This case concerned liability for payroll tax in Western Australia. The Chamber of Commerce and Industry of Western Australia (CCI) is a nonprofit association incorporated under the Associations Incorporation Act 1987 (WA). It was established in January 1992 through an amalgamation of the Confederation of Western Australia Industry (CWAI) and the Western Australian Chamber of Commerce and Industry (WACCI). The CCI sought exemption from the payment of state payroll tax on the basis that it came within the definition of a ‘charitable body or organisation’ for the purposes of the Pay-roll Tax Assessment Act 2002 (WA) (the Act).

The Commissioner of State Revenue (the Commissioner) rejected the application for exemption, arguing that the main (or at least equally important) purpose for which the Chamber carried on its operations was to provide services to its members rather than any purpose which was directed to the benefit of the public generally.

The CCI argued that it was exempt from payroll tax under section 40(2)(c) of the Act because it was an exempt public benevolent institution and the wages it paid were paid for work of a public benevolent nature. In the alternative, the CCI argued that it was exempt from payroll tax under section 41 of the Act on the basis that it was a charitable body or organisation.

The application for exemption was rejected by the Commissioner on 10 June 2010 on the grounds that the CCI was neither a public benevolent institution nor a charitable organisation. An objection to this ruling was rejected by the Commissioner on 10 June 2011. The CCI then sought a review by the Tribunal of the Commissioner’s decision that it was not a charitable organisation. It did not seek a review of the Commissioner’s conclusion that it was not a public benevolent institution.

Thus the issue for determination in this case was whether the CCI was a ‘charitable body or organisation’ within the meaning of section 41 of the Act. Subsidiary issues arising were whether all the wages paid by the CCI were exempt, and whether the exemption (if granted) should be applied retrospectively.

The definition of ‘charitable body or organisation’ in the Act is:

charitable body or organisation means a body or organisation established or carried on for charitable purposes except—
(a) a body or organisation whose sole or principal purpose is the provision of tertiary education; or
(b) a college or other vocational education and training institution under the Vocational Education and Training Act 1996.[]

It was agreed that neither of the exceptions in the definition applied to the CCI. Therefore, the question became whether the CCI was ‘established or carried on for charitable purposes’. This required an examination of the general law as to the meaning of ‘charitable purposes’.

The leading case is Aid/Watch Inc v Commissioner of Taxation (2010) 272 ALR 417, particularly at [23]–[24]. The majority in Aid/Watch described the speech of Lord Macnaghten in Commissioners for Special Purposes of Income Tax v Pemsel [1891] AC 531 (Pemsel) as ‘the source of the modern classification of charitable trusts in four principal divisions, namely, trusts for the relief of poverty, for the advancement of education, for the advancement of religion and for other purposes beneficial to the community’. Their Honours observed (at [18]) that the case law may be expected to continue to develop in response to changed circumstances. They also made it clear (at [48]) that there is no general doctrine in Australian law that excludes ‘political objects’ from charitable purposes.

The CCI submitted that the fourth division of charitable purposes, namely, ‘other purposes beneficial to the community’ should be applied to it. It was agreed by the parties that the word ‘charitable’ should be given its technical legal meaning in this case. This refers to the meaning defined by Lord Macnaghten in Pemsel by reference to the spirit and intendment of the Preamble of the Statute of Charitable Uses 1601: see Central Bayside General Practice Association Ltd v Commissioner of State Revenue (2006) 228 CLR 168 at [18].
The list of possible charitable purposes in the Preamble to the 1601 Act is not meant to be exhaustive: see *Incorporated Council of Law Reporting of Queensland v Federal Commissioner of Taxation* (1971) 125 CLR 659 at [667]. The Tribunal in this case said that the circumstances existing at the time of incorporation, and the activities undertaken at the time of the case both needed to be considered. A body may still be charitable even if it has purposes which are not charitable, but which are incidental or ancillary to its main charitable purpose.

The Tribunal then considered whether the promotion of commerce could be a charitable purpose. The CCI described its central and dominant purpose as being ‘to make it easier to do business’ through pursuing a competitive and responsible free enterprise economy. This was re-phrased in its submissions to read ‘the charitable purpose of promotion of industry and commerce in Western Australia and Australia’.

The Commissioner acknowledged that it had been recognised that the promotion of industry or commerce in general can be a public purpose of a charitable nature, so long as it is for the benefit of the public or a considerable section of the public and not for the purpose of furthering the interests of individuals engaged in trade, industry or commerce. However, the Commissioner took the view that the CCI existed to help individual members to carry on their businesses. Its object was not to support business generally. That is, there was no true ‘public benefit’.

The Tribunal said that it should not be in dispute that the purpose of promotion of industry or commerce generally could be a charitable purpose. There were a number of decided cases in support of this contention. In addition, the fact that benefit may accrue to the members of an organisation does not necessarily mean that the organisation is not being carried on for a charitable purpose; nor does the fact that an organisation derives profit from its operations.

The Tribunal considered in detail the CCI’s history, constitution and current activities. The objects clause which applied in the current proceedings was established in 2003 as follows:

(a) to promote Western Australian industry and the trade and commerce and economic development of Western Australia and in particular to promote the development of the agricultural, pastoral, horticultural, viticultural, manufacturing or industrial resources of Australia, particularly those of Western Australia;
(b) to provide for Western Australian industry trade and commerce the means of formulating and making known its common purposes and of action in regard to industrial, commercial, economic, fiscal, labour, social, educational, legal and technical matters;
(c) to promote, develop and protect the interests of all or any persons, firms, partnerships, companies, corporations, joint ventures and associations engaged in industry and commerce;
(d) to secure to the members of the Chamber all the advantages of unity of action;
(e) to form and encourage the formation of Associations of employers or persons, firms, companies and corporations within industries or groups of industries;
(f) to foster the maximum development of the free enterprise system;
(g) to promote and develop high standards in education and training in Western Australia, and for such purposes to institute lectures and classes, to hold examinations and to award scholarships and prizes;
(h) to consider, promote or oppose Commonwealth or State legislation, regulations and policies and the by-laws, regulations and policies of local governing bodies and other corporations directly or indirectly affecting commercial interests and for such purposes to take such steps or proceedings as may be expedient;
(i) to undertake by arbitration or otherwise the settlement of disputes between parties willing to refer to, and abide by, the decision of the Chamber; and
(j) to receive and decide references on matters of usage and custom dispute.

The CCI’s activities included ‘policy forums’, which took on a policy and advocacy role. It also maintained a number of specialist committees which were both advisory and advocates for industry. It provided a wide range of services to members on a fee-for-service basis. Its income from service fees (in 2011, about $80 million) were much larger than its income from subscription fees (2011: about $7 million), but as the Tribunal observed, much of its service income derived from the government, through funding of the CCI’s apprenticeship training scheme.
The Tribunal also considered a wide range of other documents relating to the CCI’s activities, including its strategic plan, mission statement, and annual reports. On the issue of the CCI’s purpose, the Tribunal said (at [90], [93]–[94]):

The critical question for present purposes is not as to the nature of the activities, but rather as to the purpose of which those activities are carried on. Are the activities of CCI directed to the purpose of promotion and industry, generally in Western Australia, as the applicant contends, or rather are the activities directed to serving the private interests of members or other businesses, as the Commissioner contends? ... The activities ... including the numerous discussion and policy papers, the activities of various committees and the advocacy and lobbying role played by CCI, are all suggestive of an organisation being carried on for a public benefit (in the sense that promotion of industry and commerce has been recognised as being directed to public benefit). The fact that the role played by CCI may be driven from a particular political or philosophical perspective does not disqualify its purpose from being characterised as charitable.... This suggests that the principal purpose of CCI is a public purpose of a charitable nature within the fourth class of charitable purposes referred to in Pemsel.

Therefore, the Tribunal took the view that the CCI’s main purpose was charitable, and that it should be exempt from payroll tax.

On the subsidiary issues, the tribunal referred the consideration of which wages should be exempt back to the Commissioner for assessment ‘in accordance with the conclusions reached as to the charitable status of [the] CCI in these reasons’ (at [104]). As to retrospectivity, the Tribunal found that a refund of payroll tax should be made which covered ‘the whole period in respect of which the exemption [is] sought’ (at [106]).

The case may be viewed at: http://www.austlii.edu.au/au/cases/wa/WASAT/2012/146.html

Implications of this case

This case follows a line of cases which have considered the meaning of ‘charitable purpose’. Although the law on this matter in Australia is still based on very old common law, courts and tribunals are willing to consider the need to extend the meaning over time. The Commissioner acknowledged in this case that it has been recognised that the promotion of industry or commerce in general can be a public purpose of a charitable nature, so long as it is for the benefit of the public or a considerable section of the public and not for the purpose of furthering the interests of individuals engaged in trade, industry or commerce. An examination of the constitution and activities of the CCI showed that, in the Tribunal’s opinion, the services provided to individual members of the CCI were not such as to outweigh its more dominant purpose of promoting industry and commerce generally. Therefore, based on the older case law, the CCI was charitable.