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## Practice Direction Duties Act:

### REGISTRATION OF CHARITABLE INSTITUTIONS—NOTICE OF CEASED ENTITLEMENT

*A practice direction, when issued, is the published view of the Commissioner of State Revenue (the Commissioner) on the particular topic to which it relates. It therefore replaces and overrides any existing private rulings, memoranda, manuals and advice provided by the Commissioner in respect of the issue(s) it addresses. Where a change in legislation or case law (the law) affects the content of a practice direction, the change in the law overrides the practice direction—that is, the Commissioner will determine the tax liability or eligibility for a concession, grant or exemption, as the case may be, in accordance with the law.*

## What this direction is about

1. The purpose of this practice direction is to clarify the circumstances in which the Commissioner will not take action against a charitable institution that has stopped being entitled to registration and fails to notify the Commissioner.
2. Part 11A of the *Taxation Administration Act 2001* (the Act) provides for the registration of charitable institutions. Registration as a charitable institution is a pre-condition to certain exemptions under the *Duties Act 2001*, *Land Tax Act 2010* and the *Payroll Tax Act 1971* (revenue laws).
3. A person authorised by an institution may apply to the Commissioner for registration of the institution.<sup>1</sup> The Commissioner must approve or refuse the application.<sup>2</sup>
4. Under s.149C of the Act, there are several restrictions on registration. Section 149C(1) of the Act provides that the Commissioner may register an institution only if one of the following applies:
  - (a) it is one of the types of institutions mentioned in s.149C(2)<sup>3</sup>
  - (b) its principal object or pursuit is fulfilling a charitable object or promoting the public good and is not a leisure, recreational, social or sporting object or pursuit<sup>4</sup>
  - (c) it is the trustee of an institution mentioned in (a) or (b), other than a university or university college.

<sup>1</sup> Section 149A of the Act

<sup>2</sup> Section 149B of the Act

<sup>3</sup> Examples include certain religious bodies, public benevolent institutions, universities and schools.

<sup>4</sup> Section 149C(3) of the Act

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5. Additionally, s.149C(5) of the Act provides that an institution generally<sup>5</sup> must not be registered unless its constitution, however described, expressly provides certain restrictions on the use of its income and property.
6. If the Commissioner approves an application for registration, the Commissioner must register the institution.<sup>6</sup>
7. Under s.149H of the Act, a charitable institution that stops being entitled to be registered under s.149C must give written notice to the Commissioner within 28 days.<sup>7</sup> Failure to give notice is an offence under s.120 of the Act.
8. The Commissioner may cancel a charitable institution's registration if the Commissioner is satisfied the institution is no longer entitled to be registered under Part 11A of the Act.<sup>8</sup>

## Direction and explanation

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9. Despite s.120 of the Act, the Commissioner will not commence legal proceedings for an offence against the Act by a charitable institution that:
  - (a) has failed to give notice under s.149H of the Act
  - (b) since its entitlement to be registered under s.149C of the Act ceased, has not obtained the benefit of an exemption under a revenue law on the basis that it is a charitable institution registered under Part 11A of that Act.

## Date of effect

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10. This practice direction takes effect from 8 April 2024.

Simon McKee  
 Commissioner of State Revenue  
 Date of issue: 3 April 2024

## References

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Practice Direction	Issued	Dates of effect	
		From	To
TAA149H.1.1	3 April 2024	8 April 2024	Current
Supersedes Public Ruling TAA149H.1.1	9 November 2018	9 November 2018	7 April 2024

<sup>5</sup> Section 149C(5) of the Act does not apply to institutions mentioned in s.149C(2)(a) or (c), being religious bodies, particular bodies controlled or associated with a religious body, universities and university colleges.

<sup>6</sup> Section 149D of the Act

<sup>7</sup> Section 149H of the Act

<sup>8</sup> Section 149I(1)(b) of the Act