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**Public Ruling**  
**Duties Act:**

**REGISTRATION OF CHARITABLE  
INSTITUTIONS—CHARITABLE TRUSTS**

*A public ruling, 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 public ruling, the change in the law overrides the public ruling—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 ruling is about

1. The purpose of this public ruling is to clarify how s.149C of the *Taxation Administration Act 2001* (the Act) applies to charitable trusts in particular circumstances.
2. Part 11A of 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*, the *Land Tax Act 2010* and the *Payroll Tax Act 1971*.
3. Under s.149C of the Act, there are several restrictions on registration. Section 149C(1) of the Act provides that an institution may only be registered if any of the following apply:
  - (a) it is one of the types of institutions mentioned in s.149C(2)<sup>1</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>2</sup>
  - (c) it is the trustee of an institution mentioned in (a) or (b), other than a university or university college.
4. Additionally, s.149C(5) of the Act provides that an institution generally<sup>3</sup> must not be registered unless its constitution, however described, expressly provides that:
  - (a) its income and property are used solely for promoting its objects and

<sup>1</sup> Examples include certain religious bodies, public benevolent institutions, universities and schools

<sup>2</sup> See s.149C(3) of the Act.

<sup>3</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.

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- (b) no part of its income or property is to be distributed, paid or transferred by way of bonus, dividend or other similar payment to its members and
  - (c) on its dissolution, the assets remaining after satisfying all debts and liabilities must be transferred:
    - (i) to an institution that, under s.149C, may be registered or
    - (ii) to an institution the Commissioner is satisfied has a principal object or pursuit mentioned in s.149C(3)(a)<sup>4</sup> or
    - (iii) for a purpose the Commissioner is satisfied is charitable or for the promotion of the public good.
5. Section 149C(6) of the Act states that a constitution includes a law, deed or other instrument that constitutes the institution and governs the activities of the institution or its members.

## Ruling and explanation

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6. A charitable trust that is an institution may be registered if it is entitled to be registered under s.149C of the Act.
7. To be entitled to registration, a charitable trust generally must have a constitution that complies with s.149C(5) of the Act. However, despite s.149C(5)(b) of the Act, a charitable trust will not be refused registration solely because its constitution does not expressly prohibit the distribution, payment or transfer of its income or property to members provided:
- (a) the charitable trust does not have any members and
  - (b) its constitution expressly provides for the restrictions in s.149C(5)(a) and (c) of the Act.

## Date of effect

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8. This public ruling takes effect from the date of issue.

Elizabeth Goli  
Commissioner of State Revenue  
Date of issue: 20 November 2018

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<sup>4</sup> Section 149C(3)(a) of the Act refers to a principal object or pursuit that is fulfilling a charitable object or promoting the public good.

## References

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Public Ruling	Issued	Dates of effect	
		From	To
TAA149C.2.1	20 November 2018	20 November 2018	Current