

Contents	Page
What this ruling is about	1
Ruling and explanation	3
Date of effect	4
References	4

Public Ruling Taxation Administration Act:

REGISTRATION OF STATUTORY ENTITIES AS CHARITABLE INSTITUTIONS UNDER THE TAXATION ADMINISTRATION ACT 2001— ADMINISTRATIVE ARRANGEMENT

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. This public ruling outlines an administrative arrangement that enables entities established by statute (statutory entities) to be registered as a charitable institution under the *Taxation Administration Act 2001* (the Act) in certain circumstances where the constitution (that is, the enabling legislation) of a statutory entity does not expressly provide for certain matters required by the Act.
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*, *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)¹.
 - (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 pursuit².
 - (c) It is a trustee of an institution mentioned in (a) or (b), other than a university or university college.

¹ Examples include certain religious bodies, public benevolent institutions, universities and schools.

² See s.149C(3) of the Act.

4. Additionally, s.149C(5) of the Act provides that an institution generally³ 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
 - (b) no part of its income or property is to be distributed, paid or transferred by way of bonus, dividend or other similar payments 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)⁴
 - 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.
6. In 2018, s.149C(5) of the Act was amended to reinstate the requirement that an entity's constitution must *expressly* provide for the matters set out in s.149C(5). A transitional provision, s.178, was inserted into the Act that has the effect of requiring already registered charitable institutions to amend their constitutions to comply with the amended s.149C(5) by 9 November 2020.
7. It is recognised that the constitution of a statutory entity may not expressly provide for the matters set out in s.149C(5) of the Act. For example, the constitution may not contain provisions for the dissolution of a statutory entity, given statutory entities typically have perpetual succession. Additionally, a statutory entity may not have members. Because statutory entities are unique in nature, it is acknowledged there may be circumstances where it is appropriate for statutory entities to retain or obtain registration as a charitable institution if its constitution does not expressly provide for the matters set out in s.149C(5).
8. An administrative arrangement was approved on 19 August 2020 that sets out the circumstances when an entity's enabling legislation will be taken to comply with s.149C(5) of the Act.

³ 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.

⁴ 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.

Ruling and explanation

9. If a statutory entity's constitution does not expressly provide for the matters set out in s.149C(5) of the Act, the entity's constitution will be taken to comply with s.149C(5) in the circumstances set out below:
- (a) If a statutory entity's constitution does not contain a provision restricting the use of its income and property solely for promoting its objects, s.149C(5)(a) will be taken to be complied with if the constitution:
 - (i) sets out the functions of the statutory entity
 - and
 - (ii) does not include provisions that allow the use of the statutory entity's income and property for a purpose that is inconsistent with its functions.
 - (b) Section 149C(5)(b) will be taken to be complied with if a statutory entity's constitution:
 - (i) does not contain any provisions for the membership of the statutory entity
 - or
 - (ii) contains provisions for the membership of the statutory entity and either of the following apply:
 - the entity's constitution only allows distributions, payments or transfers of its income or assets to be made to members by way of remuneration or reimbursement for services performed or goods provided
 - the entity's constitution does not contain any provisions allowing distributions, payments or transfers of its income or assets to be made to members.
 - (c) Section 149C(5)(c) of the Act will be taken to be complied with if a statutory entity's constitution:
 - (i) does not contain any provisions for the dissolution of the statutory entity and the only way in which the statutory entity can be dissolved is by an Act or Regulation
 - or
 - (ii) provides that upon the entity's dissolution, its assets are to be distributed in the way prescribed by an Act or Regulation, or as directed by the responsible Minister for the statutory entity.
10. This public ruling applies despite s.178 of the Act.
11. This public ruling is to be read in conjunction with Public Ruling TAA149C.1—*Registration of charitable institutions—restrictions that must be included in an institution's constitution*.⁵

⁵ [Public Ruling TAA149C.1](#)

TAA149C.3.1

4 of 4

Relevantly, paragraph 6 of the ruling states that 'to qualify for registration as a charitable institution⁶, an institution's constitution⁷ need not contain the exact words in s.149C(5)(a) to (c) of the Act. It is sufficient for an institution's constitution to contain similar words that have the same effect'.

Date of effect

12. This public ruling takes effect from 19 August 2020.

Mark Jackson
Commissioner of State Revenue
Date of issue: 21 August 2020

References

Public Ruling	Issued	Dates of effect	
		From	To
TAA149C.3.1	21 August 2020	19 August 2020	Current

⁶ 'Institution' ordinarily includes a statutory entity.

⁷ 'Constitution' is defined in s.149C(6) of the Act to include a law.