

Commissioner's Interpretation Statement: Health Promotion Charities

The purpose of this Commissioner's Interpretation Statement is to provide guidance about how to determine whether a charity is an 'institution whose principal activity is to promote the prevention or the control of diseases in human beings (Health Promotion Charity)'.

This Interpretation Statement was initially published on 12 May 2015. Revised versions were published on 19 December 2016 and 2 March 2017. The current version applies from 30 June 2023 and reflects the Commissioner's understanding of the law regarding Health Promotion Charities on that date.

Background

1. A 'Health Promotion Charity' (HPC) is 'an institution whose principal activity is to promote the prevention or the control of diseases in human beings'.
2. To be recognised as an HPC, an organisation must be registered with the ACNC as a charity and as the HPC subtype of charity.¹
3. An organisation not yet registered as a charity with the ACNC can apply to register as a charity, and as the HPC subtype of charity, at the same time.
4. An organisation that is already registered as a charity can apply to the ACNC to add the HPC subtype to its registration.
5. The purpose of this Commissioner's Interpretation Statement is to explain the ACNC's view of the definition of HPC.

How to determine if an organisation can be registered as an HPC

Requirements for registration as a charity

6. All organisations that apply for registration with the ACNC as an HPC must meet the general requirements for registration as a charity. These include that the organisation must:
 - a. meet the definition of entity
 - b. be a not-for-profit
 - c. be in compliance with the governance standards and external conduct standards
 - d. have an Australian Business Number (ABN)
 - e. meet the definition of charity

¹ HPC is a category of organisation that is entitled to certain tax concessions. For example, an HPC can apply for endorsement as a deductible gift recipient (DGR) under the HPC DGR category in the *Income Tax Assessment Act 1997* (Cth). DGR endorsement enables organisations to seek tax-deductible donations from the public, and to apply for funding from public and private ancillary funds. An HPC can also take advantage of a fringe benefit tax exemption for its staff under the *Fringe Benefits Tax Assessment Act 1986* (Cth). Further information regarding the tax concessions available to HPCs is available from the Australian Taxation Office.

- f. not be covered by a decision in writing made by an Australian government agency (including a judicial officer) under an Australian law that provides for entities to be characterised on the basis of them engaging in, or supporting, terrorist or other criminal activities.²
7. The ACNC website contains detailed guidance on [the requirements for charity registration, as well as how to apply for registration](#).³
8. An organisation that applies to the ACNC for registration as a charity can also apply to be registered as one or more subtypes of charity. One of these subtypes is HPC. There are also other subtypes that correspond with the charitable purposes that are included in the Charities Act.
9. As all HPCs must meet the charity registration requirements, organisations seeking registration as the HPC subtype must have a charitable purpose or purposes, and must pursue activities that further those purposes. An HPC's principal activity of promoting the prevention or control of diseases in human beings will further one or more of its charitable purposes.
10. Often, HPCs will have a charitable purpose of advancing health and will be entitled to registration as the 'advancing health' subtype of charity. But an HPC could have a charitable purpose other than advancing health, such as advancing education. In that case the HPC would be entitled to registration as both the HPC subtype of charity and the 'advancing education' subtype of charity.

Meeting the description of a 'Health Promotion Charity'

11. To be entitled to registration as the HPC subtype of charity, an organisation must also demonstrate that it is 'an institution whose principal activity is to promote the prevention or the control of diseases in human beings'. This description is a composite, so an organisation must demonstrate that it meets all the elements of the description.⁴
12. In this section, each element of the description of an HPC will be explained with reference to the findings of courts and tribunals that have considered the meanings of these terms.

Institution

13. An institution is a body created to conduct activities in furtherance of a particular purpose or aim.⁵ In the HPC context, the body will undertake one or more activities to promote the prevention or control of diseases in human beings.
14. An institution does not need to be any particular legal structure, but it must have a distinct identity.⁶ For example, an institution may be:

² *Australian Charities and Not-for-profits Commission Act 2012* (Cth) s 25-5.

³ Australian Charities and Not-for-Profits Commission, 'Who can apply to be registered?' <https://www.acnc.gov.au/for-charities/start-charity/you-start-charity/who-can-apply-be-registered>.

⁴ *Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission* [2017] AATA 2424, [92] (Justice White DP; Bean DP).

⁵ *Mayor of Manchester v McAdam* [1896] AC 500, 511 (Macnaghten LJ).

⁶ See, for example, *Case X33* (1990) 90 ATC 308, [20]-[21] (Beddoe SM).

- a. a trust
 - b. an incorporated body such as a company, Aboriginal or Torres Strait Islander Corporation,⁷ co-operative or incorporated association
 - c. an unincorporated body, such as an unincorporated association.
15. Although an institution can be any structure, it cannot be a ‘mere fund’ or ‘mere trust’.⁸ A mere fund or mere trust is an organisation that only exists to manage a trust fund and make distributions.⁹
16. Incorporation alone is not sufficient to demonstrate that an organisation is more than a mere fund or mere trust. If a company or other incorporated body is established only to be the corporate trustee of a fund, and its only activities are to manage the fund and make distributions, it will not be an institution.¹⁰
17. The scale of activities is relevant to determining whether an organisation is an institution. Membership and control may also be relevant in some circumstances. For example, an organisation that:
- a. had a small and exclusive membership
 - b. was controlled by the members of a family and their friends
 - c. engaged in activities on a relatively small scale that were closely aligned with the business affairs of one of its founders
- was found not to be a religious institution in *Pamas Foundation Inc v Federal Commissioner of Taxation*.¹¹ An organisation operating like this would not be an institution.
18. An organisation is likely to be an institution if it undertakes several activities on a regular basis, even if it is controlled and operated by a small number of people who are related to one another.

Demonstrating that an organisation is an institution

19. An organisation that is already operating will need to demonstrate that it is an institution. It can do so by clearly explaining the activities it has conducted over at least its past year of operation to show it does more than merely manage trust funds and make distributions.
20. An organisation that is just starting up and has not yet undertaken any activities, or has only undertaken activities for a short time, will need to demonstrate that it is an institution by providing a

⁷ Registered with the Office of the Registrar of Indigenous Corporations (ORIC) under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

⁸ *The Hunger Project Australia v Federal Commissioner of Taxation* (2013) 94 ATR 855, [112] (Perram J).

⁹ See, for example, *Trustees of the Indigenous Barristers’ Trust v Federal Commissioner of Taxation* (2002) 127 FCR 63, 87 [31] (Gyles J); *Trustees of the Allport Bequest v Federal Commissioner of Taxation* (1988) 19 ATR 1335, 1341 (Northrop J).

¹⁰ See *Sargents Charitable Foundation v Chief Commissioner of State Revenue (NSW)* (2005) 60 ATR 129, 133 [23]-[25] (Gzell J).

¹¹ *Pamas Foundation Inc v Federal Commissioner of Taxation* (1992) 35 FCR 117.

detailed plan of the activities it plans to undertake over at least its first year of operation. The plan should include:

- a. a description of the activities the organisation plans to undertake and the people who will benefit from its activities
 - b. the staff (or volunteers) and funds the organisation needs to undertake its activities
 - c. where the organisation plans to obtain the funds it needs to undertake its activities, and
 - d. an explanation of how often the organisation will undertake its activities.
21. The more clearly a start-up organisation describes how it is going to operate, the more likely it will be able to demonstrate it is an institution.

Examples

22. The following are two examples of organisations that **would be** institutions:
- a. A trust is established for the charitable purpose of advancing health. Under the terms of the trust, the trustees have broad powers to carry out activities to achieve its purpose. The trustees invest the trust fund and use the interest it earns to produce educational videos about the dangers of smoking to health, which they show online and at schools and community centres. The trust is an institution. The trustees engage in activities on behalf of the trust which go beyond merely managing the trust fund. Therefore, it is not a 'mere trust' or 'mere fund'.
 - b. A trust is established for the charitable purpose of advancing health. Under the terms of the trust, the trustees have broad powers to carry out activities to achieve its purpose. The trustees undertake fundraising activities while raising awareness of different kinds of cancer. They provide the funds that they raise to HPCs which promote the prevention or control of cancer. The trust is an institution. By actively fundraising, the trustees are engaging in an activity to achieve the trust's purpose that means it is not a 'mere trust' or 'mere fund'.
23. The following are examples of organisations that **would not be** institutions:
- a. A trust is established for the charitable purpose of advancing health. Under the terms of the trust, the trustees must invest the trust fund and distribute any interest it earns each year between three registered HPCs. The trustees are not permitted to undertake active fundraising activities or any activities other than managing the trust fund and making the distributions as set out in the deed. The trust is not an institution because it is a 'mere fund' or 'mere trust'. The fact that funds from the trust are distributed to HPCs is not enough for the trust itself to be regarded as an institution.
 - b. A trust is established for the charitable purpose of advancing health. Under the terms of the trust, the trustees have broad powers to carry out activities to achieve its purpose. The trustees choose to achieve the trust's purpose by investing the trust funds and distributing the interest it earns each year to an HPC. They don't carry out any other activities. The trust is not an institution because it is a 'mere fund' or 'mere trust'. Although the trustees could choose to undertake activities beyond managing the trust fund and making distributions, they have

decided not to do so. If the trustees decided in future to use the trust fund to undertake activities other than investing the fund and making distributions, the trust may become an institution.

- c. An incorporated association is set up by a family comprising two parents and their three adult children. Its only members are the family who set it up. It is controlled by the two parents and one of their adult children. Its purpose is to raise awareness of heart disease, which it achieves once per year by providing brochures explaining the risk of heart disease at a trade fair which the parents attend to showcase their small business. The incorporated association is not an institution. With its small and exclusive membership, and limited activities which are tied to the business affairs of the parents, it is analogous to Pamas Foundation Inc, which a court found was not an institution.¹²

Promote the prevention or control of diseases in human beings

Definition of 'diseases'

24. The term 'diseases' is not defined in the ACNC Act. In *Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission (Waubra)*, the Tribunal decided that 'diseases' in the ACNC Act is used in the same or a similar sense to how it is defined in the *Income Tax Assessment Act 1997 (Cth) (ITAA 97)*.¹³

25. 'Disease' is defined in s 34-20(3) of the ITAA 97 as follows:

Disease includes any mental or physical ailment, disorder, defect or morbid condition, whether of sudden onset or gradual development and whether of genetic or other origin.

26. The Tribunal in *Waubra* considered the following definitions further explain the meaning defined in the ITAA 97:

"Disease" in ordinary usage, when used with reference to physical or mental conditions, connotes a disturbance of the normal functions. Dictionary meanings of "disease" include "a morbid condition of the body, or of some organ or part; illness; sickness; ailment" (*The Macquarie Dictionary*) and "a condition of the body, or of some part or organ of the body, in which its functions are disturbed or deranged". (*The Shorter Oxford English Dictionary*).

...

"In general, a departure from the normal state of health. More specifically, a disease is the sum total of the reactions, physical and mental, made by a person to a noxious agent entering his body from without or arising within (such as a micro organism or a poison),

¹² *Pamas Foundation Inc v Federal Commissioner of Taxation* (1992) 35 FCR 117. See paragraph 17 for further information.

¹³ *Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission* [2017] AATA 2424, [118] (Justice White DP; Bean DP).

an injury,¹⁴ a congenital or hereditary defect, a metabolic disorder, a food deficiency or a degenerative process ... *Mental disease*. Any disease with predominantly mental symptomatology, whether of mental or physical causation". (*Butterworths Medical Dictionary*, 2nd ed, 1980).

"Any deviation from or interruption of the normal structure or function of any part, organ, or system (or combination thereof) of the body that is manifested by a characteristic set of symptoms and signs and whose etiology, pathology and prognosis may be known or unknown ... *mental disease*. Any clinically significant behavioural or psychological syndrome characterised by the presence of distressing symptoms or significant impairment of functioning. Mental disorders are assumed to result from some psychological or organic dysfunction of the individual; the concept does not include disturbances that are essentially conflicts between the individual and society (social deviance)." (*Dorland's Illustrated Medical Dictionary*, 28th ed, 1994).¹⁵

27. As these definitions show, 'disease' is a broad term. It includes both physical and mental health conditions. Examples include asthma, cancer, clinical depression, diabetes, heart disease, hepatitis, multiple sclerosis, post-traumatic stress disorder and viral infections.

General health conditions and symptoms

28. A general health condition or symptom may not be a 'disease'. However, if a health condition or symptom that is untreated or inadequately managed may result in a disease, activities to prevent or control that condition or symptom may be considered to promote the prevention or control of disease.

29. For example, having a high blood glucose level is not a disease, although it may be a symptom of a disease. But, a person who has chronic high blood glucose can develop type 2 diabetes, which is a disease. Therefore, an organisation which explains the link between high blood glucose levels and diabetes and how to maintain healthy blood glucose levels would have an activity of promoting the prevention and the control of disease.

Conditions that health authorities do not yet recognise as diseases

30. An organisation may be an HPC even if its activities are directed towards promoting the prevention or the control of a set of symptoms that may not be recognised widely by health authorities as a 'disease'.¹⁶ In such a case, the organisation must demonstrate there is credible or plausible evidence that the set of symptoms is a disease, or that there is a causal relationship between a particular

¹⁴ Note that the ACNC does not consider that 'disease' includes 'injury'. See paragraph 37 for further information.

¹⁵ *Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission* [2017] AATA 2424, [119] (Justice White DP; Bean DP), quoting *Comcare v Mooi* (1996) 69 FCR 439, [4445] (Drummond J).

¹⁶ *Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission* [2017] AATA 2424, [137] (Justice White DP; Bean DP).

activity and the development of an adverse health condition.¹⁷ Such evidence could include the results of research undertaken by the organisation or by others;¹⁸ or the opinions of appropriately qualified experts.¹⁹

31. The organisation also must demonstrate that its principal activity promotes the prevention or control of that set of symptoms or adverse health condition.
32. If there is robust evidence that a set of symptoms is not a disease, or that there is no causal relationship between a particular activity and the development of an adverse health condition, it will be taken into account in determining whether an organisation which purports to promote the prevention or control of that disease or health condition has an activity of promoting the prevention or control of diseases in human beings. Conversely, if there is no evidence of a causal relationship between a particular activity and the development of an adverse health condition, this will be taken into account in determining whether an organisation which purports to promote the prevention or control of that adverse health condition has an activity of promoting the prevention or control of diseases in human beings.
33. The ACNC will be guided by the work of key health and research bodies on any existing, new or emerging definition of, or consideration of, disease or diseases, including:
 - a. the Australian Institute of Health and Welfare – a body providing comprehensive information and research about health and diseases affecting Australians
 - b. the National Health and Medical Research Council – a leading Australian expert body promoting the development and maintenance of public and individual health standards, and
 - c. the World Health Organisation – a body with the primary role of directing and coordinating international health within the United Nations system. It publishes the annual World Health Report and the International Classification of Diseases.
34. The ACNC may also have regard to relevant work of similar reputable organisations such as the United States’ Centers for Disease Control and Prevention.

Organisations that do not specify a disease to which activity is directed

35. If an organisation is not clear about the disease or set of symptoms that its promotional activities are focused on, it will be difficult for it to demonstrate that its principal activity is to promote the prevention or control of disease.
36. Therefore, although it is not necessary for an organisation wishing to be registered as an HPC to specify one or more diseases in its objects, it must be able to identify a disease, health condition or set

¹⁷ *Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission* [2017] AATA 2424, [138] (Justice White DP; Bean DP).

¹⁸ See, for example, *Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission* [2017] AATA 2424, [257]-[310] (Justice White DP; Bean DP).

¹⁹ See, for example, *Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission* [2017] AATA 2424, [311]-[466] (Justice White DP; Bean DP).

of symptoms towards which its principal activity is directed and articulate how that activity promotes the prevention or the control of that condition.

Injuries

37. 'Injury' is not included in the definition of 'diseases'.²⁰ Therefore, an HPC cannot have a principal activity of promoting the prevention or the control of injury. However, diseases may arise from an injury.²¹ An HPC can have a principal activity of promoting the prevention or control of a disease that results from an injury. For example, a fractured spine is an injury, not a disease. But paraplegia is a disease which can result from a fractured spine. An HPC may have a principal activity of promoting the prevention or the control of diseases which arise from a fractured spine.

Disease must arise in human beings

38. An HPC's principal activity must be to promote the prevention or control of diseases in human beings. An HPC cannot have a principal activity of promoting the prevention or control of diseases that arise only in animals or plants.

Social determinants of health

39. An HPC cannot have a principal activity of promoting broader social determinants of health or general wellbeing because these types of activities do not focus sufficiently on disease.²² For example, an organisation with a principal activity of creating urban garden spaces will not have a principal activity of promoting the prevention or control of diseases. Although spending time in nature is associated with physical and mental health and wellbeing,²³ creating garden spaces is too remote to be regarded as promoting the prevention or the control of diseases in the HPC context.

Promote the prevention and control of diseases

40. 'Promote' means to further the growth, development or progress of; to encourage.²⁴

41. 'Prevention' means to keep from occurring; to hinder.²⁵

²⁰ *Healthy Cities Illawarra Inc v Commissioner of Taxation* [2006] AATA 522, [52]; [55] (Block DP).

²¹ *Healthy Cities Illawarra Inc v Commissioner of Taxation* [2006] AATA 522, [49] (Block DP).

²² *Healthy Cities Illawarra Inc v Commissioner of Taxation* [2006] AATA 522 [38]; [58] (Block DP); *Re Bicycle Victoria Inc and Federal Commissioner of Taxation* [2011] AATA 444, [197] (Forgie DP).

²³ See, for example, Jolanda Maas, 'Green Space, Urbanity and Health: How Strong Is the Relation?' (2006) 60(7) *Journal of Epidemiology and Community Health* 587-592; Terry Hartig 'Nature and Health' (2014) 35(1) *Annual Review of Public Health* 207-228.

²⁴ *Healthy Cities Illawarra Inc v Commissioner of Taxation* [2006] AATA 522, [46] (Block DP); *Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission* [2017] AATA 2424, [121] (Justice White DP; Bean DP).

²⁵ *Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission* [2017] AATA 2424, [123] (Justice White DP; Bean DP).

42. 'Control' means to hold in check; to curb²⁶ or restrain.²⁷
43. These terms should not be construed narrowly.²⁸ This means that there are many activities which may promote the prevention or control of diseases. For example, the following activities could promote the prevention or control of diseases:
- a. raising public awareness about the symptoms of a disease
 - b. raising public awareness about how to seek treatment for a disease
 - c. raising public awareness about steps that can be taken to prevent a disease being contracted, such as via vaccination or good hygiene practices
 - d. raising public awareness of the prevalence or risk of a disease
 - e. research into prevention of disease
 - f. research into identification and diagnosis of disease
 - g. research into management and treatment of disease
 - h. action to reduce the spread of disease, such as providing personal protective equipment
 - i. diagnosing, managing and treating disease
 - j. training carers and health professionals in methods of controlling disease
 - k. fundraising for HPCs or other entities that promote the prevention or control of disease, or directly prevent or control disease, as their purpose
 - l. providing support to sufferers of a disease to alleviate their distress and suffering.
44. To be entitled to registration as an HPC, an organisation does not need to prove that its principal activity results in the prevention or the control of diseases. However, there must be an evidenced, rational or plausible link between the promotional activity and the prevention or control of a disease.²⁹
45. If there is no credible evidence that a particular practice promotes the prevention or control of disease or there is evidence that it does not promote the prevention or control of disease, the ACNC will not accept that an organisation with that principal activity is an HPC.
46. In considering the evidence provided in support of an application, the ACNC will give more weight to higher quality sources such as reports of respected research bodies or peer-reviewed articles published in academic journals.

²⁶ *Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission* [2017] AATA 2424, [123] (Justice White DP; Bean DP).

²⁷ *Healthy Cities Illawarra Inc v Commissioner of Taxation* [2006] AATA 522, [46] (Block DP).

²⁸ *Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission* [2017] AATA 2424, [123] (Justice White DP; Bean DP).

²⁹ *Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission* [2017] AATA 2424 [94] (Justice White DP; Bean DP).

47. It will also not be sufficient for an organisation to point to a possible downstream effect of its activity if the activity itself does not promote the prevention or the control of diseases in human beings. For example, in *Re Krishnamurti Australia Inc and Commissioner of Taxation*,³⁰ it was conceded that the teachings of Krishnamurti may assist in preventing or controlling mental illness.³¹ However, the Administrative Appeals Tribunal found that the principal activity of promoting the teachings of Krishnamurti was not a principal activity of promoting the prevention or the control of diseases. This was because the organisation promoted the teachings generally, and did not focus on how they could help prevent or control mental illnesses.³²
48. Given the requirement to have a focus on disease, an activity of promoting general health or wellbeing will not be sufficient.

Direct prevention and control of disease

49. The ACNC accepts that an organisation could be an HPC where its principal activity includes directly preventing, controlling or treating disease or diseases.

Principal activity

50. An organisation's 'principal activity' is its 'main' or 'predominant' activity.³³
51. An organisation's principal activity does not need to take up the majority (meaning more than 50%) of its time and resources. The principal activity is the activity that takes up a greater share of the organisation's time and money than each of its other activities. For example, an organisation could spend 40% of its time and money on one activity, 30% of its time and money on a second activity, and 30% of its time and money on a third activity. The activity that takes up 40% of the organisation's time and money is its principal activity, even though it takes up less than 50% of its overall time and money.
52. Although an organisation's own description of its activities is an important factor in determining its principal activity, that description is not determinative.³⁴ To identify how an organisation applies its time and resources to determine its principal activity, it is necessary to consider all relevant information.³⁵ This could include any of the following information:
- a. the organisation's description of its activities

³⁰ *Re Krishnamurti Australia Inc and Commissioner of Taxation* [2011] AATA 512.

³¹ *Re Krishnamurti Australia Inc and Commissioner of Taxation* [2011] AATA 512 [10] (Lechter SM).

³² *Re Krishnamurti Australia Inc and Commissioner of Taxation* [2011] AATA 512 [22] (Lechter SM).

³³ *Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission* [2017] AATA 2424 [103] (Justice White DP; Bean DP). See also *Healthy Cities Illawarra Inc v Commissioner of Taxation* [2006] AATA 522, [46] (Block DP); *Re Krishnamurti Australia Inc and Commissioner of Taxation* [2011] AATA 512 [14] (Letcher SM).

³⁴ *Waubra Foundation and Commissioner for the Australian Charities and Not-for-profits Commission* [2017] AATA 2424 [105] (Justice White DP; Bean DP).

³⁵ *Waubra Foundation and Commissioner for the Australian Charities and Not-for-profits Commission* [2017] AATA 2424 [104] (Justice White DP; Bean DP).

- b. the organisation's governing document
- c. the organisation's annual reports
- d. the organisation's financial statements and budgets
- e. the organisation's records regarding its allocation of time for staff and volunteers
- f. the organisation's website and other publicly available communications, including social media posts
- g. agendas and minutes of meetings of the organisation's governing body
- h. reports to the organisation's governing body
- i. guidelines issued by the organisation's governing body
- j. the organisation's operational, strategic or business plans.

Activities unrelated to promoting the prevention or control of diseases in human beings

53. An HPC must be a registered charity, so all of its activities must be in furtherance of charitable purposes.³⁶ An HPC may undertake activities that are unrelated to promoting the prevention or control of diseases in human beings as long as those activities do not amount to the principal activity.

Duty to notify the Commissioner if principal activity changes

54. An HPC which undertakes a range of activities may find over time that one of its activities that is unrelated to promoting the prevention or control of diseases in human beings becomes its principal activity. If this happens, the organisation has a duty to notify the Commissioner that it is no longer entitled to registration with the HPC subtype of charity.³⁷

Multiple activities to promote the prevention or control of diseases and achieve other purposes

55. An organisation may undertake multiple activities to promote the prevention or control of diseases in human beings, along with other activities that are unrelated to promoting the prevention or control of diseases in human beings. In this situation, the ACNC will consider similar activities together to determine whether the organisation has a principal activity of promoting the prevention or control of diseases. Similar activities will be regarded as aspects of a wider overall activity.³⁸ For example, an organisation spends:

- a. 15% of its time and funds on undertaking research into the best methods of diagnosing heart disease in human beings

³⁶ *Australian Charities and Not-for-Profits Commission Act 2012* (Cth) s 25-5(2)(c).

³⁷ See *Australian Charities and Not-for-profits Commission Act 2012* (Cth) s 65-5. For further information regarding a charity's duty to notify the Commissioner of changes, please see <https://www.acnc.gov.au/for-charities/manage-your-charity/notifying-acnc>.

³⁸ See, for example, *Waubra Foundation and Commissioner for the Australian Charities and Not-for-profits Commission* [2017] AATA 2424 [103]; [243] (Justice White DP; Bean DP).

- b. 15% of its time and funds on undertaking research into the best methods of treating heart disease in human beings
- c. 15% of its time and funds educating medical professionals on how to diagnose heart disease in human beings
- d. 15% of its time and funds raising awareness of the symptoms of heart disease in human beings
- e. 25% of its time and funds on research into undertaking research into how to diagnose heart disease in domestic animals.
- f. 15% of its time on administration.

The ACNC would regard the organisation's principal activity to be promoting the prevention or control of heart disease in human beings because it spends 60% of its time and funds in total on this activity, even though they are spread across four different means. Although its activity to research heart disease in animals takes up more time and funds than each of its activities related to promoting the prevention or control of heart disease in human beings considered individually, researching heart disease in animals is clearly not the organisation's principal activity when its activities are considered in context.

Administrative functions

56. In addition to activities to promote the prevention or control of diseases in human beings or activities to further a charitable purpose, the ACNC accepts that organisations are required to undertake administrative functions. Such functions may include staff management, marketing, reporting, financial administration and compliance activities.
- 57. Unless there is evidence to the contrary, the ACNC will consider time and resources expended upon administrative functions as ancillary to the achievement of an organisation's principal activity and its other activities and will not take them into account in determining principal activity.**

Examples of how we will apply this Commissioner's Interpretation Statement

The hypothetical examples below show how we will apply this Commissioner's Interpretation Statement.

Example 1

Charity A has the object of reducing the incidence of skin cancer in Australia.

It spends 80% of its time and 90% of its funds raising public awareness through radio and internet advertising focusing on how the sun's UV rays can cause skin cancer, and how sun-safe behaviour can help to reduce people's UV exposure. The organisation spends the remainder of its time and funds on administration.

Charity A is likely to be entitled to registration as an HPC. It spends a majority of its time and funds on activities to promote the prevention of skin cancer, while the remainder of its time and funds are spent on ancillary activities.

Example 2

Charity B has the object of protecting Australians from diseases related to chemical exposure. It spends 70% of its time and 80% of its funds researching whether there is a link between long-term exposure to a particular industrial chemical and the development of respiratory failure in people who work with that chemical. It spends the remainder of its time and funds on administration.

Although medical authorities have not yet recognised that exposure to the chemical can result in the development of respiratory failure, there have been hundreds of reports of respiratory failure following long-term exposure to the chemical. Some small-scale peer-reviewed studies have suggested there may be a link. There are no studies that conclude a link does not exist.

Charity B makes the results of its research publicly available.

Charity B is likely to be entitled to registration as an HPC. It spends most of its time and resources determining if there is a causal relationship between exposure to a chemical and the development of a disease. Although medical authorities do not yet recognise the link, there is a plausible basis for concluding that it may exist due to the reports of respiratory failure and the results of the other small peer-reviewed studies. Charity B's principal activity is focused on gathering further evidence to determine whether or not there is a link. Refer to paragraphs 30 to 34 above for further detail. See also Waubra Foundation and Commissioner of Australian Charities and Not-for-profits Commission [2017] AATA 2424.

Example 3

Charity C has objects of educating the public about health and well-being, and environmental issues. The organisation spends 45% of its time and 45% of its funds on raising public awareness of the symptoms of clinical anxiety and how to seek treatment. It does this through presentations at workplaces and for community organisations. It spends 15% of its time and 15% of its funds on each of the following activities:

- Raising public awareness of climate change
- Raising public awareness of the environmental benefits from recycling used goods

Charity C spends the remainder of its time and funds on administration.

Charity C is likely to be entitled to registration as an HPC.

Although it spends only 45% of its time and funds on its activity to promote the prevention and control of clinical anxiety, it spends less time and funds on each of its two environmental activities. Its administration activities are undertaken to support all of the activities to achieve its objects. Therefore, the health promotion activity is its principal activity.

The fact that Charity C's environmental activities do not directly relate to health promotion does not prevent it being an HPC because these activities are not its principal activity. Rather, these activities further Charity C's other charitable purpose of advancing the natural environment. See paragraphs 55 to 57 above for further detail.

Example 4

Charity D has an object of promoting road safety. It spends 90% of its time and funds undertaking a range of activities to promote road safety, including teaching school-aged children about pedestrian and cyclist safety, as well as how to safely ride skateboards and scooters. It also runs a defensive driver training program for learner drivers.

Charity D does not mention diseases that can result from road traffic accidents when carrying out any of its activities. Charity D applies to be registered as a Health Promotion Charity on the basis that its principal activity is to promote the prevention of diseases that can arise following road traffic accidents, such as post-traumatic stress disorder and paraplegia.

Although Charity D is entitled to registration as a charity, it is unlikely to be entitled to registration as an HPC. It has identified diseases that can occur following road traffic accidents, but its principal activity is not focused on promoting the prevention or control of these diseases. Its principal activity is to promote the prevention or control of injury through promoting road safety, with a potential downstream consequence that, if injuries are prevented, then diseases that could arise from those injuries will also be prevented. See paragraphs 37 and 47 above for further detail. See also Re Krishnamurti Australia Inc and Commissioner of Taxation [2011] AATA 512.

Example 5

Charity E is a trust that has the object of holding \$5 million in perpetuity, with any income it earns each year to be distributed to one or more charities involved in researching the best ways of diagnosing and treating brain disease. The trustees of Charity E manage the invested funds and annually decide which charities will receive funds.

Charity E is unlikely to be entitled to registration as an HPC. Although it provides funds to other charities that promote the prevention and control of brain disease, it is a mere trust rather than an institution. See

paragraphs 15 and 23 above for further detail. See also *The Hunger Project Australia v Federal Commissioner of Taxation (2013) 94 ATR 855*.

Example 6

Charity F has an object of promoting the prevention and control of strokes. It spends 30% of its funds and 90% of its time actively fundraising.

Its fundraising involves staff calling prospective donors and, while asking for a donation, explaining the symptoms of a stroke and what they should do if they think someone may be having a stroke.

Charity F gives all the donations it receives through this process to a registered Health Promotion Charity that provides support and guidance to people who have had a stroke. Charity F spends the remainder of its time and funds on administration.

Charity F is likely to be entitled to registration as an HPC because its principal activity is to promote the prevention or control of disease by providing financial support to an HPC. It does this through active fundraising rather than as a mere fund, so it is an institution. See paragraph 22 above for further detail.

Example 7

Charity G is an organisation with an object of promoting healthy pregnancy.

The organisation spends 40% of its time and funds providing general information to women about how to stay healthy during pregnancy, and 50% of its time and funds providing guidance and education about the signs and symptoms of diseases that can arise during pregnancy – such as gestational diabetes and preeclampsia – so that women are aware of these diseases and know when they should seek medical treatment.

The organisation spends the remaining 10% of its time and funds on administration.

Charity G is likely to be entitled to registration as an HPC. Although pregnancy is not a disease, Charity G's principal activity is to provide guidance and education about diseases that can occur during pregnancy to promote the control of these diseases. See paragraphs 28 to 29 above for further detail.

Example 8

Charity H is an organisation with an object of educating the public about the damage that misuse of alcohol and drugs can do to physical and mental health.

It spends 80% of its time and funds visiting schools and community organisations to make presentations about the damage alcohol and drug misuse can cause to health. It spends the remaining 20% of its time and funds on fundraising and administration.

Charity H is likely to be entitled to registration as an HPC. Although Charity H focuses on alcohol and drug misuse, rather than on a specific disease or a set of symptoms that could indicate a disease, it is educating

people about the relationship between alcohol and drug misuse and harm to health. There is a rational link between educating people about these harms and preventing the harms from occurring. Therefore, Charity H is promoting the prevention of the diseases that arise from alcohol and drug misuse. See paragraphs 35 to 36 above for further detail.

Version Control

| Version | Date of effect | Summary of change |
|-------------------------------|----------------|---|
| Version 1 – Initial statement | 12/05/2015 | Initial statement endorsed by Commissioner on 12/05/2015 |
| Version 2 - Amendment | 19/12/2016 | Amendments made to point 4 to provide consistency with CIS 2016/03 – Public Benevolent Institutions |
| Version 3 – Minor amendment | 02/03/2017 | Minor amendment to point 4.4.2 to correct a drafting error. |
| Version 4 – Amendments | 30/06/2023 | Amendments made to reflect principles set out in <i>Waubra</i> ; to add guidance about grouping similar activities when determining ‘principal activity’; to add guidance about how the ACNC treats administrative functions; and to amend the language and formatting for clarity. |