

CITATION: *Verra Pty Ltd as trustee for the Pharmacies Services Trust and Ors v Commissioner of State Revenue, Office of State Revenue* [2012] QCAT 64

PARTIES: Verra Pty Ltd as trustee for the Pharmacies Services Trust
Kristen McKerrell trading as Banyo Pharmacy and Terry White Chemist Hervey Bay
RJ Holland & KE McKerrell trading as Garden City Amcal Chemist
Albany Creek Amcal Chemist
Aniline Pty Ltd trustee for the Garden City Service Trust
Almere Pty Ltd as trustee for the Albany Creek Service Trust
Krembrook Pty Ltd as trustee for the St Ives Service Trust
Kristen E McKerrell and Hoa Huynh trading as St Ives Pharmacy
v
Commissioner of State Revenue
Office of State Revenue

APPLICATION NUMBER: GAR171-10

MATTER TYPE: General administrative review matters

HEARING DATE: 17-18 February 2011 and 21 March 2011

HEARD AT: Brisbane

DECISION OF: **Dr Peter McDermott, Member**

DELIVERED ON: 3 February 2012

DELIVERED AT: Brisbane

ORDERS MADE: **The Tribunal (pursuant to s 24(1)(a) of the *Queensland Civil and Administrative Tribunal Act 2009*) makes the order to confirm the objection decision of the Commissioner of State Revenue dated 30 March 2010.**

CATCHWORDS: Appeal against determinations of objections by the Commissioner of State Revenue – review of discretion of Commissioner to “de-group” employers for payroll tax purposes

APPEARANCES and REPRESENTATION (if any):

APPLICANT: Mr D Marks of counsel for applicant, instructed by Flower and Hart, Lawyers

RESPONDENT: Ms M Brennan of counsel for respondent, instructed by Office of State Revenue

REASONS FOR DECISION**Introduction**

[1] This is an application is to review an objection decision of the respondent on 30 March 2010. The respondent disallowed the objection of the applicant in respect of assessments of payroll tax for the financial years ended 30 June 2003 through to 30 June 2008.

Reviewable Decision

[2] The reviewable decision before me is the decision of the respondent dated 30 March 2010. Under s 69(2) of the *Taxation Administration Act 2001* a taxpayer who is dissatisfied by the decision of the respondent on objection may apply to QCAT for review of the decision.

The Pharmacies

[3] During the course of the hearing the pharmacies were referred to as “wholly owned pharmacies” and “independent pharmacies”. I will explain what is meant by these different terms.

Wholly owned pharmacies

[4] The "wholly owned pharmacies" are the Banyo Pharmacy which trades under the “Chemworld” name and the Hervey Bay Pharmacy which trades under the “Terry White” name. The “wholly owned pharmacies” have also been referred to as the businesses of Verra.

[5] In 1975 the Banyo Pharmacy was acquired by Mrs Pamela McKerrell (the mother of Ms K McKerrell). On 5 March 1997 the Hervey Bay Pharmacy was transferred to Ms K McKerrell.

[6] The Hervey Bay Pharmacy was owned by Mrs P McKerrell who passed away on 2 October 2005. Under the will of the late Mrs McKerrell her interest in this pharmacy business passed to Ms McKerrell (cl 3).

Independent pharmacies

[7] The “independent pharmacies” are:

(a) for the years ended 30 June 2003 to 30 June 2008, the St Ives Pharmacy and in respect of which services were provided by Krembrook Pty Ltd as trustee for the St Ives Service Trust;

- (b) for the years ended 30 June 2004 to 30 June 2008 , the Albany Creek Amcal Chemist in respect of which services were provided by Almere Pty Ltd; and
- (c) for the years ended 30 June 2004-2008, the Garden City Amcal Chemist in respect of which services were provided by Aniline Pty Ltd.
- [8] The St Ives Pharmacy was the subject of a partnership deed that was executed on 4 March 2002 by Mrs P McKerrell and Hoa Huynh. On 2 October 2005 under the will of the late Mrs McKerrell her interest in this pharmacy business passed to Ms McKerrell (cl 3).
- [9] The Albany Creek Amcal Pharmacy was the subject of a partnership deed that was executed in 2003 by Mrs P McKerrell and Christopher John Kelly. On 2 October 2005 under the will of the late Mrs McKerrell her interest in this pharmacy business passed to Ms McKerrell (cl 3).
- [10] The Garden City Pharmacy was the subject of a partnership deed that was executed on 22 March 2003 by Ms K McKerrell and Robert John Holland.
- [11] This application requires the consideration of two periods of time:
- from 1 July 2002 until 2 October 2005 (when Mrs P McKerrell passed away); and
 - from 2 October 2005 until 30 June 2008.
- [12] From 1 July 2002 until 2 October 2005 there were effectively two groups:
- Mrs P McKerrell had a controlling interest in the applicant, Krembrook Pty Ltd, Almere Pty Ltd, the Hervey Bay Pharmacy, the Albany Creek Amcal Chemist and the St Ives Pharmacy.
 - Ms K McKerrell had a controlling interest in the Banyo Pharmacy and the Garden City Amcal Chemist.
- [13] From 2 October 2005 until 30 June 2008, Ms K McKerrell had a controlling interest in Krembrook Pty Ltd, Almere Pty Ltd, Aniline Pty Ltd, the Banyo Pharmacy, the Garden City Amcal Chemist, the applicant, the Hervey Bay Pharmacy, the Albany Creek Amcal Chemist and the St Ives Pharmacy. It would seem that her controlling interest in Aniline Pty Ltd and the Garden City Amcal Chemist may have been from 20 February 2004.

Verra Pty Ltd

- [14] The appellant is a corporate entity. At the outset of the proceedings I sought confirmation whether this corporate entity was in existence during the relevant years of assessment. An ASIC search has confirmed that the appellant was registered on 21 June 2002 and is still registered.

- [15] From 21 June 2002 until 2 October 2005 the directors of the appellant were the late Mrs P McKerrell and Mr Michael Thomas McKerrell.
- [16] On 2 October 2005 Ms K McKerrell became the director of the appellant. On 14 September 2006 the share of her father in the applicant was transferred to her. She then became the sole shareholder and director of the applicant.

Legislation

- [17] The *Payroll Tax Act 1971* (“the Act”) provides for the grouping of related employers. The parties have agreed that Reprint No. 4A of the Act is the version of the Act that was applicable to the assessments over the relevant years. Any later reprint would not be of assistance as from 1 July 2008 the grouping provisions were significantly changed. The applicant has quite properly conceded that the amendments prior to that date are not significant: eg, the amendments made to Part 4, Division 4 as well as the insertion of divisional headings by Act No 46 of 2004 and the renumbering of provisions under the *Reprints Act 1992* (eg, s 16A was renumbered as s 66, etc).
- [18] The respondent has placed reliance upon s 68(1) of the Act as authority for the grouping of the wholly owned pharmacies and the independent pharmacies.
- [19] At relevant times s 68(1) of the Act provided:

68 Grouping where employees used in another business

(1) *For the purposes of this Act, where –*

- (a) *an employee of an employer or 2 or more employees of an employer performs or perform duties solely or mainly for or in connection with a business carried on by that employer and another person or other persons or by another person or other persons; or*
- (b) *an employer has, in respect of the employment of or the performance of duties by 1 or more of the employer’s employees, an agreement, arrangement or undertaking (whether formal or informal, whether expressed or implied and whether or not the agreement, arrangement or undertaking includes provisions in respect of the supply of goods or services or goods and services) with another person or other persons relating to a business carried on by that other person or those other persons, whether alone or together with another person or other persons; that employer and*
- (c) *each such other person; or*
- (d) *both or all of those other persons; constitute a group”.*

- [20] At relevant times, s 68(2) of the Act provided:

- (2) *Where the Commissioner is satisfied, having regard to the nature and degree of the duties referred to in subsection (1) and to any*

other matters that the Commissioner considers relevant, that it would not be just and reasonable to include as a member of a group a person or persons carrying on a business, the Commissioner may, by order in writing served on that person or those persons, exclude the person or persons from the group.

[21] At relevant times, s 69(2) of the Act provided:

(2) For the purposes of this Act, where the same person has or the same persons have together a controlling interest as referred to in subsection (3) in each of the 2 businesses the persons who carry on those businesses constitute a group.

[22] The applicant seeks the exercise of the discretion under s 69(7) of the Act which at relevant times provided:

“Where the Commissioner is satisfied, having regard to the nature and degree of ownership or control of businesses that constitute a group and to any other matters that the Commissioner considers relevant, that
(a) a business carried on by a member of that group is carried on substantially independent of and is not substantially connected with the carrying on of a business carried on by any other member of that group; and
(b) it is just and reasonable that the first mentioned member be excluded from that group; the Commissioner may, by order in writing served on the first mentioned member, exclude that member from that group.”

[23] Section 71 of the Act enables smaller groups to be subsumed into larger groups. In *John French Pty Ltd v Commissioner of Payroll Tax* [1984] 1 Qd R 125 McPherson J remarked (at p. 135) that the function of such a provision “is not primarily to constitute groups but to combine them”.

[24] Subsection 71(1) provided

“Notwithstanding any other provision of this part (except subsection (2)), where a person is whether or not by virtue of this subsection a member of 2 or more groups (each of which is in subsection (2) referred to as a smaller group), all of the members of those groups constitute, for the purposes of this Act, one group.”

[25] Subsection 71(3) provided:

“Where the Commissioner is satisfied, having regard to any matters that the Commissioner considers relevant, that it would not be just and reasonable to include as members of one group the members of 2 or more groups, the Commissioner may, by order in writing served on the person or persons who are members of those groups, exclude them from that one group.”

Issues

- [26] This application concerns the application of the grouping provisions in the Act to the applicant, the service companies, the wholly owned pharmacies and the independent pharmacies (ss 68, 69, 71).
- [27] The applicant has quite properly submitted that the pharmacies and the service companies were admittedly grouped by virtue of s 69 of the Act. There is also no issue concerning the application of s 71 of the Act.
- [28] In final submissions the applicant now submits: "The applicants only seek the degrouping of the independent pharmacies' entities". This application now raises the issue whether it is appropriate to exercise the "degrouping" discretion by the respondent to exclude the independent pharmacies from the group (pursuant to s 68(2), s 69(7) or s 71(3) of the Act).
- [29] This application concerns a "complaint about judgment within discretion", cf, *Conte Mechanical and Electric Services Pty Ltd v Commissioner of State Revenue* [2011] VSC 104 at [14].

The nature of the arrangements

- [30] The activities of the wholly owned pharmacies and the independent pharmacies activities are a "business" as defined in s 66 of the Act for the purpose of Part 4 of the Act. The term "business" is widely defined and includes a trade or profession and any other activity carried on for fee, gain or reward. Evidence was given before me that the activities of the pharmacies encompassed both the practice of the pharmacy profession as well as the selling of various items of stock.
- [31] Ms McKerrell gave evidence that pharmacies were divided into a front shop which sells supermarket lines and the back shop which dispenses dispensary medications or scheduled medications.
- [32] I accept the submission of the applicant that the applicant did not carry on a business with "another person" so that grouping cannot occur under s 68(1)(a) of the Act: see *Chief Commissioner of State Revenue v Tasty Chicks Pty Limited* 2010 ATC 20-233 at paras 47-48, 58.
- [33] This leads me to consider the operation of s 68(1)(b) of the Act which is relied upon by the respondent. I am satisfied that this provision is satisfied as the applicant has in respect of the employment of or the performance of duties by one or more its employees an "arrangement" with the persons who conducted both the wholly owned pharmacies as well as the independent pharmacies whereby the employees provide services to those pharmacies.
- [34] The accountants of the applicant advised the respondent in the letter of 2 December 2009 that "there are currently three employees of Verra Pty Ltd ... whose services are used in the businesses of all the pharmacies. These are a retail manager and two bookkeepers" (at page 5). Ms McKerrell in her evidence confirmed that three bookkeepers, and not two bookkeepers, provided their services. The retail manager is Mr Adrian

Stoll. I find that these employees provided services to the wholly owned and the independent pharmacies, all of whom were employees of the applicant. These employees were not called by the applicant to give evidence.

- [35] The accountants of the applicant in the letter of 2 December 2009 also made submissions to the respondent about the nature of the services provided by Mr Adrian Stoll. The accountants submitted: "As the pharmacies all required guidance in this respect, and it made commercial sense to use the services of a trusted staff member who understood the workings of a pharmacy business, rather than hire a manager or independent agents for each store which would have been inefficient and costly" (at page 6).
- [36] Ms McKerrell confirmed that Mr Stoll was the group retail manager. He was and still is employed by the applicant. She remarked that he is a "trusted staff member" who "understood the workings of the pharmacy business". She also explained the nature of the consultancy services that he provided, she remarked: "Adrian provided the partners with retailing advice if they wanted it he spoke to the staff about displays, how the stores looked, general retailing things like that was his role of the partners asking to do that. He was there on the partner's request if they wanted his assistance".
- [37] The services of Mr Stoll were charged out by the applicant to the independent pharmacies who did use his services. Ms McKerrell confirmed that "Adrian is basically helping out in the store". I would infer that his services were of benefit to the independent pharmacies, although such is not required for the operation of s 68(1)(b) of the Act. I am satisfied that he provided services to the wholly owned pharmacies and the independent pharmacies.
- [38] Another staff member that the accountants for the applicant identified was Mr Roger Kluth who was the general manager of the applicant. His role was confirmed by the accountants who advised the respondent in the following terms: "For completeness, we note that in addition to the above, Verra Pry Ltd also employs a General Manager who essentially acts as the personal representative for Kirsten McKerrell at the abovementioned monthly meetings".
- [39] Ms McKerrell regarded the main role of Mr Kluth was to "look after my wholly owned pharmacies". She also stated that Mr Kluth was her "representative". He had to monitor her interest in the independent pharmacies. He regularly attended the Albany Creek Amcal Chemist and the Garden City Amcal Chemist. He also monitored developments at the St Ives Pharmacy which led to the legal proceedings against the other partner. Mr Chris Kelly, the partner of the Albany Creek Amcal Chemist confirmed that he had monthly meetings with Mr Kluth where they would discuss "the state of the pharmacy". Mr Holland of the Garden City Amcal Chemist accepted that under the partnership agreement he had to share information with Ms McKerrell or her agent who was Mr Kluth.

- [40] The independent pharmacies were not invoiced for the time of Mr Kluth. Ms McKerrell explained that “Roger is specifically more my agent”. However, it is clear that Mr Kluth did not just act as the agent of Ms McKerrell. Ms McKerrell mentioned that Mr Kluth was an experienced person in the pharmacy industry who has worked overseas and in Australia. She remarked that “if the partners of the independent pharmacies had any queries they could have used him as a sounding board. But they certainly didn’t pay for his services nor were they obliged to use any of his suggestions”.
- [41] The fact that the appellant did not charge the independent pharmacies for the services of Mr Kluth is not material as the terms of s 68 of the Act do not require that there be remuneration for the services. In any event any services which were provided by Mr Kluth would be for the benefit of Mrs McKerrell or Ms McKerrell who was a partner of each of the independent pharmacies.
- [42] I make the inference that Mr Kluth provided “services” to not only the partners of the wholly owned pharmacies but also the partners of the independent pharmacies. That some services were provided was confirmed by Ms McKerrell who did not give evidence on the extent of those services. As Mr Kluth was not called to give evidence it is difficult to find out the extent of those services.
- [43] Ms McKerrell in her affidavit and in her evidence referred to the three part-time bookkeepers that were employed by the applicant during the relevant years. Ms McKerrell confirmed that the bookkeepers provided bookkeeping services to both the wholly owned and the independent pharmacies. Ms McKerrell confirmed that the independent pharmacies were charged a fee for those bookkeeping services, such fee being payable to the applicant. I am satisfied that the bookkeepers provided services to the wholly owned pharmacies and the independent pharmacies.
- [44] I am satisfied that employees of Verra Pty Ltd being Mr Kluth, Mr Stoll and three bookkeepers provided “services” within the meaning of s 68(1)(b) of the Act.
- [45] The terms of s 68(1)(b) of the Act are satisfied by the fact that the “arrangement” involved the provision of “services” by employees of the applicant to both the wholly owned pharmacies and the independent pharmacies.
- [46] The applicant has quite properly acknowledged that such services were provided. There was a reference in a submission to “services of a limited scale in terms of overall turnover and which were provided at market rates”. However, the terms of s 68(2) of the Act do not provide any qualification in respect of either the extent of services or the rate by which the services have been remunerated. The services that Mr Kluth had provided without any charge to the independent pharmacies would also be “services” for the purposes of s 68(2) as that provision does not impose a requirement that there be any direct remuneration for any

services.

- [47] I do not consider that the “arrangement” relates to the supply of any “goods” by the employees: see s 68(1)(b). The evidence before me is that various external suppliers supply goods to the wholly owned pharmacies and the independent pharmacies.
- [48] I find that the two groups were properly grouped under s 68(1)(b).
- [49] There is another basis for grouping the two groups under s 69 of the Act.
- [50] During the hearing I raised the issue of who is the “person” in terms of s 69(2) which the applicant stated was Mrs P McKerrell (until her death) and then Ms K McKerrell from when she then acquired a controlling interest. Where the same person has a controlling interest in each of two businesses the persons who carry on those businesses constitute a group.
- [51] I accept the submission of the respondent in respect of the expression “persons” in s 69(2) of the Act, that the provision does not impose a requirement that those “persons” need be employers: see *John French Pty Ltd v Commissioner of Payroll Tax* [1984] 1 Qd R 125, 136 per McPherson J.
- [52] In view of the definition of “controlling interest” in s 69(3)(c) of the Act, the fact that the “person” owns 50% of the capital of the partnership or is entitled to 50% of the profits of the partnership means that the “person” had a controlling interest in each partnership that operated the independent pharmacies. The various partnership agreements for the independent pharmacies provide that either Mrs McKerrell or Ms McKerrell was entitled to 50% of the profits of each of the independent pharmacies. Under cross-examination Ms McKerrell confirmed that she had a half-interest as a partner in the independent pharmacies. In the case of the Garden City Amcal Chemist the partnership agreement provided in cl 7 for the profits to belong to the partners in equal shares even though there has been no profit for any of the operating years.
- [53] There is no issue concerning the subsuming of the two groups under s 71 of the Act.

Whether the discretion to “de-group” should be exercised

- [54] The terms of s 68 “cast an exceptionally wide net” as acknowledged by Yeldham J in *Baxter v Chief Commissioner of Pay-roll Tax* (1986) 7 NSWLR 122 at 131. It is for this reason that a number of provisions in the Act confer discretion upon the respondent to “de-group” various parts of the group to prevent injustice. See also, *John French Pty Ltd v Commissioner of Payroll Tax* [1984] 1 Qd R 125, 132 per McPherson J.
- [55] The applicant contends that the independent pharmacies should be excluded from the group. The respondent certainly has discretion to exclude the independent pharmacies from the group pursuant to s 68(2),

s 69(7) or s 71(3) of the Act. Each of these provisions enables the respondent to exclude an entity from a group where it is “just and reasonable”. This application raises for consideration whether it is appropriate to exercise that discretion.

- [56] I accept the submission of the respondent that the dispensing power in these provisions must be exercised in a manner which does not defeat the fundamental legislative objectives of the scheme of regulation under the Act.
- [57] The evidence before me is that for the years ended 30 June 2003 to 30 June 2008, the St Ives Pharmacy generated a profit as did the Albany Creek Amcal Chemist in those years. The evidence of Ms K McKerrell is that for all operating those years the Garden City Amcal Chemist generated a loss. Ms McKerrell stated that the location of the Amcal pharmacy in the shopping centre was not a fortunate choice.
- [58] I certainly accept the submission of learned counsel for the applicant that in considering the exercise of discretion under s 68(2), s 69(7) or s 71(3) of the Act, it is possible to consider events that transpire after the years in question. The appellant advanced an argument that in this case the St Ives Pharmacy should be excluded from the group having regard to the St Ives Pharmacy being flooded this year. However, I have decided not to rely upon that event which occurred sometime after the years in question. The accounts of that pharmacy were also not placed in evidence.
- [59] The evidence before me was that Ms McKerrell was for various reasons (including the death of her mother and the birth of her children) not actively involved in the management of the independent pharmacies. There was evidence before me that the managing partners of the independent pharmacies had made management decisions quite contrary to the wishes of Ms McKerrell. For instance Mr Robert Holland, the managing partner of the Garden City Amcal Chemist, had given evidence that in the promotion of an assistant manager he had “overrode the thing”, meaning that he made a management decision without the consent of Ms McKerrell.
- [60] Such evidence was advanced by the appellant to establish that Ms McKerrell did not have the “control” of the businesses of the independent pharmacies within the meaning of s 69(7) of the Act. The appellant also contended that “control” has been interpreted in the authorities as being a reference to management control.
- [61] The fact that Ms McKerrell was content to allow the managing partners to make management decisions in the independent pharmacies is one consideration. However, Ms McKerrell also had rights under the partnership agreements that related to the independent pharmacies.
- [62] In the case of the Albany Creek Amcal Chemist, clause 20.1.1 of the partnership agreement gave effective control to Ms McKerrell as unanimity was required for the hire or dismissal of any agent or employee.

- [63] There was evidence before me that Ms McKerrell has a high standard of professional care in the conduct of her pharmacies. She meets QCPP standards as a matter of professional pride rather than any legal requirement. In evidence she mentioned that the proper management of dangerous drugs was the “holy grail” of professional conduct. Admitted before me as evidence was comprehensive documentation relating to quality care standards.
- [64] To ensure that there was proper conduct of the St Ives Pharmacy Ms McKerrell was prepared to take action as a partner, including court action, to ensure that proper professional standards were maintained. On 11 September 2007 she wrote to the managing partner in respect of the breach of the partnership agreement. She later sought a declaration from the Supreme Court of Queensland that the partnership was determined on 12 October 2007 as well as an order for specific performance of the partnership agreement.
- [65] Ms McKerrell confirmed in cross-examination that the partnership agreement for the St Ives Pharmacy provided that a partner had an entitlement to participate in the management of the partnership (clause 21.1). Although that deed was originally executed by Mrs P McKerrell, her interest has been treated as devolving upon Ms McKerrell. Under the will of the late Mrs McKerrell her interest in the pharmacy businesses passed to Ms McKerrell (cl 3). On 11 September 2006 a deed of accession was executed by the partners, under that deed Ms McKerrell was recognised as being a partner since 2 October 2005.
- [66] In examining the issue of management control it is important to have regard to the banking arrangements. The fact that, for example, the bank account for the Garden City Amcal Chemist Garden City was in the name of Ms McKerrell and another pharmacist is an indicator of control.
- [67] What is relevant is that the partnership agreements of the independent pharmacies gave each partner a substantial “degree of ownership” of those pharmacies within the meaning of s 69(7) of the Act. This is because each partner was entitled to 50% of the profits of the independent pharmacies.
- [68] What is also important to keep in mind is that Ms McKerrell has been a signatory to agreements between the independent pharmacies and the banner groups. She also signs the leases.
- [69] During the relevant years of assessment the employees of the appellant had provided services to five pharmacies in which Mrs McKerrell or Ms McKerrell had a substantial interest. I have taken into consideration that the arrangements in place enabled the applicant (in which Mrs McKerrell was a director and of which Ms McKerrell is a director) to monitor the financial activities in all the pharmacies in which they had an interest.
- [70] I should record that I do not consider that the arrangements in question were motivated by a tax minimisation purpose. If anything the arrangements would appear to have been adopted to ensure compliance

with legislation relating to the pharmaceutical industry as well as enabling Mrs McKerrell or Ms McKerrell to monitor their interests.

- [71] I am not satisfied that the requirements of s 69(7)(a) of the Act are met. Having regard to the presence of the conjunctive “and” between paragraphs (a) and (b) of s 69(7) of the Act, it is necessary for the requirements of both paragraphs to be satisfied before the Commissioner can exercise the discretionary power under s 69(7) of the Act. I am not satisfied that the businesses of the independent pharmacies are carried out “substantially independently of” any other member of the group.
- [72] While the contentious website was created after the relevant years in question, it does contain the statement that Mr Stoll has the responsibility for “promotional activity within the pharmacies”. Mr Kluth is said to have the responsibility of “streamlining business systems to meet the needs of our modern day pharmacies”. The accountants confirmed that “independent agents” were not used in each pharmacy. Mr Stoll or Mr Kluth did not give evidence which would displace the inference that they have management responsibility for the independent pharmacies. There is no suggestion that the duties of Mr Stoll or Mr Kluth were any different before the establishment of the website.
- [73] In considering s 69(7)(a) of the Act, it is important to have regard to the partnership deeds of the independent pharmacies which have provisions which confirmed that Mrs McKerrell or Ms McKerrell had extensive powers of management in those pharmacies: see St Ives Pharmacy: partnership deed, 4 March 2002, cl 20; Albany Creek Pharmacy, partnership deed, 2003, cl 20,21; Garden City Amcal Pharmacy, partnership deed, cl 13-16. The presence of those provisions in the partnership deeds is inconsistent with any suggestion that the businesses of the independent pharmacies could be carried out independently of Mrs McKerrell or Ms McKerrell.
- [74] After consideration of all of the evidence I do not consider that it would be just and reasonable that the independent pharmacies be excluded pursuant to s 68(2), s 69(7) or s 71(3) of the Act.
- [75] There was a considerable amount of material lodged before me. I wish to record my assistance to the learned counsel for both the applicant and respondent for their co-operation and assistance in resolving this application.
- [76] As *Chief Commissioner of State Revenue v Tasty Chicks Pty Limited* 2010 ATC 20-233 was cited as an authority before me, I have considered it prudent to await the decision of the High Court of Australia in *Tasty Chicks Pty Limited v Chief Commissioner of State Revenue* [2011] HCA 41. A Senior Member of this Tribunal make a direction to enable the parties to make any further submissions by 17 January 2012, no further submissions were made.

Decision

- [1] For these reasons it is the decision of the Tribunal (pursuant to s 24(1)(a) of the *Queensland Civil and Administrative Tribunal Act 2009*) to confirm the objection decision of the Commissioner of State Revenue dated 30 March 2010.