

CENTRAL BAYSIDE GENERAL PRACTICE ASSOCIATION LIMITED
formerly known as CENTRAL BAYSIDE DIVISION OF GENERAL
PRACTICE LTD v COMMISSIONER OF STATE REVENUE (M3/2006)

Court Appealed from: Court of Appeal, Supreme Court of Victoria

Date of Judgment: 1 July 2005

Date Special Leave Granted: 16 December 2005

The appellant (one of at least 123 such Divisions) was set up in 1993 with Commonwealth Department of Health funding (as part of the National Health Care Scheme), to encourage general practitioners to work together to promote the quality of local health care. It sought an exemption under sub section 10 (1) (bb) of the *Payroll Tax Act 1971 (Vic)* from payment of payroll tax as it was a charitable body engaged exclusively in the work of a charitable nature.

The Victorian Civil and Administrative Tribunal upheld the respondents' determination that the appellant was not exempt from pay roll tax (on wages) as it was too close to being an arm of government to be an organisation whose objects come within the concept of charity. The appellant's appeal to the Supreme Court of Victoria (Nettle J) was dismissed.

The Court of Appeal by majority (Chernov, JA and Osborn AJA, Byrne AJA dissenting) dismissed the appellant's appeal. They found the core activities of the appellant were performed pursuant to the dictates of government such as to deny it the status of a charity and that it was a creature or agent of government. Byrne AJA found such an entity could be classified as charitable so long as it stood sufficiently distant from government so as not to be seen as a mere creature or agent.

The Commonwealth is seeking leave to appear as amicus curiae.

The grounds of appeal are:

- The Court of Appeal of the Victorian Supreme Court erred in holding that the appellant is not a "charitable body" for the purpose of the exemption from payroll tax contained in paragraph 10(1)(bb) of the *Payroll Tax Act 1971 (Vic)* on the basis that it performs the work of government.
- The Court of Appeal should have held that the appellant is a charitable body for that purpose notwithstanding its role in relation to the Federal Government's health policy.