

Duties (Guidelines- Insurance Exempt from Duty) Determination 2002 (No 1)

Disallowable instrument DI2002—118

made under the

Duties Act 1999, s 201A (Insurance exempt from duty in certain circumstances)

EXPLANATORY STATEMENT

Summary

Chapter 8 of the *Duties Act 1999* (the Duties Act) imposes duty at the determined rate, currently 10%, on the amount of the premium paid in relation to a contract of general insurance. The insurer is liable to pay the duty but the charge is invariably passed on to the insured.

Exemption is already provided for some institutions such as hospitals, schools and charitable organisations, and for some types of insurance such as compulsory third party insurance and medical benefits insurance.

Section 201A of the Duties Act provides for exemption from duty imposed by part 8.2 on a premium for public liability insurance or other general insurance as prescribed in the Ministerial Guidelines.

The intention of the Ministerial Guidelines is to limit the exemption to contracts of general insurance necessary to hold a public event and to provide relief from duty to the end user, that is, small amateur sporting and community bodies run on a not-for-profit basis.

These Ministerial Guidelines are a disallowable instrument. They provide definitions and details of:

- what is an *eligible not-for-profit body*;
- which contracts of insurance are *exempt insurance*;
- the circumstances under which exemption may be granted;
- the extent of the exemption; and
- procedures for application for exemption.

Under section 44 of the *Legislation Act 2001*, the guidelines may be made with respect to any matter that is necessary or convenient to be prescribed for carrying out or giving effect to the authorising law.

Definitions

Eligible not-for-profit body means an amateur sporting body or community organisation that is run on a not-for-profit basis and pursues their objectives and incurs expenditure principally in the ACT. Activities must be at least 50% in the ACT.

This definition ensures that sporting bodies run on a commercial basis do not qualify for the exemption. For an organisation that is not charitable, its main purpose must be the encouragement or promotion of culture, religion, sport, community service, etc to be eligible for an exemption from duty. This excludes non-profit clubs whose main operations provide dining, gaming and leisure facilities, even if they give a grant to an associated sporting or cultural club, but are not involved in the sport or cultural activity itself.

Not-for-profit means a non-profit organisation that is determined by the same rules used by the Australian Taxation Office.

Exempt insurance contract ensures the risks are associated with the pursuit of the objectives of the ***eligible not-for-profit body*** in the ACT, even if the contracts are taken out on their behalf by a national or umbrella organisation, or by a group of similar bodies.

Exempt insurance defines four types of general insurance, ***public liability and products liability, professional indemnity, directors' and officers' liability***, and ***group personal accident insurance***. These contracts of insurance are the types usually required by an organisation to hold a public event.

Circumstances of duty exemption

Exemption from duty will be approved in circumstances where the ***exempt insurance contracts*** would normally be required to hold a public event and the body can provide evidence of their status and that they do not hold events on a professional basis or receive payments for the conduct of events.

Extent of duty exemption

The exemption is limited to the extent that it applies to the ***exempt insurance contract*** for the ***eligible not-for-profit body*** for public events within the ACT.

This allows for group policies across jurisdictions to be exempt for the relevant ACT proportion.

Application procedures

The applicant must provide sufficient supporting information to the Commissioner to establish that they are an ***eligible not-for-profit body***. The Commissioner will provide approval in writing and may revoke this approval if the organisation ceases to be an ***eligible not-for-profit body***. The Commissioner may request further information at any time to support an application.

Authorised by the Treasurer, Ted Quinlan MLA