

REVENUE CIRCULAR GEN010.1
Charitable Organisations – <i>Taxation Administration Act 1999</i>
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Introduction

Part 3A of the *Taxation Administration Act 1999* (TAA) defines a ‘charitable organisation’ for the purpose of ACT tax laws.

This circular sets out the relevant definitions for charitable organisations, explains the process by which some excluded organisations can apply for a Beneficial Organisation Determination (BOD) from the Commissioner for ACT Revenue (the Commissioner), and outlines the concessions and exemptions available to these organisations.

Charitable organisations

Under section 18B of the TAA a ‘charitable organisation’ means an organisation carried on for a religious, educational, benevolent or charitable purpose, but does not include an organisation carried on for securing pecuniary profits to its members.

Certain types of organisation are defined as ‘excluded organisations’ (see Table 1 below). An excluded organisation is not eligible to be treated as a charitable organisation unless the Commissioner makes a BOD in respect of it.

Table 1 – Charitable exemptions and concessions

Act	Section	Exemption	Exception(s)
<i>Duties Act 1999</i> (Duties Act)	232	Exemption from duty if the duty would be payable by a charitable organisation.	Exemption does not apply to organisations related to an excluded organisation. Under subsection (3) an organisation is ‘related’ if it holds dutiable property as trustee for an excluded organisation as beneficiary.
<i>Payroll Tax Act 2011</i> (Payroll Tax Act)	schedule 2, part 2.2	Exemption from payroll tax for wages paid or payable by charitable organisation.	Exemption does not apply to charitable organisations carried on for an educational purpose, unless the organisation is a school or college (other than a technical school or college) providing education at or below secondary level.
<i>Rates Act 2004</i> (Rates Act)	8 (1) (b) (iii)	Land is not rateable if leased to a charitable organisation and used exclusively for religious, educational, benevolent or charitable purposes. (Exemption applies to both rates and land tax.)	Exemption does not apply to land used exclusively for community housing purposes.

Excluded organisations

Section 18C of the TAA defines five types of excluded organisation: political parties, industrial organisations (trade unions), organisations that promote trade, industry or commerce, professional organisations, and organisations prescribed by regulation.

Political parties

A political party is an organisation that has, as one of its purposes, the promotion of the election to the Legislative Assembly, Commonwealth parliament or State parliament of a candidate endorsed by it. Political parties cannot apply for a BOD.

Industrial organisations (trade unions)

An industrial organisation includes:

- an association of employees or association of employers registered or recognised under *Fair Work (Registered Organisations) Act 2009* (Cwlth);
- an association of employees registered or recognised as trade union under State or Territory law;
an association of employers registered or recognised under State or Territory law; or
- an association of employees with exclusive or predominant purpose of protecting and promoting employees' interests in matters concerning their employment.

Industrial organisations cannot apply for a BOD.

Organisations that promote trade, industry or commerce

An organisation that has, as one of its purposes, promoting or advocating for trade, industry or commerce, whether generally or limited to a particular kind. Organisations in this category can apply for a BOD.

Professional organisations

A professional organisation is an organisation that has, as one of its purposes, the promotion of the interests of its members in a profession. Professional organisations can apply for a BOD.

Class of organisation prescribed by regulation

A class of organisation is excluded if it is prescribed by regulation under the TAA. Organisations in this category can apply for a BOD if permitted by the regulation.

Determining the purposes of an organisation

The purposes of an organisation are determined having regard to all the relevant circumstances including the organisation's stated objects (if any) and its activities.

For political parties, organisations that promote trade, industry and commerce, and professional organisations, only one of the purposes of the organisation needs to meet the respective definition in order for it to be excluded. The relevant purpose does not have to be a main, exclusive or predominant purpose of the organisation; the organisation will be excluded even if the relevant purpose is incidental or ancillary.

For organisations to which section 18C (2), definition of ***industrial organisation***, paragraph (d) applies, the purpose of protecting and promoting the employees' interests in matters concerning their employment must be an exclusive or predominant purpose of the organisation.

Beneficial Organisation Determinations

If an excluded organisation is a professional organisation or an organisation that promotes trade, industry or commerce, it may make an online application to the Commissioner for a BOD. Political parties and industrial organisations are not entitled to make a BOD application.

An organisation prescribed by regulation may apply for a BOD if this is provided for under the regulation.

The Commissioner must be satisfied of the following considerations before making a BOD:

- the predominant purpose of the organisation is to advance religion, advance education, relieve poverty, or otherwise benefit the community;
- the objects and activities of the organisation that make the organisation an excluded organisation are not significant in relation to the purpose of the organisation considered as a whole; and
- the purpose of the organisation is not, or is not intended to be, beneficial to a particular class of people (whether or not members of the organisation) rather than the community generally.

BODs are notifiable instruments made under the TAA.

Effect of BODs

A BOD takes effect on the day the organisation applied for a determination (rather than the date it is made).

A BOD will apply to an organisation's tax liability as detailed in Table 3 below:

Table 2 – Effect of BODs

Tax	Effect
Duty	<p>Organisation is eligible for a duty exemption in relation to dutiable transactions entered into while the BOD is in effect.</p> <p>The Barrier Free model of conveyance duty commences on 18 September 2017. Organisations applying for a BOD under the Barrier Free model should be aware that the application must be submitted <u>on or before</u> the execution date of any dutiable transaction for which the BOD is sought – not the settlement date or the registration date.</p> <p>If the dutiable transaction is entered into before a BOD application is submitted, the BOD will not apply to that transaction.</p>
Payroll Tax	Organisation is eligible for a payroll tax exemption for a financial year in which the BOD is in effect.
Rates	Land leased by the organisation, and used exclusively for religious, educational, benevolent or charitable purposes, is eligible for an exemption from rates for a financial year in which the BOD is in effect.
Land Tax	Land that is eligible for an exemption from rates will also be exempt from land tax. However, making the BOD does not require the Commissioner to reassess previous land tax (see below).

Applying for charitable organisation or a BOD

An organisation can apply online to the Commissioner for charitable organisation status, or alternatively it can apply for a BOD if it is an excluded organisation. The application SmartForm is available on www.revenue.act.gov.au. Both applications use the same form.

Required documents

An organisation must attach the following information to the form in support of its application:

- the organisation's constitution, memorandum of association or other establishing document, including any amending documents;
- the organisation's most recently published annual reports and/or financial statements;
- a comprehensive outline of all activities carried out by the organisation in the conduct of its business; and
- if the organisation is seeking a rates exemption—information about the use of the land for which the exemption is sought.

Objections and appeals

The following decisions of the Commissioner are reviewable decisions under the TAA:

- a refusal to make a BOD in respect of an organisation;
- a revocation of a BOD;
- an assessment or reassessment in respect of a charitable organisation (not including an excluded organisation) where the charitable exemption is disputed.

Organisations retain the right to lodge an objection through the regular procedures and have a decision reviewed in the ACT Civil and Administrative Tribunal (ACAT) and other courts, subject to the restrictions on reassessment outlined below.

Reassessments for charitable organisations or organisations with a BOD

Charitable organisations receive prospective exemption from tax and may be able to receive refunds of any tax paid, subject to the Commissioner's powers under the TAA.

The Commissioner is required to reassess the duty, payroll tax or rates liability of an organisation with a BOD beginning on the day the BOD takes effect, unless the reassessment would be made more than 5 years after the BOD is made.

Organisations with a BOD are otherwise treated as any other charitable organisation for the purpose of seeking a reassessment.

As BODs do not apply to land tax under section 18G (2) of the TAA, the Commissioner is not obliged to reassess the land tax liability of an organisation with a BOD.

Reassessments for excluded organisations

For excluded organisations, to which a BOD does not apply, part 20 of the TAA prevents the Commissioner from making a reassessment under the state of the law that was in place prior to the commencement of the *Revenue (Charitable Organisations) Legislation Amendment Act 2015* on 24 November 2015.

In other words, excluded organisations cannot seek a reassessment from the Commissioner for periods before 24 November 2015 on the basis that they were charitable organisations before the change in the law.

This limitation applies regardless of whether the organisation made a submission to the Commissioner or the ACAT (including an objection or appeal) about the matter. It is restricted to situations where the reassessment's purpose is to give effect to a decision that a now excluded organisation was or is a charitable organisation (and its tax liability was therefore nil or negligible).

Part 20 of the TAA does not apply if the organisation applies for and obtains a BOD from the Commissioner. If a BOD is in effect, the usual reassessment process will apply to the organisation (see above).

Signed

Kim Salisbury
Commissioner for ACT Revenue
18 September 2017