimination laws showed the acceptance of the public benefit of removing barriers to the advancement of women in all areas.

ATO View

The ATO has noted that:

- Charitable institutions can provide benefits to members, if those benefits are only incidental to the main purpose which benefits the community as a whole.
- It is OK to have lobbying or political activities that are incidental to the main charitable purpose.

Conclusion

In every case, whether an organization is, or continues to be, a charitable institution will depend on the purpose for which it exists and the activities it carries out to meet that purpose. Over time, it may develop into the tortoise and the hare syndrome where your activities run ahead of your constitutional purpose. You run the danger of compromising your tax status when your original charitable purposes are overtaken by your business activities. May be it's time we reviewed your Constitution and activities.