

1 September 2021

Our ref: WD: NFP

Mr Mark Jackson  
Commissioner of State Revenue  
Queensland Treasury  
Level 21, 1 William Street  
BRISBANE QLD 4000

By email: [REDACTED]

Dear Commissioner

**Charitable trusts and charitable institutions - availability of land tax exemption under *Land Tax Act 2010* and other exemptions under the *Duties Act 2001***

I write at the request of the Not for Profit Law Committee of the Queensland Law Society (QLS), whose members have significant experience in the not for profit sector, including representing charitable and other not for profit clients.

It has been brought to the attention of the Committee that there have been instances in recent times where your office has refused registration of charitable trusts on the basis that they do not meet the requirements of being a "charitable institution" for the purposes of Part XIA of *Taxation Administration Act 2001* (Qld) (**Act**). This is so even though the trust may have been registered as a charity with the Australian Charities and Not for Profits Commission (**ACNC**).

Practitioners are concerned that this reflects a change of policy or interpretation by the Office of State Revenue (**OSR**) and accordingly we are seeking to clarify the position as soon as possible so that we can inform our members accordingly.

Section 149C(1) of the Act provides that the Commissioner can only register an **institution** as a charitable institution, but we have been cited examples where your office has taken the view that a charitable trust can only be registered if the trustee in its own right is also an institution or the charitable trust has its own administrative structure.

As you know, there is an extensive body of case law around what constitutes an "institution".

Public ruling GEN003.3 speaks of the first step in assessing an entity for charity registration in Queensland being to establish that the organization is an institution. The ruling cites the term as defined in the Oxford Dictionary which definition was quoted with approval in *Young Men's Christian Association of Melbourne -v- FC of T* 37 CLR351. The ruling goes on to say that the

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term "institution" promotes more than a mere trust and refers to a Privy Council decision<sup>1</sup> where it was held that a trust to pay a fund and accumulations to a municipal council for the benefit of the aged and poor was a charitable trust but not a charitable institution.

At paragraph 9 of the ruling, it is said that an organisation will therefore require some form of administrative structure to retain the status of an institution.

The difficulty that has been experienced is that a trust, registered with the ACNC as a charitable trust, does have an administrative structure and does carry on more things than being a mere trust of a pool of funds, but still the trust has been denied registration for the reason apparently that the trustee itself is not an institution.

The concern that our members have with the OSR's approach is that it seems to be suggesting that a trust can only be an institution if the trustee itself is an institution. The concept is wrong at law given that the trustee of a charitable trust holds property on behalf of its charitable purposes. If, in doing so, it is effecting a purpose and not merely holding assets on trust, then it must meet the requirements of an institution.

It is a surprising outcome that a trust can be registered with the ACNC as a charitable institution on the one hand but declined registration under the Act.

We are keen to understand the OSR's position and legal basis so that we can communicate this appropriately to our members and so avoid confusion in the future.

I am wondering if you would be amenable to meeting with representatives of our Not for Profit Law Committee to discuss this matter further.

I would be grateful if your office would contact our Principal Policy Solicitor, Wendy Devine, to arrange a meeting to work through these issues, with a view to developing communications for our members. Wendy can be contacted at (07) 3842 5896 or [REDACTED]

Yours faithfully

[REDACTED]  
Elizabeth Shearer  
**President**

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<sup>1</sup> *Minister of National Revenue -v- Trust & Guarantee Co Ltd* [1940] AC138