

Contents	Page
What this ruling is about	1
Ruling and explanation	2
Date of effect	3
References	3

**Public Ruling**

**Taxation Administration Act:  
REGISTRATION OF CHARITABLE  
INSTITUTIONS—RESTRICTIONS THAT MUST  
BE INCLUDED IN AN INSTITUTION'S  
CONSTITUTION**

*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. 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*.
2. 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 applies:
  - (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.

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

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

3. 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
  - (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.
4. 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.
5. The purpose of this public ruling is to clarify when a constitution will satisfy the requirements of s.149C(5) of the Act.

## **Ruling and explanation**

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6. To qualify for registration as a charitable institution, an institution's constitution 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.
7. Institutions that have adopted template rules may qualify for registration as a charitable institution, if the template rules satisfy s.149C(5) of the Act and the institution meets the other requirements in s.149C.
8. An example of a template constitution that satisfies s.149C(5) of the Act is the Australian Charities and Not-for-Profits Commission template rules for a charitable unincorporated association.

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<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.

<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.

## Date of effect

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

Elizabeth Goli  
Commissioner of State Revenue  
Date of issue: 9 November 2018

## References

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Public Ruling	Issued	Dates of effect	
		From	To
TAA149C.1.1	9 November 2018	9 November 2018	Current