



## Charitable Exemptions

### Introduction

1. This ruling outlines the Commissioner's interpretation of certain terms for the purpose of determining an application for a charitable exemption from tax.

### Background

#### *Charitable exemptions*

2. The *Duties Act 2008* (Duties Act), the *Land Tax Assessment Act 2002* (LTA Act) and the *Pay-roll Tax Assessment Act 2002* (PTA Act) (together 'the Acts') each provide an exemption from liability to tax for certain charitable bodies, institutions or purposes.
3. However, an exemption is not available to a *relevant body* unless a *beneficial body determination* is in force in respect of that relevant body.

#### *Duties*

4. A dutiable transaction is exempt from transfer duty if it has been entered into or occurred for charitable or similar public purposes.<sup>1</sup>
5. If the transaction is exempt from transfer duty or landholder duty, it will also be exempt from the foreign transfer duty or foreign landholder duty that may otherwise apply.
6. The exemption does not apply if the person liable to pay duty on the transaction is a relevant body, or is related to a relevant body, unless a beneficial body determination is in force in respect of that relevant body.<sup>2</sup>
7. A person liable to pay duty on a transaction is related to a relevant body if:
  - (a) the person holds the dutiable property the subject of the transaction as trustee of a trust and
  - (b) the relevant body is a beneficiary under the trust, whether it has a vested share, is contingently entitled or is a potential beneficiary under a discretionary trust, unless:
    - (i) the trust is a discretionary trust and
    - (ii) the Commissioner decides in a particular case that it would be inequitable for the person to be treated as related to the relevant body.<sup>3</sup>

<sup>1</sup> Duties Act s 95(1). Under section 168, a landholder acquisition is exempt from landholder duty in circumstances where, if the landholder's land were to be taken to be the property of the relinquishing person, a transfer of that land from the relinquishing person to the acquiring person would be exempt from transfer duty.

<sup>2</sup> Duties Act s 95(2).

<sup>3</sup> Duties Act s 95(3).

## Land tax

8. Land is exempt from land tax if it is owned by, vested in or held in trust for a *public charitable or benevolent institution* and used solely for the public charitable or benevolent purposes for which the institution was established.<sup>4</sup>
9. A public charitable or benevolent institution does not include a relevant body unless a beneficial body determination in respect of that relevant body is in force.<sup>5</sup>

## Payroll tax

10. A *charitable body or organisation* is exempt from payroll tax if the Commissioner has given the body or organisation an exemption under section 41(2) of the PTA Act or it is a relevant body in respect of which a beneficial body determination is in force.<sup>6</sup>
11. Wages paid or payable by a charitable body or organisation exempted under section 41 of the PTA Act are exempt if paid “for doing work of the kind ordinarily performed in connection with a charitable purpose for which the body or organisation is established or carried on”.<sup>7</sup>
12. Wages paid or payable by a public benevolent institution are exempt if paid “for doing work of a public benevolent nature”.<sup>8</sup>
13. The Commissioner cannot give an exemption under section 41(2) of the PTA Act to a charitable body or organisation that is a relevant body.<sup>9</sup>
14. The Glossary to the PTA Act defines *charitable body or organisation* to be a body or organisation established or carried on for charitable purposes except:
  - (a) a body or organisation whose sole or principal purpose is the provision of tertiary education or
  - (b) a college or other vocational education and training institution under the *Vocational Education and Training Act 1996*.

## Relevant body

15. A *relevant body* is defined in the Acts<sup>10</sup> to be:
  - (a) a political party
  - (b) an industrial association
  - (c) a professional association
  - (d) a body, other than a body referred to in (a), (b), (c) or (e), that promotes trade, industry or commerce, unless the main purposes of the body are charitable purposes that fall within the first three categories (being relief of poverty, advancement of education and advancement of religion) identified by Lord Macnaghten in *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531 as developed by the common law of Australia from time to time
  - (e) a body that is a member of a class of bodies prescribed for the purposes of this paragraph or

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<sup>4</sup> LTA Act s 37(2).

<sup>5</sup> LTA Act s 37(1).

<sup>6</sup> PTA Act s 41(1A).

<sup>7</sup> PTA Act, s40(2)(n).

<sup>8</sup> PTA Act, s40(2)(c).

<sup>9</sup> PTA Act s 41(3A).

<sup>10</sup> Duties Act s 96A; LTA Act s 38AA; PTA Act s 42A.

- (f) a body that:
  - (i) is a member of a payroll tax group (as defined in the PTA Act Glossary) of which a body referred to in another paragraph is also a member
  - (ii) is a related body corporate as defined in section 9 of the *Corporations Act 2001* (Cth) of a body referred to in another paragraph or
  - (iii) has as its sole or dominant purpose or object the conferral of a benefit on a body referred to in another paragraph.

16. The Acts relevantly define the following terms:<sup>11</sup>

- (a) *industrial association* means:
  - (i) an organisation registered under the *Industrial Relations Act 1979* section 53 or 54
  - (ii) an association of employees, or an association of employers, registered as an organisation or recognised under the *Fair Work (Registered Organisations) Act 2009* (Cth)
  - (iii) an association of employees registered or recognised as a trade union (however described) under the law of another State or Territory
  - (iv) an association of employers registered or recognised as such (however described) under the law of another State or Territory or
  - (v) an association of employees a principal purpose of which is the protection and promotion of the employees' interests in matters concerning their employment
- (b) *political party* means a body or organisation, whether incorporated, having as one of its objects or activities the promotion of the election to the Parliament of the Commonwealth, or a State or Territory, of a candidate or candidates endorsed by it or by a body or organisation of which it forms part
- (c) *professional association* means a body or organisation, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the interest of its members in any profession and
- (d) *promote trade, industry or commerce* includes to carry out an undertaking a purpose of which includes the promotion of, or the advocacy for, trade, industry or commerce, whether generally or in respect of any particular kind of trade, industry or commerce.

### **Beneficial body determination**

- 17. A relevant body that is not an industrial association or political party may apply to the Minister for Finance for a beneficial body determination if the Commissioner has refused to give a charitable exemption solely because the taxpayer is<sup>12</sup> a relevant body.<sup>13</sup>
- 18. The Minister, with the Treasurer's concurrence, may make a beneficial body determination in respect of a relevant body only if the Minister has considered all relevant information and decided it is in the public interest to do so.<sup>14</sup> The beneficial body determination will reinstate the entitlement to the charitable exemptions.

<sup>11</sup> Duties Act s 3; LTA Act Glossary; PTA Act Glossary.

<sup>12</sup> Or is related to a relevant body under section 95(3) of the Duties Act.

<sup>13</sup> Duties Act s 96B; LTA Act s 38AB; PTA Act s 42B.

<sup>14</sup> Duties Act s 96C; LTA Act s 38AC; PTA Act s 42C.

## Ruling

### Charitable or similar public purposes

#### Charitable purpose

19. The term 'charitable purpose' is not defined in the Duties Act or the PTA Act and is therefore given its technical legal meaning.<sup>15</sup> Similarly, a body will be a *public charitable institution* for the purposes of the LTA Act when it has a charitable purpose.
20. To be a charitable purpose within its technical meaning, the purpose must be within the scope of those recognised by Australian common law as being charitable. That is, a purpose that falls within the spirit and intendment of the preamble of the *Statute of Charitable Uses Act 1601* (Imp) and that is beneficial to the public.<sup>16</sup>
21. In *Commissioners for Special Purposes of Income Tax v Pemsel*,<sup>17</sup> Lord Macnaghten identified that the purposes set out in the preamble fell within four heads of charity which have subsequently developed into:
  - (a) the relief of the aged, impotent and poor
  - (b) the advancement of education
  - (c) the advancement of religion and
  - (d) other purposes beneficial to the community.
22. To be of general public utility, the purpose must be to benefit the public generally (or a section of the public) rather than individual members of the community, although the fulfilment of the purpose may directly or indirectly incidentally benefit such individuals.<sup>18</sup> The benefit must be available for the community generally or a section of the community that is not numerically insignificant. There must not be any relationship between the beneficiaries and the person(s) setting up the body.<sup>19</sup>
23. A group of individuals ascertained by reference to some personal tie by blood or contract does not amount to the public or a section of it (for example, an individual's relations, members of a particular family, employees of a particular firm or the members of a particular association).<sup>20</sup>

#### Similar public purposes

24. The term 'similar public purposes' in section 95 of the Duties Act is not defined. Use of the words 'similar' and 'public' denote that the purpose must be analogous with a charitable purpose. That is, an organisation will have a similar public purpose when its objects are for the benefit of the community and all of its profits are directed to those publicly beneficial purposes.

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<sup>15</sup> *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146 [13] (Chaney J), quoting *Central Bayside General Practice Association Ltd v Commissioner of State Revenue* (2006) 228 CLR 168 [18] (Gleeson CJ, Heydon and Crennan JJ).

<sup>16</sup> *Commissioner of Taxation v Triton Foundation* (2005) 147 FCR 362 [21].

<sup>17</sup> [1891] AC 531.

<sup>18</sup> *Commissioner of Taxation v Triton Foundation* (2005) 147 FCR 362.

<sup>19</sup> See, for example, *Powell v Compton* (1945) Ch 123; *Oppenheim v Tobacco Securities Trust Co. Ltd* (1951) AC 297.

<sup>20</sup> *Thomson v Federal Commissioner of Taxation* [1959] HCA 66, 322 (Dixon CJ), quoting *In re Scarisbrick; Cockshott v Public Trustee* (1951) Ch 622, 649 (Jenkins LJ).

## Public benevolent institutions

25. A public benevolent institution is not synonymous with a charitable institution and is considered to be a subset of charitable institutions.<sup>21</sup>
26. When a public benevolent institution applies for a charitable exemption, the Commissioner must determine whether the body (or purpose) is charitable by reference to the factors set out below. For payroll tax purposes, a public benevolent institution may self-assess itself as exempt without making an application for exemption.

## Heads of charity

27. The Commissioner will consider the facts of each case when determining a charitable exemption application. The following paragraphs contain examples of the types of purposes that have been found to fall within each head of charity.

### First head of charity

28. The first head, often referred to as the relief of poverty, encompasses providing relief to the aged, the impotent (that is, persons who suffer a disability or sickness or persons who are helpless) and the poor. Purposes found to be charitable under the first head include:
  - (a) providing low cost accommodation to persons in needy circumstances
  - (b) caring for the physically disabled or mentally afflicted<sup>22</sup>
  - (c) providing health and welfare services
  - (d) non-profit hospitals
  - (e) providing care for persons afflicted by the disabilities and infirmities of old age<sup>23</sup> and
  - (f) providing services for Indigenous communities.

### Second head of charity

29. The second head is directed towards the advancement of education, which goes beyond 'the mere acquisition or increase of knowledge, but requires its propagation, publication, dissemination or diffusion'.<sup>24</sup> The term 'education' is to be interpreted broadly, and 'extends to the improvement of a useful branch of human knowledge and its public dissemination'.<sup>25</sup> It is not limited to formal education such as that supplied by schools or universities.<sup>26</sup> Purposes found to be charitable under the second head include:
  - (a) educational institutions such as schools, universities and colleges
  - (b) establishing, maintaining and contributing to educational institutions, for example, establishing teaching positions or providing student accommodation, scholarships or prizes<sup>27</sup>
  - (c) scientific research, for example cancer research, geriatric research or research work into curing human diseases<sup>28</sup> and
  - (d) increasing public appreciation for art, music or literature.<sup>29</sup>

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<sup>21</sup> G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 36.

<sup>22</sup> G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 183.

<sup>23</sup> *City of Hawthorn v Victoria Welfare Association* [1970] VR 205.

<sup>24</sup> G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 196.

<sup>25</sup> *Incorporated Council of Law Reporting for England and Wales v Attorney-General* [1972] Ch 73 [102].

<sup>26</sup> *Alice Springs Town Council v Mpweteyerre Aboriginal Corporation* (1997) 139 FLR 236 [253].

<sup>27</sup> G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 194.

<sup>28</sup> G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 197.

<sup>29</sup> G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 199.

30. For the purposes of payroll tax, providers of tertiary education are excluded from the definition of *charitable body or organisation* even though such a body or organisation will have a charitable purpose under the second head.<sup>30</sup>

### *Third head of charity*

31. The third head is directed towards the advancement of religion, which has been interpreted to mean the promotion of spiritual teaching, to spread its message, or to take positive steps to sustain and increase religious beliefs.<sup>31</sup> Examples of purposes found to be charitable under the third head include:
- (a) churches and other places of worship
  - (b) the maintenance and promotion of religion<sup>32</sup>
  - (c) gifts directed to enhancing the conduct or quality of religious services<sup>33</sup> and
  - (d) providing accommodation, support, aid or relief for clergy, ministers, nuns or teachers of religion.<sup>34</sup>

### *Fourth head of charity*

32. The fourth head recognises other purposes beneficial to the community that do not fall within the first three heads.<sup>35</sup> The broad classes of purposes found to be charitable under the fourth head include:<sup>36</sup>
- (a) relief of human distress
  - (b) safety and protection of the community
  - (c) locality cases, for example, land and facilities for public use
  - (d) protection of the environment
  - (e) protection of animals
  - (f) improvement of agriculture and
  - (g) promotion of trade, industry or commerce.
33. Organisations recognised as having a purpose that is the promotion of trade, industry or commerce include:
- (a) an organisation whose main purpose is the promotion of industry or commerce in Western Australia and Australia<sup>37</sup>
  - (b) a company whose main object is to provide research and development facilities to help the business community to adopt electronic commerce and to compete in the international marketplace<sup>38</sup>
  - (c) a society formed for the general improvement or general advancement of agriculture<sup>39</sup>

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<sup>30</sup> PTA Act Glossary.

<sup>31</sup> G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 232.

<sup>32</sup> See, for example, *Attorney-General v Eagar* (1864) 3 SCR (NSW) 234; *Re Hargreaves* [1973] Qd R 448.

<sup>33</sup> *Re Royce (deceased)* [1940] 1 Ch 514 [518].

<sup>34</sup> See, for example, *Re Drummond's Trusts* (1907) 4 Tas LR 9; *Re Burton's Charity* [1938] 3 All ER 90.

<sup>35</sup> G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 247.

<sup>36</sup> G A Dal Pont, *Law of Charity* (LexisNexis Butterworths, 2010) 254 – 279.

<sup>37</sup> *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146.

<sup>38</sup> *Tasmanian Electric Commerce Centre Pty Ltd v Commissioner of Taxation* (2005) 142 FCR 371.

<sup>39</sup> See, for example, *Inland Revenue Commissioners v Yorkshire Agricultural Society* [1928] 1 KB 611; *Royal Agricultural Society of England v Wilson* (1924) 9 TC 62.

- (d) an organisation whose object is to preserve and improve craftsmanship<sup>40</sup> and
- (e) an organisation that promotes an aspect of commerce through the promotion of a culture of innovation and entrepreneurship.<sup>41</sup>

### **Non-charitable purposes**

34. Purposes not usually considered charitable include:

- (a) services provided by a body that exists solely or dominantly to benefit its members, for example, health insurance funds and other member-based associations
- (b) providing education or training where that is merely an activity the body carries out in the furtherance of its main purpose of promoting trade, industry or commerce and
- (c) providing accommodation to employees of a charity when provision of the accommodation is not made for the substantial purpose of facilitating the more efficient carrying out of the body's charitable purpose.<sup>42</sup>

### **Determining whether a body or purpose is charitable**

#### **Established or carried on for charitable purposes**

- 35. To determine whether a body is established or carried on for charitable purposes, the Commissioner must look at the circumstances that existed at the time of incorporation as well as the body's activities at the time the charitable exemption application is determined.<sup>43</sup>
- 36. To characterise the purpose of a body, the Commissioner will have particular regard to the body's objects and the activities it carries on to achieve those objects.<sup>44</sup> The relevant question is the purpose for which the activities are carried out rather than the nature of the activities.<sup>45</sup>
- 37. In *Commissioner of Taxation (Cth) v Word Investments Ltd*, the High Court held that a body that carries on commercial business activities may be charitable where those commercial activities are carried out in furtherance of a charitable purpose.

#### **Main or dominant purpose**

- 38. A body may have a charitable purpose if its main purpose is charitable even though it may have other purposes which are ancillary, concomitant or incidental to that purpose.<sup>46</sup> These other purposes must not be of substance in their own right and must only be something which tends to assist, or go naturally with, the achievement of the main object.<sup>47</sup> If the other

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<sup>40</sup> *Commissioner of Inland Revenue v White and Others* (1980) 55 TC 651.

<sup>41</sup> *Commissioner of Taxation v Triton Foundation* 147 FCR 362.

<sup>42</sup> See, for example, *Knowles v The Council of the Municipality of Newcastle* (1909) 9 CLR 534; *Waverley Municipal Council v New South Wales Board of Jewish Education* (1959) 5 LGRA 122; *Glasgow Corporation v Johnston* [1965] AC 609.

<sup>43</sup> See, for example, *Brookton Co-operative Society Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 447 [450] – [451]; *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146 [17].

<sup>44</sup> *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146 [27].

<sup>45</sup> As above.

<sup>46</sup> See, for example, *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146 [19]; *Stratton v Simpson* (1970) 125 CLR 138 [159] – [160].

<sup>47</sup> *Navy Heath Ltd v Deputy Commissioner of Taxation* (2007) 163 FCR 1 [65].

purposes are not merely incidental or ancillary to the charitable purpose, the body will not be regarded as charitable.<sup>48</sup>

39. To have regard to the main or dominant purpose for which the body is established and carried on, the Commissioner must examine factors including:<sup>49</sup>
- (a) the body's history
  - (b) the statutory role(s) it has been given by Parliament, if any
  - (c) the body's constituting document and
  - (d) the activities carried out under that constituting document.

### **Payroll tax - determining exempt wages**

#### *Charitable bodies and organisations*

40. For wages to be exempt:
- (a) the employer paying the wages must be a *charitable body or organisation* (first test), which has been granted an exemption by the Commissioner<sup>50</sup> and
  - (b) the wages paid must be for doing work of the kind ordinarily performed in connection with a charitable purpose (second test).<sup>51</sup>
41. The second test excludes wages paid for work not typically carried out in accordance with the body's charitable purpose and imposes an objective test as to whether that work is performed in connection with a charitable purpose.<sup>52</sup>
42. Work that is not inherently charitable in nature may further, support, fund or be ancillary to the charitable purposes of a charitable body or organisation. Depending on the nature of the work and the circumstances of the body or organisation, the fact that it does this work may not prevent the body from satisfying the first test. However, the work may not be 'work of the kind ordinarily performed in connection with a charitable purpose' for the second test.
43. The term 'work of the kind ordinarily performed' requires an assessment of whether the work carried out by each of the charitable body's employees is work ordinarily, regularly, commonly or customarily performed by bodies with the same charitable purpose.<sup>53</sup> The assessment does not consider how often the charitable body itself carries out that kind of work.<sup>54</sup>

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<sup>48</sup> See, for example, *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146 [19]; *Tasmanian Electric Commerce Centre Pty Ltd v Commissioner of Taxation* (2005) 142 FCR 371 [385]; *Commissioner of Taxation v Triton Foundation* 147 FCR 362 [370].

<sup>49</sup> See, for example, *Commissioner of Taxation v Triton Foundation* 147 FCR 362; *Royal Australasian College of Surgeons v Federal Commissioner of Taxation*; *Chamber of Commerce and Industry of Western Australia (Inc) v Commissioner of State Revenue* [2012] WASAT 146.

<sup>50</sup> Including a relevant body for which a beneficial body determination is in force.

<sup>51</sup> PTA Act s 40(2)(n).

<sup>52</sup> *South Australian Employers' Chamber of Commerce & Industry Inc v Commissioner of State Taxation* [2017] SASC 127 [323].

<sup>53</sup> *Grain Growers Limited v Chief Commissioner of State Revenue* [2015] NSWSC 925, [87]; *South Australian Employers' Chamber of Commerce & Industry Inc v Commissioner of State Taxation* [2017] SASC 127 from [324].

<sup>54</sup> *Grain Growers Limited v Chief Commissioner of State Revenue* [2015] NSWSC 925, [78].

44. The term 'in connection with a charitable purpose' must be interpreted widely and may include work carried out in performance of a body's administrative functions<sup>55</sup> and work carried out to earn revenue to fund a body's charitable purpose.<sup>56</sup>
45. Wages paid by a charitable body or organisation that are not for work of the kind ordinarily performed in connection with a charitable purpose are taxable wages. A charitable body or organisation must register to pay payroll tax if its taxable wages exceed the tax free threshold.

*Example 1*

Organisation AAB operates as a group training organisation with the purpose of employing and assisting trainees to complete their training by facilitating short and long-term placements with employers. The work each trainee carries out differs depending on the industry and their role. AAB also operates a labour-hire enterprise to provide people with uncertified skills the opportunity for employment. Revenue from the labour hire enterprise is used to pursue AAB's purpose.

The first test is to determine if AAB is a charitable body or organisation. AAB's historical records indicate the company was formed specifically to educate young people in the local region. AAB's objects and activities reflect this intent and also provide for the pursuit of youth education rather than another purpose such as the promotion of local industry.

AAB's publications confirm its key performance indicators are centred around training completion rates rather than other indicators such as the number of workers affiliated with the company or government grants received. Based on the evidence provided, AAB has the purpose of advancing education which is a charitable purpose under the second head of charity. Although it operates a labour-hire enterprise to earn revenue, AAB satisfies the first test because all revenue earned is used to pursue its charitable purpose.

The second test is to determine if the wages paid to AAB's employees are for work of the kind ordinarily performed in connection with a charitable purpose. AAB's pastoral, managerial and administrative employees perform work which facilitates the placement of these workers. An analysis of other charitable organisations that advance education (such as educational institutions, research organisations and cultural organisations) demonstrates that, on balance, the employees of these bodies ordinarily perform work that facilitates practical educational and workplace opportunities for present and future workers. Consequently, the wages paid to AAB's pastoral, managerial and administrative employees satisfy the second test and will be exempt from payroll tax.

The work completed by AAB's trainees and labour-hire employees is highly diverse across many industries, including meat-handling, car repair, construction and hair-dressing. An analysis of other charities that advance education demonstrates that, on balance, the employees of those bodies do not ordinarily perform work of this kind. Consequently, the wages paid to AAB's trainees and labour-hire employees are not wages for doing work of the kind ordinarily performed in connection with advancing education. Those wages do not satisfy the second test and will not be exempt from payroll tax.

<sup>55</sup> *Telecommunications Industry Ombudsman Ltd v Commissioner of State Revenue* [2017] VSC 286, [155] – [158]; *South Australian Employers' Chamber of Commerce & Industry Inc v Commissioner of State Taxation* [2017] SASC 127, [311].

<sup>56</sup> *South Australian Employers' Chamber of Commerce & Industry Inc v Commissioner of State Taxation* [2017] SASC 127, [314].

## Public benevolent institutions

46. For wages to be exempt:
  - (a) the employer paying the wages must be a public benevolent institution (first test) and
  - (b) the wages must be paid for doing work of a public benevolent nature (second test).<sup>57</sup>
47. The second test excludes wages paid for work not typically carried out in accordance with an institution's public benevolent purpose. The nature of work will not be benevolent simply because the person works for, or raises revenue for the purposes of, a public benevolent institution.<sup>58</sup>
48. Whether work is of a public benevolent nature is a matter of fact and degree. The characterisation of the activity is not restricted to the activity itself but also to the context in which it is carried out. Cleaning hotel rooms will not normally be benevolent work, however, cleaning rooms in an establishment classified as a public benevolent institution and providing assistance to the sick and needy may be benevolent work.<sup>59</sup>
49. Work carried out in performance of a public benevolent institution's administrative functions, such as managing funds and maintaining proper records and management procedures, are recognised as benevolent in nature when undertaken by a public benevolent institution's employees.<sup>60</sup>
50. Providing non-benevolent services to others for reward is not work of a benevolent nature. In these circumstances, the work is not part of the benevolent functions of the institution and is better classified as having a commercial nature, even if the revenue earned from that work is used to fund the institution's public benevolent purpose.<sup>61</sup>
51. Wages paid by a public benevolent institution that are not for work of a public benevolent nature are taxable wages. A public benevolent institution must register to pay payroll tax if its taxable wages exceed the tax free threshold.

### Example 2

Organisation XYZ was formed with a purpose of relieving poverty, sickness, disability, destitution, suffering, misfortune and helplessness. In pursuing this purpose, XYZ employs people with physical and mental disabilities, provides them with pastoral and employment support, and connects them with employers to earn a wage with a view to possible long-term employment.

Revenue earned from this enterprise is used to pursue XYZ's purpose. XYZ establishes that it is a public benevolent institution. Although their business model is to operate a labour-hire enterprise to earn revenue, XYZ is a public benevolent institution as the revenue earned is used to pursue its benevolent purpose.

For the exemption to apply, the wages paid to XYZ's employees must be for work of a benevolent nature. XYZ's pastoral, managerial and administrative employees perform work which facilitates the placement of the employees with a disability. This work is benevolent in nature because it provides people with a disability with direct relief from the disadvantages they routinely experience in life. Consequently, the wages paid to XYZ's pastoral,

<sup>57</sup> PTA Act s 40(2)(c).

<sup>58</sup> *Ngurratjura Pmara/Ntjarra Aboriginal Corporation v Commissioner of Taxes* (2000) 44 ATR 217, [34]; Affirmed by the NT Court of Appeal in *Ngurratjura Pmara/Ntjarra Aboriginal Corporation v Commissioner of Taxes* (2001) 47 ATR 257.

<sup>59</sup> *Ngurratjura Pmara/Ntjarra Aboriginal Corporation v Commissioner of Taxes* (2000) 44 ATR 217.

<sup>60</sup> *Ngurratjura Pmara/Ntjarra Aboriginal Corporation v Commissioner of Taxes* (2000) 44 ATR 217, [35] and [36].

<sup>61</sup> *Glebe Administration Board v Commissioner of Pay-roll Tax* (1987) 10 NSWLR 352 at 370; *Ngurratjura Pmara/Ntjarra Aboriginal Corporation v Commissioner of Taxes* (2000) 44 ATR 217.

managerial and administrative employees satisfy the second test and will be exempt from payroll tax.

The work completed by XYZ's labour-hire employees (who are people with a disability) largely consists of unskilled general labour across many industries, including meat-handling, clothes sorting and data entry for for-profit companies. The nature of the work carried out by these employees is of a commercial nature, even though revenue earned by XYZ through the arrangement is used to further its benevolent purpose. Consequently, the wages paid to XYZ's labour-hire employees are not wages for work of a benevolent nature. Those wages do not satisfy the second test and will not be exempt from payroll tax.

### **Supporting information**

52. The taxpayer is responsible for establishing its entitlement to a charitable exemption under the Acts.<sup>62</sup>
53. The taxpayer should provide the Commissioner with the following information in support of an exemption application:
  - (a) a completed application form<sup>63</sup>
  - (b) its constitution, memorandum of association or other establishing document, including any amending documents
  - (c) its most recently published annual reports and/or financial statements
  - (d) a comprehensive outline of all activities carried out by the body in the conduct of its business and
  - (e) where applicable, the purpose for the dutiable transaction, or use of the land, for which an exemption is sought.

### **Relevant bodies**

54. The Commissioner will only consider whether a taxpayer is a relevant body after deciding the taxpayer is charitable. If a taxpayer is not charitable, the relevant body provisions will not be considered.

### **Political party**

55. There is a distinction between a political party as defined for the purposes of the Acts and a body that has a political purpose or political objects where the underlying object of the political advocacy is charitable.
56. In *Aid/Watch Inc v Commissioner of Taxation*,<sup>64</sup> the High Court held there is no general doctrine in Australia which excludes political objects from being charitable purposes. The High Court determined Aid/Watch had a charitable purpose under the fourth head because it generated public debate by lawful means regarding the efficiency of foreign aid directed to the relief of poverty.
57. An organisation with similar objects and activities to Aid/Watch will not usually meet the definition of political party for the purposes of the relevant body provisions. However, this type of organisation may still fall within one of the other relevant body types.

<sup>62</sup> See, for example, *Diethelm v FCT* (1993) 44 FCR 450, 457; *Commissioner of Taxation v Word Investments* (2008). HCA 55; *KinCare Community Services Limited v Chief Commissioner of State Revenue* [2019] NSWSC 182.

<sup>63</sup> Relevant application forms are available on the website at [wa.gov.au](http://wa.gov.au)

<sup>64</sup> [2010] HCA 42.

## Professional association

58. *Professional association* is defined in the Acts to mean a body, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the interests of its members in any profession.
59. The definition of professional association may apply to any charitable body or organisation; it is not limited to bodies or organisations with charitable purposes under the fourth head.

## Meaning of 'profession'

60. There is no precise legal definition for the term profession.<sup>65</sup>
- (a) The *Macquarie Dictionary* defines profession as:  
A vocation requiring knowledge of some department of learning or science, especially one of the three vocations of theology, law and medicine  
Any vocation, occupation, etc.  
The body of persons engaged in an occupation or calling.
  - (b) The *Oxford Dictionary* defines profession as it relates to professional occupation to mean 'an occupation in which a professed knowledge of some subject, field or science is applied; a vocation or career, especially one that involves prolonged training and a formal qualification'.
  - (c) Traditionally, the Courts considered that the word profession implied specialised knowledge as distinguished from mere skill.<sup>66</sup> The professions originally referred to theology, law and medicine, but over time extended to include other occupations, for example, accounting and architecture.
  - (d) The Courts acknowledge that the use of the term varies over time and progresses with the general community's understanding and use of the term.<sup>67</sup>
61. Professions are considered a class or subset of occupations, the size and distinguishing features of which are not fixed.<sup>68</sup> The following factors usually distinguish an occupation as a profession:
- (a) A professional possesses special knowledge which is attained after prolonged study, training and application, as distinguished from mere skill.
  - (b) There are particular standards imposed upon the profession and certain ethical responsibilities imposed upon the professional person.
  - (c) There will typically be some form of official accreditation accompanied by evidence of qualification.
  - (d) A profession will usually have an overarching governing body that provides certification, accreditation and training.

<sup>65</sup> *Prestia v Aknar* [1996] 40 NSWLR 165 [30] (Santow J) citing *Bradfield v Federal Commissioner of Taxation* (1924) 32 CLR 1 [7] (Isaacs J); *Bond Corp Pty Ltd v Thiess Contractors Pty Ltd* (1987) 14 FCR 215; 71 ALR 615, 619 (French J).

<sup>66</sup> *Prestia v Aknar* [1996] 40 NSWLR 165 [30] (Santow J) citing *Robbins Herbal Institute v Federal Commissioner of Taxation* (1923) 32 CLR 457, 461 (Starke J); *Bond Corp Pty Ltd v Thiess Contractors Pty Ltd* (1987) 14 FCR 215, 619 (French J).

<sup>67</sup> *Prestia v Aknar* [1996] 40 NSWLR 165 [31] (Santow J) quoting *Bradfield v Federal Commissioner of Taxation* (1924) 34 CLR 1, 7 (Isaacs J). See also *Bond Corp Pty Ltd v Thiess Contractors Pty Ltd* (1987) 14 FCR 215; 71 ALR 615, 619.

<sup>68</sup> *Prestia v Aknar* [1996] 40 NSWLR 165 [30] (Santow J) citing *Currie v Commissioners of Inland Revenue* [1921] 2 KB 332, 340 (Scrutton LJ); *Robbins Herbal Institute v Federal Commissioner of Taxation* (1923) 32 CLR 457, 461 (Starke J); *Re Social and Community Welfare Services (State Award)* 8 IR 364; *Bond Corp Pty Ltd v Thiess Contractors Pty Ltd* (1987) 14 FCR 215, 619 (French J).

62. Whether or not an occupation can be characterised as a profession is a question of fact or degree.<sup>69</sup> The Commissioner will have regard to the facts of each case when determining whether an occupation is a profession for the purposes of the definition of professional association.

#### *'Members' in any profession*

63. Entities that are not natural persons cannot hold a profession, however, they can operate in and practice a profession and are generally referred to as practice companies. They are usually formed by professional persons such as medical practitioners, legal practitioners or accountants, where the ethical and statutory governing bodies of the profession permit members to conduct their professional activities through incorporated bodies.<sup>70</sup>
64. The Commissioner interprets the term 'members' in the definition of professional association to include natural persons and other entities.

#### *Promote trade, industry or commerce*

65. While the promotion of trade, industry or commerce is a charitable purpose under the fourth head, a body that promotes trade, industry or commerce is a relevant body unless the main purposes of the body are charitable purposes that fall within the first, second or third heads of charity.
66. Under the Acts, the term *promote trade, industry or commerce* includes to carry out an undertaking a purpose of which includes the promotion of, or the advocacy for, trade, industry or commerce, whether generally or in respect of any particular kind of trade, industry or commerce.
67. Taking its ordinary meaning, 'promotion' means an activity that supports or encourages a cause, venture or aim, or the publicising of a product, organisation, or venture so as to increase sales or public awareness.<sup>71</sup> Similarly, 'advocacy' means public support for or recommendation of a particular cause or policy.<sup>72</sup>
68. There is a distinction between the concepts of the 'promotion' of trade, industry or commerce and 'engaging' in trade, industry or commerce. A body may engage in trade, industry or commerce by operating a business in the course of carrying out its charitable activities. However, the body will not usually be considered to have a purpose that is the promotion of trade, industry or commerce if it does not have a specific object or activity directed to that purpose.
69. A body which has a purpose that is the promotion of, or advocacy for, trade, industry or commerce will usually have clear objects directed to that purpose and will be carrying out activities in furtherance of that purpose. Determining this requires a holistic examination of all of its objects and activities, however, examples of objects that indicate a purpose of promoting trade, industry or commerce include to:
- (a) promote Western Australian and Australian trade, industry and commerce
  - (b) promote and foster the development of a particular industry both in Australia and overseas

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<sup>69</sup> *Prestia v Aknar* [1996] 40 NSWLR 165 [30] (Santow J) citing *Currie v Commissioners of Inland Revenue* [1921] 2 KB 332, 340 (Scrutton LJ); *Robbins Herbal Institute v Federal Commissioner of Taxation* (1923) 32 CLR 457, 461 (Starke J); *Re Social and Community Welfare Services (State Award)* 8 IR 364; *Bond Corp Pty Ltd v Thiess Contractors Pty Ltd* (1987) 14 FCR 215, 619 (French J).

<sup>70</sup> Australian Taxation Office (Cth), Taxation Ruling No. *IT 2503 Income tax: Incorporation of medical and other professional practices* (1988).

<sup>71</sup> Oxford University Press, *Oxford Dictionaries*.

<sup>72</sup> Oxford University Press, *Oxford Dictionaries*.

- (c) promote, develop and protect the interests of all or any persons engaged in a particular trade, industry or commerce
  - (d) consider, promote or oppose legislation, regulations, policies and by-laws directly or indirectly affecting commercial interests
  - (e) identify and promote advancements within a particular industry, which improve systems in the industry and the advancement of the industry in Australia and overseas
  - (f) promote sales of a particular product by encouraging the growth and utilisation of objective measurement of the product
  - (g) foster, promote, protect and conciliate, or assist in the fostering, promotion, protection and conciliation on behalf of members' businesses and the trade in Western Australia
  - (h) promote, represent and advocate Australian industry in discussion and negotiation with all levels of Government or
  - (i) provide for a particular trade, industry or commerce the means of action in regard to industrial, commercial, economic, fiscal, labour, social, educational, legal and technical matters.
70. Examples of bodies that may be engaged in trade, industry or commerce that will not usually have a purpose of promoting trade, industry or commerce include:
- (a) organisations that operate not-for-profit hospitals
  - (b) not-for-profit aged care providers
  - (c) organisations providing disability employment
  - (d) community housing providers and
  - (e) not-for-profit organisations conducting scientific research, consulting and information services to a particular industry for a fee.
71. A body that has a purpose of promoting trade, industry or commerce will not be a relevant body if its main purposes fall within the relief of poverty, advancement of religion or advancement of education. For example, while an organisation that promotes the economic development of a disadvantaged group may be considered to have a purpose that is the promotion of trade, industry or commerce, it is more likely to be pursuing purposes under the relief of poverty.
72. The Commissioner will consider the factors outlined in paragraph 34 to determine whether a body's main purpose is the promotion of trade, industry or commerce, or a purpose that falls within the first three heads of charity.

#### *Conferring a benefit on a relevant body*

73. As noted above, in *Commissioner of Taxation (Cth) v Word Investments Ltd*,<sup>73</sup> the High Court held that a body may be charitable when the benefits of the commercial activities are used to further a charitable purpose. This includes when the benefits from the body's commercial activities are conferred upon another charitable body to be used in furthering that other body's charitable purpose.
74. A taxpayer will be a relevant body if its sole or dominant purpose is to confer the benefits of its commercial activities upon a body that is one of the other types of relevant body, for example, a professional association or a body that has a main purpose that is the promotion of trade, industry or commerce.

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<sup>73</sup> (2008) HCA 55.

## ***Duties – discretionary trustees***

75. Under section 95(3) of the Duties Act, the Commissioner may decide in a particular case that it is inequitable for a person that is the trustee of a discretionary trust to be treated as related to a relevant body that is a beneficiary under the discretionary trust.
76. The Commissioner will usually exercise this discretion when satisfied there is only a remote, contingent possibility of the relevant body benefitting from the discretionary trust, for example, as a member of the class of general beneficiaries.
- (a) The Commissioner will consider the nature of the relevant body's entitlement under the trust and whether the relevant body does, will or may control the trust. A beneficiary will be considered to control a discretionary trust if it is in a position to directly or indirectly influence the vesting of the whole or any part of the capital of the trust property or income from the trust property.
- (b) Factors the Commissioner will have regard to include:
- (i) the terms of the trust deed
  - (ii) the degree of the relevant body's affiliation and interest in the trust
  - (iii) whether the relevant body has benefited from the trust, either through the distribution of trust property or income under a power of appointment or otherwise and
  - (iv) whether the body is a taker in default under the trust.

## **Ruling history**

Revenue Ruling	Issued	Date of effect	
		From	To
DA/PT/LT 18.0	3 June 2015	3 June 2015	31 December 2018
DA/PT/LT 18.1	1 January 2019	1 January 2019	18 January 2021
DA/PT/LT 18.2	27 October 2021	19 January 2021	Current