


***CR 2016/36 - Income tax: Queensland Parents and Citizens Associations - exempt from income tax: association established for community service purposes - Goods and Services Tax: GST Concessions***

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## Class Ruling

### Income tax: Queensland Parents and Citizens Associations – exempt from income tax: association established for community service purposes – Goods and Services Tax: GST Concessions

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#### **❶ This publication provides you with the following level of protection:**

This publication (excluding appendices) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provisions identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

### Relevant provisions

2. The relevant provisions dealt with in this ruling are:

- section 50-1 of the *Income Tax Assessment Act 1997* (ITAA 1997)
- section 50-10 of the ITAA 1997
- section 50-70 of the ITAA 1997
- section 9-17 of the *A New Tax System (Goods and services Tax) Act 1999* (GST Act 1999)
- section 23-15 of the GST Act 1999
- section 38-250 of the GST Act 1999

- section 38-255 of the GST Act 1999
- section 38-270 of the GST Act 1999
- section 40-130 of the GST Act 1999
- section 40-160 of the GST Act 1999
- section 48-10 of the GST Act 1999
- Division 63 of the GST Act 1999
- Division 111 of the GST Act 1999
- Subdivision 129-C of the GST Act 1999, and
- Division 157 of the GST Act 1999.

## Class of entities

3. This Ruling applies to the following entities who have adopted the 'model constitution' for Parents and Citizens (P&C) Associations of Queensland State Schools as prepared by the chief executive (Director-General) of the Department of Education and Training under section 36 of the *Education (General Provisions) Regulation 2006* (Queensland):

- Patricks Road State School P&C Association
- Craigslea State School P&C
- The Gap State High School P&C Association

## Qualifications

4. This Ruling assumes that the Queensland State School P&Cs identified at paragraph 3 of this Ruling satisfy the special condition in paragraph 50-70(2)(a) of the ITAA 1997; they comply with all the substantive requirements in their governing rules.

5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 17 of this Ruling.

6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
- this Ruling may be withdrawn or modified.

## Date of effect

7. This Ruling applies from 1 August 2015 to 30 June 2025. The Ruling continues to apply after 30 June 2025 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

8. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of and are to be read with the description:

- Parents & Citizens' Association Constitution (Version: February 2015) ('Model constitution').
- The Annual financial statements for the year ended 31 December 2014 for each of the Queensland State School P&Cs identified at paragraph 3 of this Ruling.

9. Queensland State School P&Cs are governed by the provisions of the *Education (General Provisions) Act 2006* (Queensland) (EA 2006) and the *Education (General Provisions) Regulation 2006* (Queensland) (ER 2006).

10. The relevant sections of the EA 2006 include:

### **118 Formation of parents and citizens association**

- (1) A parents and citizens association may be formed for a State instructional institution in the way prescribed under a regulation.
- (2) The following persons are eligible to be members of a parents and citizens association formed for a State school —
  - (a) a parent of a child attending the school;
  - (b) a staff member of the school;
  - (c) an adult, other than a person mentioned in paragraph (a) or (b), who is interested in the school's welfare.

...

### **120 Objectives of an association**

The objectives of an association are to promote the interests of, and facilitate the development and further improvement of, the State instructional institution, or proposed State instructional institution, for which it is formed.

## 121 Functions of an association

- (1) An association has the following functions —
  - (a) fostering community interest in educational matters;
  - (b) trying to bring about closer cooperation between —
    - (i) ... the parents of children attending the school and other members of the community, staff members of the school and students of the school; ...
  - (c) ... giving advice and recommendations to the principal about issues relating to persons who receive educational instruction at the institution;
  - (d) ... giving advice and recommendations to the principal about the general operations and management of the institution;
  - (e) giving, or assisting in the giving of, financial or other resources or services for the benefit of persons who receive educational instruction at the State instructional institution for which it is formed;
  - (f) performing any other functions, not inconsistent with this Act, as the Minister decides.
- (2) In the performance of its functions, an association must comply with this Act and any written directions the Minister may give the association about —
  - (a) complying with departmental policies that apply to associations; or
  - (b) a matter relevant to the performance of its functions....

## 131 Constitution

- (1) An association must have a constitution.
- (2) An association must adopt, or amend, its constitution in the way prescribed under a regulation.
- (3) An association's constitution, or amendment of the constitution, has no effect unless it is approved by the chief executive.

## 132 Use of money received by association

Subject to section 137(4), any money received by an association must be applied by the association, at the direction of the Minister, to the following purposes —

- (a) firstly, in paying expenses lawfully incurred by the association;

- (b) secondly, in achieving the objectives, and performing the functions, of an association.

11. The relevant sections of the ER 2006 include:

#### **34 Formation of parents and citizens association**

- (1) A State instructional institution's principal may call a meeting of eligible persons to consider the formation of a parents and citizens association for the institution.
- (2) If the eligible persons present at the meeting decide an association should be formed for the institution, it must be formed by the election from among the eligible persons of the following officers —
  - (a) a president;
  - (b) at least 1 vice-president;
  - (c) a secretary;
  - (d) a treasurer;
  - (e) any additional officers, as decided by the eligible persons present at the meeting

...

#### **36 Adoption of constitution**

- (1) The members of an association must adopt a constitution for the association as soon as practicable after the association is formed.
- (2) ...
- (3) The chief executive may prepare a model constitution for associations.
- (4) In adopting a constitution for an association, the members of the association must have regard to the model constitution for associations prepared under subsection (3).

#### **47 Dissolution of an association**

- (1) For section 122(c) of the Act, an association must be dissolved if the question of dissolution is put and resolved in the affirmative on a three-fourths majority vote of its members present and entitled to vote at a special meeting called to consider the question.
- (2) On the dissolution of an association formed for a State instructional institution, the following must be dealt with by the principal's supervisor for the institution's principal, as directed by the Minister —
  - (a) any property in the name of the association;

- (b) the association's funds, after payment of any expenses lawfully incurred by the association.

12. In accordance with subsection 36(3) of the ER 2006 the chief executive (Director-General) of the Department of Education and Training has prepared a 'model constitution' for Queensland State School P&Cs.

13. The relevant clauses of the 'model constitution' include:

## **2 OBJECTIVES**

The objectives of the Association are to promote the interests of, and facilitate the development and further improvement of the School, for example, by promoting parent participation and encouraging collaboration between parents, students, school communities and non-government entities to foster a commitment to achieving the best educational outcomes for children and young people.

## **3 FUNCTIONS**

In pursuit of the Association's objectives, the functions of the Association are to:

- 3.1 foster community interest in educational matters
- 3.2 try to bring about closer co-operation between the parents of children attending the School and other members of the community, staff members of the School and students of the School
- ...
- 3.3 if asked by the principal, give advice and recommendations about:
  - 3.3.1 issues relating to persons who receive educational instruction at the School
  - 3.3.2 the general operations and management of the School
- 3.4 give, or assist in the giving of, financial or other resources or services for the benefit of persons who receive educational instruction at the School
- 3.5 perform any other functions, not inconsistent with the Act, as the Minister may decide.

## **4 PERFORMANCE OF FUNCTIONS**

In the performance of its functions, the Association must comply with the Act and any written directions the Minister may give the Association about:

- a) complying with Departmental policies that apply to the Association, or
- b) any matter relevant to the performance of the Association's functions.

**9 AUTHORITY OF ASSOCIATION**

The Association may, without derogating from the authority of the Principal in the Principal's capacity as the person in charge of the School, exercise the authority in relation to the School that is consistent with the functions of the Association, **provided that** the Association must not exercise any authority over the teaching staff, or over the control or management, of the School.

**22 NO DISTRIBUTION TO MEMBERS**

No portion of the Association's funds, income or assets will be distributed, paid, or transferred directly or indirectly to members of the Association.

**26 DISSOLUTION**

26.1 The Association is dissolved if:

- a) the School is closed
- b) the number of members of the Association is two or less, or
- c) the question of dissolution is put and resolved in the affirmative on a three-fourths (75%) majority vote of its members present and entitled to vote at a special meeting of the Association called to consider the question.

26.2 On dissolution of the Association, the Principal's supervisor must, as directed by the Minister, deal with all property in the name of the Association and the Association's funds, after payment of any expenses lawfully incurred by the Association.

14. The activities of a P&C include:

- fundraising for the school
- operating a tuckshop, uniform shop or other amenity for the school
- applying for grants or other financial assistance for the school, and
- operating a school building fund for the school.

15. The Queensland State School P&Cs identified at paragraph 3 of this Ruling are registered for Goods and Services Tax (GST).

16. The Queensland State School P&Cs identified at paragraph 3 of this Ruling are not endorsed as deductible gift recipients (DGR).

17. The Queensland State School P&Cs identified at paragraph 3 of this Ruling are not registered as charities under the Australian Charities and Not-for-Profits Commission Act 2012, and are not endorsed as charities under the ITAA 1997 or GST Act 1999.



18. Patricks Road State School P&C Association, and The Gap State High School P&C Association, operate a school building fund for the benefit of the State Schools for which they were formed. Both school building funds are endorsed as a deductible gift recipient.

## Ruling

**Section 50-1 of the ITAA 1997: The Queensland State School P&Cs identified at paragraph 3 of this Ruling are exempt from income tax.**

19. The Queensland State School P&Cs identified at paragraph 3 of this Ruling are exempt from income tax under section 50-1 of the ITAA 1997 on the basis that they are exempt entities under item 2.1 of the table in section 50-10 of the ITAA 1997; they are societies, associations or clubs established for community services purposes (except political or lobbying purposes).

**Are the P&Cs identified at paragraph 3 of this Ruling eligible for concessions under subsection 9-17(2) of the GST Act 1999, subsection 23-15(2) of the GST Act 1999, section 40-130 of the GST Act 1999 and Division 63 of the GST Act 1999 (GST NFP concessions).**

20. The Queensland State School P&Cs identified at paragraph 3 of this Ruling are non-profit bodies for the purposes of the GST NFP concessions. As such, certain supplies that they make may be able to be considered under the special rules in subsection 9-17(2) of the GST Act 1999, subsection 23-15(2) of the GST Act 1999, section 40-130 of the GST Act 1999 and Division 63 of the GST Act 1999.

**Section 38-250, section 38-255, section 38-270, section 40-160, Division 111, Subdivision 129-C and Division 157 of the GST Act 1999 (GST GDE concessions): The Queensland State School P&Cs identified at paragraph 18 of this Ruling are eligible for the GST GDE concessions (except Division 157 of the GST Act 1999) in respect of the deductible gift recipients they operate.**

21. None of the P&Cs identified at paragraph 3 of this Ruling are endorsed as a deductible gift recipient under Subdivision 30-BA of the ITAA 1997, or are mentioned by name in either Subdivision 30-A or subdivision 30-B of the ITAA 1997 (that is, they are not deductible gift recipients), or are political parties, independent candidates and members for the purposes of Subdivision 30-DA of the ITAA 1997, and therefore will not be gift deductible entities for the purposes of the GST Act 1999. However, the two P&Cs identified at paragraph 18 of this Ruling operate funds which are endorsed as deductible gift recipients.

22. As such, the two P&Cs identified at paragraph 18 of this Ruling are gift deductible entities (GDE) for the purposes of the GST Act 1999 and will be eligible to access the concessions at section 38-250 of the GST Act 1999, section 38-255 of the GST Act 1999, section 38-270 of the GST Act 1999, section 40-160 of the GST Act 1999, section 111-18 of the GST Act 1999, and section 129-45 of the GST Act 1999. The Queensland State School P&Cs will only be able to access these provisions in respect of the deductible gift recipients they operate, but not any other activities or purposes of the P&Cs.

23. The concessions in Division 157 of the GST Act 1999 are only available to an entity that is endorsed as a charity under subsection 176-1 of the GST Act 1999, or is a government school, or is endorsed as a deductible gift recipient under subsection 30-125(1) of the ITAA 1997. The Queensland State School P&Cs identified at paragraph 3 of this Ruling are not endorsed charities, are not government schools, and are not endorsed as deductible gift recipients.

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**Commissioner of Taxation**8 June 2016

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## Appendix 1 – Explanation

**❶** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

**The Queensland State School P&Cs identified at paragraph 3 of this ruling are exempt from income tax under section 50-1 of the ITAA 1997.**

24. Section 50-1 of the ITAA 1997 states that:

The total ordinary income and statutory income of the entities covered by the following tables is exempt from income tax. In some cases, the exemption is subject to special conditions.

25. The table in section 50-10 of the ITAA 1997 provides the following:

<b>Community service</b>		
<b>Item</b>	<b>Exempt entity</b>	<b>Special conditions</b>
2.1	Society, association or club established for community service purposes (except political or lobbying purposes)	See section 50-70

26. Section 50-70 of the ITAA 1997 states the following:

- (1) An entity covered by item ... 2.1 ... is not exempt from income tax unless the entity is a society, association or club that is not carried on for the purpose of profit or gain of its individual members and that:
  - (a) has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia; or
  - (b) is a society, association or club that meets the description and requirements in item 1 of the table in section 30-15; or
  - (c) is a prescribed society, association or club which is located outside Australia and is exempt from income tax in the country in which it is resident;
 and the entity satisfies the conditions in subsection (2).
- (2) The entity must:
  - (a) comply with all the substantive requirements in its governing rules; and
  - (b) apply its income and assets solely for the purpose for which the entity is established.

27. The tax legislation does not define the terms 'society, association or club', or the phrase 'community service purposes'.

### **Society, association or club**

28. In *Pro-Campo Ltd v. Commr. of Land Tax (NSW)* 81 ATC 4270; (1981) 12 ATR 26, which concerned exemption from New South Wales land tax, Lee J said the following on the meaning of society, association and club:

The three words 'society, club or association' are words in frequent use in our community and societies, clubs and associations are well-known entities...

In *Theosophical Foundation Pty Ltd v. Commr. of Land Tax* (1966-1967) 67 SR 70 ... Sugerman JA stated at p.82

'A society, in the relevant sense, is 'a number of persons associated together by some common interest or purpose, united by a common vow, holding the same belief or opinion, following the same trade or profession, etc: an association.' (*Oxford English Dictionary*,...) A society as thus described, in which the common element pertains to areas concerned with religion, may aptly be described as a religious society.'

... the three words are describing bodies made up of groups of persons who have come together to implement common purposes and objects... (at 4278-4279).

29. Although *Pro-Campo Ltd v. Commr. of Land Tax* was considered in the context of State land tax, it is instructive as to the meaning of the terms contained in section 50-10 of the ITAA 1997.

30. Under the provisions of the ER 2006 a State School P&C is formed where the Principal of a school calls a meeting of eligible persons (parents, school staff, other adults interested in the school's welfare) to consider the formation of a P&C, and it is agreed that a P&C should be formed (section 34).

31. A State School P&C is formed for the object of promoting the interests of, and facilitating the development and further improvement of, the School for which it is formed (section 120 of the EA 2006).

32. The Queensland State School P&Cs identified at paragraph 3 of this Ruling are a society, association or club for the purposes of section 50-10 of the ITAA 1997.

## Community service purposes

33. In *Douglas & Ors v. Federal Commissioner of Taxation* 97 ATC 4722; (1997) 36 ATR 532; (1997) 77 FCR 112, Olney J said the following on the meaning of 'community service':

The absence of a statutory definition and the very broad ambit of the word 'community service' justify resort to the explanatory memorandum to identify more precisely the legislative intention.

The Explanatory Memorandum circulated by the then Treasurer upon the introduction of the Taxation Laws Amendment Bill (No 2) 1990 states...

... The words 'for community service purposes' are not defined but are to be given a wide interpretation. The words are not limited to those purposes beneficial to the community which are also charitable. They extend to a range of altruistic purposes. The words would extend to promoting, providing or carrying on activities, facilities or projects for the benefit or welfare of the community, or of any members of the community who have particular need of those activities, facilities or projects by reason of their youth, age, infirmity or disablement, poverty or social or economic circumstances...

When purposes are directed to the benefit or welfare of members of the community in particular need, that need must arise by reason of youth, age, infirmity or disablement, poverty or social or economic circumstances...

34. In *Navy Health Ltd v. Federal Commissioner of Taxation* [2007] FCA 931; 2007 ATC 4568; (2007) 68 ATR 215; (2007) 163 FCR 1, Jessup J said the following on the meaning of 'community service' after referring to the meaning provided in the explanatory memorandum:

... it is clear that the words are not limited to charitable purposes. But neither should the paragraph be applied, in my view, merely as a fall back position for anybody which almost, but not quite, achieves recognition as a charity... I consider that the essence of 'community service' is that a service is provided to the community, or a section of the community. Here the word 'service' is used in the sense of 'help, benefit or advantage', particularly 'the action of serving, helping or benefiting, conduct tending to the welfare or advantage or another'... (at paragraph 83).

35. Jessup J went on to say that the word 'community' refers not only to the community as a whole, but also to any identifiable section of the community, and that the receipt of a service by any group of persons should not be regarded as the receipt of that service by a section of the community. In this regard, Jessup J stated that 'community service purpose':

... deals with 'service' in a much more concrete setting, and requires, in my view, the community, or a section of the community, to benefit by way of the receipt of some identifiable help, benefit or advantage... (at paragraph 84).

36. In *Commissioner of Taxation v. Wentworth* [2011] FCAFC 42; 2011 ATC 20-253; (2010) 81 ATR 312, the Full Federal Court

considered whether an entity which facilitated the provision of a face-to-face banking service in a small rural community was established for community service purposes. The Court found that the activities of Wentworth were within the exemption:

... the main or dominant purpose for which it was established was a community service. Here the community service purpose was the facilitation of face-to-face banking services which provided a substantial benefit to the community of Wentworth that was both real and tangible... 'service' imports delivery of some practical help, benefit or advantage... (at paragraph 43)

37. The Commissioner's view on the meaning of 'community service purposes' is stated in *Taxation Determination TD 93/190 Income tax: what is the scope of the exemption from income tax provided by sub-paragraph 23(g)(v) of the Income Tax Assessment Act 1936?*, which provides that 'community service purposes' has a broad meaning, and extends to a range of altruistic purposes such as:

3. ...promoting, providing or carrying out activities, facilities or projects for the benefit or welfare of the community or any members of the community who have a particular need by reason of youth, age, infirmity or disablement, poverty, or social or economic circumstances.

4. However, the provision does not give exemption from income tax to a broad range of organisations that are established within the community, but whose purposes are not of an altruistic nature. Altruistic purposes are an essential element of even the widest interpretation or 'community service purposes'.

### **Main or dominant purpose**

38. In *Cronulla-Sutherland Leagues Club Ltd v. Commissioner of Taxation* 90 ATC 4215; (1990) 21 ATR 300; (1990) 23 FCR 82, a case concerning exemption under section 23(g) (iii) of the *Income Tax Assessment Act 1936* as a society, club or association established for the encouragement of a game or sport, Lockhart J stated the following regarding entitlement to the exemption from income tax (which is relevant to the operation of section 50-10 of the ITAA 1997):

For a society, association or club to qualify for the exemption granted by sec. 23(g)(iii) it must be one that has as its main object or purpose the encouragement or promotion of an athletic game or athletic sport in which human beings are the sole participants. It may have other objects or purposes which are merely incidental or ancillary thereto or which are secondary or even unrelated to the main object or purpose without disqualifying the body from the exemption. But if it has two co-ordinate objects, one of which is outside the exemption, the exemption cannot apply because it would be impossible to say that one object is the main or predominant object (at 4225).

39. Queensland State School P&Cs are governed by the provisions of the EA 2006 and the ER 2006, and the Minister for Education and Training is given significant control over the operations of State School P&Cs.

40. Generally, where the operations and activities of an entity are a function of government, they are not carried on for altruistic purposes for the benefit of the community (that is a community service purpose); they have a purpose of government.

41. The Queensland State School P&Cs are brought into existence by parents, teachers and interested citizens who are motivated by the altruistic intention to promote and improve the learning experience of the students who attend the school for which the P&C is formed.

42. The stated object of a State School P&C is to promote the interests of, and facilitate the development and further improvement of, the School for which it is formed.

43. The functions of a State School P&C include:

- foster community interest in educational matters
- try to bring about closer cooperation between the parents of children attending the school and other members of the community, staff members of the school and students of the school
- give advice and recommendations to the principal about issues relating to students who attend the school
- give advice and recommendations to the principal about the general operations and management of the school
- give, or assist in the giving of, financial or other resources or services for the benefit of students at the school, and
- any other functions, not inconsistent with the EA 2006, as the Minister decides.

44. The activities of a State School P&C include:

- fundraising for the school
- operating a tuckshop, uniform shop or other amenity for the school
- applying for grants or other financial assistance for the school, and
- operating a school building fund for the school.

45. Queensland State School P&Cs are not merely carrying on activities which promote the schools for which they are formed; such a purpose would be considered a purpose of government.

46. Rather, they are undertaking a range of activities which develop and support the education of the students at the schools for which they are formed, either individually through financial assistance, or for the student body as a whole (that is operating tuck shops and other amenities), and they are concerned with developing and fostering the relationships the school has with parents, and interested community members, to ensure that the school is well supported by the community.

47. While Queensland State School P&Cs are concerned with promoting State Schools, their purpose is much broader and extends to promoting the education of students at the schools for which they are formed, and fostering the community of the school for which they are formed; which are altruistic purposes for the benefit of the community.

48. The Commissioner does not consider that the altruistic functions and operations of the Queensland State School P&Cs lose that character because the Queensland Minister of Education and Training can exercise a level of control over the operations of the P&Cs.

49. The Queensland State Schools P&Cs identified at paragraph 3 of this Ruling, are considered to be established for community service purposes.

50. There is no evidence that the Queensland State School P&Cs identified at paragraph 3 of this Ruling operate for political or lobbying purposes; their activities are not concerned with the exercise of influence or power over party political activities, government activities, legislation, or government affairs.

51. As stated above, a society, association or club established for community service purposes must also satisfy the requirements of section 50-70 of the ITAA 1997 to be an exempt entity.

### **Subsection 50-70(1) of the ITAA 1997**

52. For the purposes of this ruling, subsection 50-70(1) of the ITAA 1997 requires that the society, association or club:

- is not carried on for the purpose of profit or gain of its individual members; and
- it has a physical presence in Australia and, to that extent, incurs its expenditure and pursues its objectives principally in Australia.

### **Purpose of profit or gain of individual members**

53. The phrase 'carried on for the purpose of profit or gain of its individual members' is not defined in the tax legislation.

54. In *Commissioner of Taxation v. Co-operative Bulk Handling LTD* [2010] FCAFC 155; 2010 ATC 20-231; (2010) 81 ATR 312, the



Full Federal Court considered the operation of section 50-40 of the ITAA 1997, a special condition of which is that an entity 'must not be carried on for the profit or gain of its individual members'. Mansfield and McKerracher JJ stated the following on the expression 'not carried on for the profit or gain of individual members':

...if as a consequence of pursuing the purpose, the members derive a benefit or gain..., that gain or benefit will not preclude exemption unless it is a gain produced only by reason of individual membership... In all cases of exemption, it must be the position that it is not open to the body to disburse any profits or dividends to members... (at paragraph 94).

55. This was also the approach of the South Australian Supreme Court in *Repromed Pty Ltd v. Lucas and Anor* [2000] SASC 203; (2000) 76 SASR 575; 2000 ATC 4542; (2000) 44 ATR 452 where the court considered whether Repromed Pty Ltd was exempt from pay-roll tax on the basis that it was an employer who provided health services 'otherwise than for the purpose of profit or gain'. Debelle J held that Repromed Pty Ltd was carried on for the purpose of profit or gain as its constitution did not provide barriers to individual profit, and profits could find their way into pockets of individuals (at paragraph 35).

56. The above authorities indicate that the phrase 'not carried on for the purpose of profit or gain to its individual members' requires an absolute prohibition against profits or gains arriving to individual members.

57. The Commissioner has adopted this approach in Taxation Ruling TR 2011/4 *Income tax and fringe benefits tax: charities* (TR 2011/4), which states the following on the phrase 'not carried on for the purpose of profit or gain to its individual members':

235. Institutions use various mechanisms to ensure they are not entitled to be carried on for the purposes of private profit or gain. The most common way is to include clauses in the constituent documents that prevent the institution from distributing its profits or assets for the benefit of particular persons while it is operating and on winding up... The courts have tended to regard these clauses as an essential aspect of the constituent documents.

...

241. An institution's actions must be consistent with a prohibition on the institution's funds or assets finding their way to particular persons such as owners, their associates or nominees, or members, in a private capacity. Such distributions... are inconsistent with the institution not being carried on for the purpose of private profit or gain.

58. Section 132 of the EA 2006 requires that any money received by a Queensland State School P&C to be applied to achieve its objectives and perform its functions, and clause 22 of the 'model constitution' provides that no income or assets of a P&C will be distributed or paid to or for the benefit of members.

59. Section 47 of the ER 2006, and clause 26 of the 'model constitution', provides that on dissolution of a P&C, the surplus funds and property of the P&C must be distributed as directed by the Minister.

60. It is accepted that the Queensland State School P&Cs identified at paragraph 3 of this Ruling are not carried on for the purpose of profit or gain of their individual members.

### **Physical presence in Australia and expenditure**

61. The Queensland State School P&Cs identified at paragraph 3 of this Ruling have a physical presence in Australia (they operate in Queensland) and, to that extent, incur their expenditure and pursue their objectives principally in Australia.

### **Subsection 50-70(2) of the ITAA 1997**

62. Subsection 50-70(2) of the ITAA 1997 requires that a society, association or club must:

- comply with all the substantive requirements in its governing rules; and
- apply its income and assets solely for the purpose for which the it is established.

### **Comply with all substantive requirements in its governing rules**

63. Taxation Ruling TR 2015/1 *Income tax: special conditions for various entities whose ordinary and statutory income is exempt* sets out the Commissioners view on the meaning of the special conditions set out in subsection 50-70(2), and provides the following meaning of 'substantive requirements':

18. The 'substantive' requirements in an entity's governing rules are those rules that define the rights and duties of the entity.

19. The substantive requirements in an entity's governing rules include rules such as those that:

- give effect to the object or purpose of the entity
- relate to the non-profit status of the entity
- set out the powers and duties of directors and officers of the entity
- require financial statements to be prepared and retained
- set out the criteria for admission as a member of an entity
- require an entity to maintain a register of members, and

- relate to the winding-up of the entity.

...

21. The governing rules condition is applied on a continuous basis throughout an income year. The entity must consider whether, at all times throughout the income year, it has complied with all of the substantive requirements in its governing rules. In order for an entity to be exempt from income tax for all of an income year, it must (among other things) satisfy the governing rules condition at all times during that income year. While an entity is in breach of the governing rules condition, its ordinary and statutory income will not be exempt from income tax. (Footnotes removed).

64. In accordance with paragraph 4 of this Ruling, it is assumed that the Queensland State School P&Cs identified at paragraph 3 of this Ruling comply with all the substantive requirements in their governing rules.

## **Apply its income and assets solely for its purpose**

65. Paragraph 23 of TR 2015/1 provides that:

23. Two questions must be considered to determine whether an entity satisfies the income and assets condition:

- What is the 'purpose for which the entity is established', and
- Has the entity applied its income and assets solely for the purpose for which the entity is established?

66. As referred to in paragraph 45 of this Ruling, the sole purpose of the Queensland State School P&Cs is to promote the school for which they are formed, promote the education of students at the school for which they are formed, and foster the community of the school for which they are formed.

67. The financial reports for each of the Queensland State School P&Cs identified at paragraph 3 of this Ruling show that the income and assets of each of the P&Cs is being applied for the purpose for which they were established.

## **Conclusion**

68. The Queensland State School P&Cs identified at paragraph 3 of this Ruling are exempt entities as described in item 2.1 of the table in section 50-10 of the ITAA 1997. As such, the ordinary and statutory income of those P&Cs is exempt from income tax under section 50-1 of the ITAA 1997.

**Certain supplies made by the Queensland State School P&Cs identified at paragraph 3 of this Ruling may be able to be considered under the special rules in subsection 9-17(2) of the GST Act 1999, subsection 23-15(2) of the GST Act 1999, section 40-130 of the GST Act 1999 and Division 63 of the GST Act 1999.**

### ***Gifts***

69. Subsection 9-17(2) of the GST Act 1999 states that:

- (1) ...
- (2) Making a gift to a non-profit body is not the provision of consideration.

70. For a payment to be considered a gift it must be unfettered, that is, there must be no obligations to do anything in recognition of the gift and no expectation on the part of the donor to receive anything in return for donation. Subsection 9-17(2) of the GST Act 1999 specifically excludes a gift made to a non-profit body from being consideration for a supply. A payment will not be a gift where there are contractual obligations on the part of the non-profit organisation to use the funds in a specified way or there is the provision of a material benefit to the donor. In this case, the non-profit body would have to consider if the supply is a taxable supply under section 9-5 of the GST Act 1999.

### ***Registration***

71. Subsection 23-15(2) of the GST Act 1999 states that:

- (1) ...
- (2) Your registration threshold if you are a non-profit body is:
  - (a) \$100,000; or
  - (b) Such higher amount as the regulations specify

72. The GST Regulations currently specify a GST registration turnover threshold of \$150,000 for non-profit bodies. As such, you are not required to be registered if you are a non-profit body unless your turnover threshold is \$150,000 or higher.

### ***Supply of food from a school tuckshop or canteen***

73. Section 40-130 of the GST Act 1999 states that:

- (1) A supply of food is input taxed if:
  - (a) the supply is made by a non-profit body through a shop operating on the grounds of a school that supplies primary courses or secondary courses; and
  - (b) the non-profit body chooses to have all its supplies of food through the shop treated as input taxed.
- (2) However, the non-profit body:

- (b) cannot revoke the choice within 12 months after the day on which the non-profit body made the choice; and
  - (c) cannot make a further choice within 12 months after the day on which the non-profit body revoked a previous choice.
- (3) This section does not apply to a supply of food by a school to boarding students of the school as part of their board.

## ***Non-profit sub-entities***

74. Section 63-5 of the GST Act 1999 states that:

An entity may choose to apply this Division.

- (1) However, the entity must be registered and must be:
  - (a) an endorsed charity or a government school; or
    - (aa) a gift-deductible entity that is a non-profit body; or
  - (b) a non-profit body that is exempt from income tax under any of these provisions of the \* ITAA 1997:
    - (i) section 50-5 (charity, education and science);
    - (ii) section 50-10 (community service);
    - (iii) ...

75. To be eligible for the above GST NFP concessions an entity must be a non-profit body. The expression 'non-profit body' is not defined for the purposes of the GST Act 1999.

76. The Commissioners view on the meaning of 'non-profit body' is stated in *Goods and Services Tax Ruling GSTR 2012/2 Goods and services tax: financial assistance payments*, which provides that 'non-profit body':

... takes its ordinary meaning in the context in which it appears. A body is a non-profit body if, by operation of law (for example, a statute governing a body's activities) or by its constituent documents, the body is prevented from distributing its profits or assets amongst its members while the body is functional and on its winding-up.

77. Section 132 of the EA 2006 requires that any money received by a Queensland State School P&C to be applied to achieve its objectives and perform its functions, and clause 22 of the 'model constitution' provides that no income or assets of a P&C will be distributed or paid to or for the benefit of members.

78. Section 47 of the ER 2006, and clause 26 of the 'model constitution', provides that on dissolution of a P&C, the surplus funds and property of the P&C must be distributed as directed by the Minister.

79. The Queensland State School P&Cs identified at paragraph 3 of this Ruling are 'non-profit bodies' for the purposes of the GST Act 1999, and are eligible for the above GST NFP concessions.

**The Queensland State School P&Cs identified at paragraph 18 of this Ruling are eligible for the GST GDE concessions (except Division 157 of the GST Act 1999) in respect of the deductible gift recipients they operate.**

80. Section 38-250 of the GST Act 1999 states that:

- (1) A supply is GST-free if:
  - (a) the supplier is an endorsed charity, a gift-deductible entity or a government school; and
  - (b) the supply is for consideration that:
    - (i) if the supply is a supply of accommodation--is less than 75% of the GST inclusive market value of the supply; or
    - (ii) if the supply is not a supply of accommodation--is less than 50% of the GST inclusive market value of the supply.
- (2) A supply is GST-free if:
  - (a) the supplier is an endorsed charity, a gift-deductible entity or a government school; and
  - (b) the supply is for consideration that:
    - (i) if the supply is a supply of accommodation--is less than 75% of the cost to the supplier of providing the accommodation; or
    - (ii) if the supply is not a supply of accommodation--is less than 75% of the consideration the supplier provided, or was liable to provide, for acquiring the thing supplied.
- (3) Subsections (1) and (2) do not apply to a supply by a \* gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the \* ITAA 1997) under section 30-120 of the ITAA 1997, unless:
  - (a) the supplier is:
    - (i) an endorsed charity; or
    - (ii) a government school; or
    - (iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or
  - (b) each purpose to which the supply relates is a \* gift-deductible purpose of the supplier.

Note: This subsection denies GST-free status under this section to supplies by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, supplies can be GST-free under this section if they relate to the principal purpose of the fund, authority or institution.

81. Section 38-255 of the GST Act 1999 states that:

- (1) A supply of second-hand goods is GST-free if:
  - (a) the supplier is an endorsed charity, a gift-deductible entity or a government school; and
  - (b) the goods were supplied to the endorsed charity, gift-deductible entity or government school:
    - (i) as a gift; or
    - (ii) by way of a supply that was GST-free because of a previous application of this section.

However, the supply is *not* GST-free if the endorsed charity, gift-deductible entity or government school has dealt with the goods in such a way that the goods no longer have their original character.

- (3) Subsection (1) does not apply to a supply by a gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the ITAA 1997) under section 30-120 of the ITAA 1997, unless:
  - (a) the supplier is:
    - (i) an endorsed charity; or
    - (ii) a government school; or
    - (iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or
  - (b) each purpose to which the supply relates is a gift-deductible purpose of the supplier.

Note: This subsection denies GST-free status under this section to supplies by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, supplies can be GST-free under this section if they relate to the principal purpose of the fund, authority or institution.

82. Section 38-270 of the GST Act 1999 states that:

- (1) A supply is GST-free if:
  - (a) the supplier is an endorsed charity, a gift-deductible entity or a government school; and
  - (b) the supply is:
    - (i) a supply of a ticket in a raffle; or
    - (ii) an acceptance of a person's participation in a game of bingo; or
    - (iii) a gambling supply of a kind specified in the regulations; and

- (c) the supply does not contravene a State law or a Territory law.
- (3) Subsection (1) does not apply to a supply by a gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the ITAA 1997) under section 30-120 of the ITAA 1997, unless:
  - (a) the supplier is:
    - (i) an endorsed charity; or
    - (ii) a government school; or
    - (iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or
  - (b) each purpose to which the supply relates is a gift-deductible purpose of the supplier.

Note: This subsection denies GST-free status under this section to supplies by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, supplies can be GST-free under this section if they relate to the principal purpose of the fund, authority or institution.

83. Section 40-160 of the GST Act 1999 states that:

- (1) A supply is input taxed if:
  - (a) the supplier is an endorsed charity, a gift-deductible entity or a government school; and
  - (b) the supply is made in connection with a fund-raising event; and
  - (c) the supplier chooses to have all supplies that it makes in connection with the event treated as input taxed; and
  - (d) the event is referred to in the supplier's records as an event that is treated as input taxed.
- (3) Subsection (1) does not apply to a supply by a gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the ITAA 1997) under section 30-120 of the ITAA 1997, unless:
  - (a) the supplier is:
    - (i) an endorsed charity; or
    - (ii) a government school; or
    - (iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or
  - (b) each purpose to which the supply relates is a gift-deductible purpose of the supplier.

Note: This subsection denies input taxed status under this section to supplies by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution.



However, supplies can be input taxed under this section if they relate to the principal purpose of the fund, authority or institution.

84. Section 111-18 of the GST Act 1999 states that:

- (1) If:
  - (a) an endorsed charity, a gift-deductible entity or a government school reimburses an individual for an expense he or she incurs; and
  - (b) the expense is directly related to his or her activities as a volunteer of the endorsed charity, gift-deductible entity or government school;

this Division applies to the endorsed charity, gift-deductible entity or government school as if:

- (c) the individual were an employee of the endorsed charity, gift-deductible entity or government school; and
  - (d) his or her activities in connection with incurring the expense were activities as such an employee.
- (3) Subsection (1) does not apply in relation to a reimbursement by a gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the ITAA 1997) under section 30-120 of the ITAA 1997, unless:
  - (a) the entity is:
    - (i) an endorsed charity; or
    - (ii) a government school; or
    - (iii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or
  - (b) each purpose to which the expense relates is a gift-deductible purpose of the entity.

Note: This subsection excludes from this section reimbursements by certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, reimbursements can be covered by this section if they relate to the principal purpose of the fund, authority or institution.

85. Section 129-45 of the GST Act 1999 states that:

- (1) If you are or were entitled to an input tax credit for the creditable acquisition of a thing, an adjustment does not arise under this Subdivision merely because you supply the thing as a gift to an endorsed charity or gift-deductible entity.
- (3) Subsection (1) does not apply in relation to a thing that you supply to a gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the ITAA 1997) under section 30-120 of the ITAA 1997, unless:
  - (a) the entity is:
    - (i) an endorsed charity; or

- (ii) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997; or
- (b) each purpose to which the supply relates is a gift-deductible purpose of the entity.

Note: This subsection excludes from this section supplies to certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution. However, supplies can be covered by this section if they relate to the principal purpose of the fund, authority or institution.

86. Section 157-5 of the GST Act states that:

- (1) An endorsed charity, a gift-deductible entity or a government school may choose to account on a cash basis, with effect from the first day of the tax period that the endorsed charity or entity chooses.
- (3) This section does not apply in relation to a gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the ITAA 1997) under section 30-120 of the ITAA 1997, unless the entity is:
  - (a) an endorsed charity; or
  - (b) a government school; or
  - (c) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997.

Note: This subsection excludes from this section certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution.

- (4) ...

87. Section 157-10 of the GST Act 1999 states that:

- (1) Paragraphs 29-50(1)(a) and (ab) and subsection 29-50(3) do not apply in relation to any endorsed charity, any gift-deductible entity or any government school.
- (3) This section does not apply in relation to a gift-deductible entity endorsed as a deductible gift recipient (within the meaning of the ITAA 1997) under section 30-120 of the ITAA 1997, unless the entity is:
  - (a) an endorsed charity; or
  - (b) a government school; or
  - (c) a fund, authority or institution of a kind referred to in paragraph 30-125(1)(b) of the ITAA 1997.

Note: This subsection excludes from this section certain (but not all) gift-deductible entities that are only endorsed for the operation of a fund, authority or institution.

88. The meaning of 'gift-deductible entity' and 'gift-deductible purpose' is provided at section 195-1 of the GST Act 1999:

'gift-deductible entity': an entity is a gift-deductible entity if gifts or contributions made to it can be deductible under Division 30 of the ITAA 1997

'gift-deductible purpose', of an entity, means a purpose that is the principal purpose of:

- (a) if the entity legally owns a fund for the operation of which the entity is entitled, under subsection 30-125(2) of the ITAA 1997, to be so endorsed – that fund; or
- (b) if the entity includes an authority or institution for the operation of which the entity is entitled, under subsection 30-125(2) of the ITAA 1997, to be so endorsed – that authority or institution.

89. An entity that is not endorsed as a deductible gift recipient under subsection 30-125(1) of the ITAA 1997, is not mentioned by name in Subdivision 30-A or subdivision 30-B of the ITAA 1997, or is not a political party, independent candidate and member for the purposes of Subdivision 30-DA of the ITAA 1997, will not be a gift deductible entity for the purposes of the GST Act 1999 and will not be eligible for the GST GDE concessions, unless the entity owns and operates a fund, authority or institution and the fund, authority or institution is endorsed as a deductible gift recipient under subsection 30-125(2) of the ITAA 1997.

90. Where an entity operates a fund, authority or institution which is endorsed as a deductible gift recipient, the entity is a gift deductible entity for the purposes of the GST Act 1999 and will be eligible for the GST GDE concessions (excluding the concessions in Division 157 of the GST Act 1999) in respect of the activities or purposes of that fund, authority or institution, but not any other activities or purposes of the entity.

91. The Queensland State School P&Cs identified at paragraph 3 of this Ruling are not endorsed as deductible gift recipients under subsection 30-125(1) of the ITAA 1997, are not mentioned by name in Subdivision 30-A or subdivision 30-B of the ITAA 1997, and are not a political party, independent candidate and member for the purposes of Subdivision 30-DA of the ITAA 1997, but the two Queensland State School P&Cs identified at paragraph 18 of this Ruling operate school building funds that are endorsed as deductible gift recipients.

92. As such, the two Queensland State School P&Cs identified at paragraph 18 of this Ruling are gift deductible entities and eligible for the GST GDE concessions in respect of the deductible gift recipients they operate, but not any other activities or purposes of the entity.

93. The concessions in Division 157 of the GST Act 1999 are only available to an entity that is endorsed as a charity under subsection 176-1 of the GST Act 1999, or is a government school, or is endorsed as a deductible gift recipient under subsection 30-125(1) of the ITAA 1997. As stated above, the Queensland State School P&Cs identified at paragraph 3 of this Ruling are not endorsed charities, are not government schools, and are not endorsed as deductible gift recipients.

## Appendix 2 – Detailed contents list

94. The following is a detailed contents list for this Ruling:

	<b>Paragraph</b>
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Are the P&Cs identified at paragraph 3 of this Ruling eligible for concessions under subsection 9-17(2) of the GST Act 1999, subsection 23-15(2) of the GST Act 1999, section 40-130 of the GST Act 1999 and Division 63 of the GST Act 1999 (GST NFP concessions).	20
Section 38-250, section 38-255, section 38-270, section 40-160, Division 111, Subdivision 129-C and Division 157 of the GST Act 1999 (GST GDE concessions): The Queensland State School P&Cs identified at paragraph 18 of this Ruling are eligible for the GST GDE concessions (except Division 157 of the GST Act 1999) in respect of the deductible gift recipients they operate.	21
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Certain supplies made by the Queensland State School P&Cs identified at paragraph 3 of this Ruling may be able to be considered under the special rules in subsection 9-17(2) of the GST Act 1999, subsection 23-15(2) of the GST Act 1999, section 40-130 of the GST Act 1999 and Division 63 of the GST Act 1999.

69

*Gifts*

69

*Registration*

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*Supply of food from a school tuckshop or canteen*

73

*Non-profit sub-entities*

74

The Queensland State School P&Cs identified at paragraph 18 of this Ruling are eligible for the GST GDE concessions (except Division 157 of the GST Act 1999) in respect of the deductible gift recipients they operate.

80

**Appendix 2 – Detailed contents list****94**

## References

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Not previously issued as a draft

- ITAA 1997 50-70(2)
- TAA 1953

*Related Rulings/Determinations:*

TD 93/190; TR 2006/10; TR 2011/4;  
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