

## Application for Beneficial Body Determination

The Minister for Finance may, with the Treasurer's concurrence, make a beneficial body determination for a charitable entity that is a *relevant body* if it is in the public interest to do so. A beneficial body determination reinstates the entitlement to the charitable exemptions.

See information about the charitable exemptions on our website at

[www.wa.gov.au/service/financial-management/taxation-and-duty/apply-charitable-exemption](http://www.wa.gov.au/service/financial-management/taxation-and-duty/apply-charitable-exemption).

### When to use this form

Use this form to apply to the Minister for Finance for a beneficial body determination.

Apply if:

- the Commissioner has refused to give a charitable exemption on the sole ground that the taxpayer is, or is related to, a relevant body and
- all objection and review proceedings have been exhausted, discontinued or fully determined, or all objection or review rights have been surrendered by the taxpayer and
- the application is made within 60 days after the objection or review rights have been finalised or surrendered, as applicable.

### How to lodge this form

Lodge with the Minister for Finance at [Minister.Michael@dpc.wa.gov.au](mailto:Minister.Michael@dpc.wa.gov.au)

You can also post this form to:

Hon David Michael MLA  
Minister for Finance  
Dumas House  
2 Havelock Street  
WEST PERTH WA 6005

For enquiries about how to complete and lodge this application, contact RevenueWA on (08) 9262 1400.

### Information to provide with this application

1. A copy of the Commissioner of State Revenue's decision on the exemption application.
2. A copy of the acknowledgement of surrender of objection or review rights **or** documents relating to the finalisation of all objection and any subsequent review proceedings.
3. A copy of the body's constitution, memorandum of association or other establishing document, including any amending documents.
4. The applicant's most recently published annual report and/or financial statements.
5. A comprehensive submission with relevant supporting information as to why it is in the public interest for the Minister for Finance to make a beneficial body determination for the purposes of the taxation Acts (see page 3).

### Which application are you making?

- ☐ Section 96B of the *Duties Act 2008*
- ☐ Section 38AB of the *Land Tax Assessment Act 2002*
- ☐ Section 42B of the *Pay-roll Tax Assessment Act 2002*

### Applicant details

|                             |  |       |  |
|-----------------------------|--|-------|--|
| Name of body                |  | ABN   |  |
| Address / registered office |  |       |  |
| Contact person              |  | Phone |  |

### Details of relevant body decision

|   |  |
|---|--|
| Type of relevant body   |  |
| <input type="checkbox"/> <b>Professional association</b>  |  |
| <input type="checkbox"/> A body that <b>promotes trade, industry or commerce</b>  |  |
| <input type="checkbox"/> A <b>member of a payroll tax group</b> of which another type of relevant body is a member  |  |
| <input type="checkbox"/> A <b>related body corporate</b> of another type of relevant body   |  |
| <input type="checkbox"/> A body that has <b>a sole or dominant purpose or object to confer a benefit</b> on another type of relevant body                       |  |
| Date of Commissioner's decision   |  |
| Has the taxpayer surrendered objection and/or review rights?  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If YES, go to Declaration. If NO, answer the next question.   |  |
| Have all objection and review proceedings been exhausted, discontinued or finally determined?   | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If YES, go to Declaration.  |  |
| If NO, this application cannot be made until all objection and/or review proceedings have been finalised or surrendered. Please refer to information on page 3. |  |

### Declaration

|   |  |       |  |
|---|--|-------|--|
| In signing the declaration below you authorise the Commissioner of State Revenue under the <i>Taxation Administration Act 2003</i> to release any relevant information or material to the Minister for Finance and the Treasurer in relation to this application. |  |       |  |
| I declare that the information contained in this application is, to the best of my knowledge and belief, true, accurate and complete in every particular.   |  |       |  |
| Name  |  | Phone |  |
| Address   |  |       |  |
| Capacity in which declaration is made   |  |       |  |
| Signature   |  | Date  |  |

# Beneficial Body Determination

## Application for beneficial body determination

Subject to certain criteria, an application may be made to the Minister for Finance for a determination that a relevant body is a beneficial body for the purposes of the *Duties Act 2008*, *Land Tax Assessment Act 2002* and the *Pay-Roll Tax Assessment Act 2002*. A beneficial body determination reinstates the entitlement to the charitable exemptions from State taxes.

An application for a beneficial body determination may be made to the Minister for Finance where:<sup>1</sup>

- the Commissioner has refused to give a charitable exemption on the sole ground that the taxpayer is, or is related to, a relevant body
- all objection and review proceedings have been exhausted, discontinued or fully determined, or all objection or review rights have been surrendered by the taxpayer and
- the application is made within 60 days after the objection or review rights have been finalised or surrendered, as applicable.

A relevant body that is an industrial association or a political party is not entitled to make an application.

The Minister, with the Treasurer's concurrence, may make a beneficial body determination only if the Minister is of the opinion it is in the public interest to do so and after considering any information the Minister considers is relevant. The Minister must provide written reasons to the applicant for a decision in relation to an application for a beneficial body determination.<sup>2</sup>

### Public interest test

The beneficial body determination process requires the Minister to determine whether it is in the public interest for a charity to have its entitlement to the State taxation exemptions reinstated, despite being specifically excluded from the exemptions by the legislation.

The term 'public interest' is not defined in the taxation Acts. The consideration of whether or not a matter is in the public interest usually involves weighing the interests of the public against a set of competing private rights or interest. In the context of the beneficial body determination provisions, this will involve identifying and weighing up relevant competing interests for and against making a beneficial body determination.

The taxation Acts do not provide any guidance about or limit the matters the Minister may take into account when deciding whether or not to make a beneficial body determination. The following list includes examples of the types of matters the Minister may take into consideration:

- Has the organisation historically delivered its charitable activities while being liable for State taxes?
- What will be the financial and commercial impacts on the organisation if it is liable for State taxes?
- What section of the community benefits from the organisation's charitable activities?
- Are the organisation's activities essential to the health, life and welfare of the persons receiving those services?
- If the organisation ceased providing its charitable activities, would another organisation likely provide similar activities?
- Would granting an exemption from State taxes create any anti-competitive effects?
- If the organisation is a relevant body because it is related to another relevant body, to what extent are the activities and operations of the organisations integrated?

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<sup>1</sup> *Duties Act* s 96B; *Land Tax Assessment Act 2002* s 38AB; *Pay-roll Tax Assessment Act 2002* s 42B.

<sup>2</sup> *Duties Act* s 96C; *Land Tax Assessment Act 2002* s 38AC; *Pay-roll Tax Assessment Act 2002* s 42C.

**Important:** These factors provide guidance about the types of matters that an applicant should address in the submission supporting an application for a beneficial body determination, however the applicant should also provide any other information it considers relevant to its circumstances. All submissions must include objective, accurate and relevant supporting evidence, including copies of any documents referred to in the submission.

### **Surrender of objection or review rights**

Under section 34B of the *Taxation Administration Act 2003*, a taxpayer may give written notice to the Commissioner that they surrender their objection or review rights in relation to the Commissioner's decision to refuse a charitable exemption on the sole ground that the taxpayer is, or is related to, a relevant body. This notice must be given before the right to object or the right to take review proceedings has expired.

For further information regarding a beneficial body determination, see the [Charitable Exemptions web page](#).