

REVENUE RULING NO. SD 010

ASSOCIATIONS INCORPORATION ACT 1984 - EXEMPTION (EFFECTIVE FROM 1 JULY 1985)

RULING

An "Association" is defined as including a society, club, institution or other body and an incorporated association incorporated under the Associations Incorporation Act 1984. Unless expressly provided in the Associations Incorporation Act 1984, the provisions of the Companies (New South Wales) Code do not apply.

An association comprising not less than five members is eligible to be incorporated under the Associations Incorporation Act 1984.

However, an association is not eligible where it:

- is carried on for the object of trading or securing pecuniary gain for its members (see however the terms of sec. 4 which indicates 8 classifications of pecuniary gain which will not disqualify an application);
- has a capital divided into shares or stock held by members of the association;
- holds property in which the members of the association have a disposable interest, whether directly or in the form of shares or stock in the capital of the association or otherwise;

- is a trade union registered under the Trade Union Act 1881 (N.B. many trade unions are registered under other Statutes);
- is registered or required or authorised to be registered under the Friendly Societies Act 1912, the Permanent Building Societies Act 1967 or the Credit Union Act 1969 or is a society specified in the Second Schedule to the Co-operation Act 1923;
- is a company within the meaning of the Companies (New South Wales) Code, other than a company limited by guarantee within the meaning of that Code; or
- is an association which is, or is included in a class of associations which is, prescribed for the purposes of this subsection.

Any two or more incorporated associations may apply to be amalgamated as an incorporated association under the Associations Incorporation Act 1984.

Upon the winding up of an incorporated association any surplus property is to be distributed in accordance with the terms set out in sec. 53 of the Associations Incorporation Act 1984.

The effects of incorporation are, inter alia, that the incorporated association is capable of performing all of the functions of a body corporate.

It is a requirement that such a body include at the end of its name the word "incorporated" or the abbreviation "Inc.". Schedule 2 of the Associations Incorporation Act 1984 provides for the vesting of property from the previous association to that formed under that Act and any documents or instruments executed or registered only for a

purpose ancillary to or consequential on the operation of the Schedule or for the purpose of giving effect to the Schedule shall not be liable to stamp duty (refer to cl.10).

There will also be certificates of incorporation which will be available in each of the three types of change envisaged by the Associations Incorporation Act 1984 and also where a change of name is sought. These instruments are not covered by cl.10 of Sch.2. It is considered that stamp duty is nonetheless not payable thereon as the duty charge applies only to Certificates under the Companies (New South Wales) Code.

(N.B. As of 11 December 1985, certificates of incorporation under the Companies (New South Wales) Code are no longer liable to stamp duty in New South Wales).

(Departmental references: 85/257; T.I. 124).

A. D. CLYNE,
CHIEF COMMISSIONER OF STAMP DUTIES.
1 December, 1985

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