



# Update for Charitable Institutions in Queensland

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Charitable institutions (excluding religious institutions and universities) which operate in Queensland and that access exemptions for payroll tax, transfer duty and land tax need to review their constitutions to ensure that they comply with the recently passed Revenue and Other Legislation Authority Amendment Act 2018 (Qld) (Act).

The Act amends the Taxation Administration Act 2001 (Qld) to impose an obligation on charitable institutions to expressly include particular provisions in their constitutions which govern the use and distribution of income and property.

## What are the implications of the Act?

The Act reverses the effect of the Queensland Chamber of Commerce and Industry v Commissioner of State Revenue decision which provided that a charitable purpose did

not need to be expressed in the constitution of a charitable institution but could be implied based on the conduct of the organisation and other factors.

A registered charitable institution must now expressly state in its governing documents that:

- a) its income and property are used solely for promoting its charitable objects;
- b) no part of its income or property is to be distributed, paid or transferred to its members; and
- c) on its dissolution, its assets remaining after satisfying all debts and liabilities must be transferred to another charitable institution or one which is capable of registration or can otherwise demonstrate it is charitable or promotes the public good.

## What does this mean for charities?

Charities that access Queensland tax concessions should review their constitutions and consider whether amendments are required to comply with these new legal requirements.

The amendments apply to both currently registered entities and entities seeking registration in the future. Charities that are already registered as a charitable institution will have 2 years to make any necessary changes to their constitutions and to notify the Office of State Revenue (OSR) of those changes.

## How this impacts your charity's current registration?

The Australian Charities and Not-for-profits Commission Act 2012 (Cth) requires that not-for-profits include certain provisions in their governing documents before they can be registered as a charity with the national regulator, the Australian Charities and Not-for-profits Commission (ACNC). These drafting requirements closely align with the requirements imposed under the Act. Accordingly, charitable institutions that are registered with the ACNC may already satisfy the requirements under the Act. In any event, it is recommended that these charitable institutions still conduct a review of their constitutions to confirm compliance with the Act.

## How can McInnes Wilson Lawyers assist?

McInnes Wilson Lawyers can assist by:

- a) reviewing and amending the constitutions of charitable institutions to ensure compliance with the Act;
- b) notifying the ACNC and/or OSR of any amendments made to the constitution of a charitable institution;
- c) preparing constitutions for those not-for-profit organisations seeking registration as a charity with the ACNC and/or as a charitable institution with the OSR; and
- d) facilitating the application process with the OSR for those not-for-profit organisations wanting to be registered as a charitable institution.

## Contact the article author for more info



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