

# Compendium of issues raised - Updated Commissioner's Interpretation Statement: Public Benevolent Institutions

This compendium provides responses to feedback received in relation to the ACNC's public consultation on a redraft of its Commissioner's Interpretation Statement: Public Benevolent Institutions (PBI CIS). It is not a publication that has been approved to allow you to rely on it for any purpose and is not intended to provide advice or guidance, nor does it set out the ACNC's approach to determining whether a charity is a PBI.

## Summary of issues raised and responses

Issue number	Issue raised	ACNC response
1.	<p>The redrafted PBI CIS states that a PBI must have a 'main purpose' of benevolent relief and that any other purposes must be incidental or ancillary to its purpose of benevolent relief.</p> <p>The use of the phrase 'main purpose' is confusing. It is used in the PBI CIS to convey the concept from charity law that a charity's 'sole purpose' must be charitable, and any other purposes must be ancillary or incidental.</p> <p>The ordinary meaning of the word 'main' is not 'sole'.</p> <p>The majority of court and tribunal decisions regarding PBI do not indicate that a PBI's sole purpose must be benevolent relief. The decisions that apply this test rely on charity law decisions as authority for doing so. In the recent decision in <i>Global Citizen Limited v Commissioner of the ACNC</i> [2021] AATA 3313 (<i>Global Citizen</i>), the Administrative Appeals Tribunal</p>	<p>We acknowledge the use of the phrase 'main purpose' has caused confusion.</p> <p>We have removed references to 'main purpose' in the updated PBI CIS and instead refer to a PBI being 'organised', or 'promoted' or 'conducted' for benevolent relief.</p>

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	<p>pointed this out (at [87]) and stated that ‘Our analysis of the authorities suggests we should not apply an ‘exclusivity of purpose’ test in relation to PBIs’ (at [88]).</p> <p>The CIS (and the Hunger Project CIS) should be amended to reflect the fact that the Hunger Project case expressly sought to provide an inclusive and not an exclusive definition of PBI.</p>	
2.	<p>The redrafted PBI CIS is of concern to faith-based PBIs. The current interpretation indicates that a ‘purpose of advancing religion’ may result in not being ‘entitled’ to PBI status. As faith plays a central role in many charitable institutions across Australia, there is naturally a concern regarding how this may be regulated in practice.</p> <p>Faith is not only a motivator in the background but plays an active role in decision making as well as the all-too-common practice of going ‘above and beyond’ in the service of care recipients. It is important to flag that there is a real risk and trend towards de-valuing the vital role that faith plays in many PBIs who deliver significant public benefit both directly through service provision and indirectly through substantial economic social dividends.</p>	<p>We acknowledge the role of faith in relation to the operations of a faith-based PBI. We consider that charity law differentiates between having a charitable purpose of advancing religion, and a purpose that is carried out by a group of people of faith but which does not directly or immediately advance religion. It is important to us that we can explain this in the PBI CIS (and our decisions) without undermining or devaluing the role of faith in PBIs.</p> <p>The updated PBI CIS contains an example of an organisation with a purpose of advancing religion which is also a PBI.</p>
3.	<p>The ‘arousal of community compassion’ test from <i>Commissioner of Pay-roll Tax (Vic) v The Cairnmillar Institute</i> (1990) 90 ATC 4752 (<i>Cairnmillar Institute</i>) should not be relied on to determine whether a group of beneficiaries are in need benevolent relief.</p>	<p>The updated PBI CIS does not use the ‘arousal of community compassion’ test to explain how the ACNC approaches the determination of whether a condition gives rise to a need requiring benevolent relief.</p> <p>The updated PBI CIS states that the kinds of conditions that a PBI may relieve are those that cause suffering that goes beyond the pain and suffering of</p>

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	<p>The use of this authority in the redrafted PBI CIS may suggest to organisations that are entitled to registration as a PBI that the ACNC would refuse their applications if the people who run these organisations perceive that the community may not have compassion for the people they assist.</p> <p>A better test might be the “unable to care for themselves” test, as set out by Evatt J in <i>Perpetual Trustee Co Ltd v Federal Commissioner of Taxation</i> (1931) 45 CLR 224 (at 235) (<i>Perpetual Trustee</i>):</p> <p style="padding-left: 40px;">Such bodies vary greatly in scope and character. But they have one thing in common: they give relief freely to those who are in need of it and who are unable to care for themselves.</p>	<p>everyday life (see <i>Marriage Guidance Council of Victoria v Commissioner of Pay-roll Tax (Vic)</i> (1990) 21 ATR 1272, 1277 (McGarvie J)).</p> <p>We decided not to use the “unable to care for themselves” test set out by Evatt J in <i>Perpetual Trustee Co Ltd v Federal Commissioner of Taxation</i> (1931) 45 CLR 224 (at 235) because we received stakeholder feedback that it is inconsistent with the outlook of contemporary Australian society to label people who are in need as being incapable of caring for themselves.</p>
4.	<p>The redrafted PBI CIS states that, although a PBI does not need to prove that its activities are effective in providing benevolent relief, there needs to be a ‘clear connection’ between the activities and the resulting relief. There is no authority for the ‘clear connection’ test, just as there was no authority for the ‘clear mechanism’ test that is currently specified in the CIS regarding the <i>Hunger Project</i> decisions.</p>	<p>We agree that ‘clear connection’ is not contained in authority. Paragraphs 39 to 45 of the updated PBI CIS discuss the role that activities provide in an organisation demonstrating that it is ‘organised, conducted or promoted’ for benevolent relief.</p>
5.	<p>The redrafted PBI CIS should provide more detail about the circumstances in which a PBI can undertake advocacy work drawing from the decision in <i>Global Citizen</i>.</p> <p>The Tribunal members’ comments confirm an important point for PBIs, that is, a PBI can undertake advocacy work (e.g. advocating for legislative</p>	<p>We agree that advocacy does not disqualify an entity from being a PBI. The advocacy must be considered in the context of the purpose of the entity and the other activities it undertakes.</p> <p>Paragraphs 64 to 67 of the updated PBI CIS provide guidance about advocacy and benevolent relief, drawing from the decision in <i>Global Citizen</i> and the</p>

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	<p>change or government policy) provided that its other activities are sufficiently concrete to amount to relieving poverty or another need (e.g. direct relief work).</p> <p>This point should be included in the redrafted PBI CIS and a further example should be included to address this point.</p> <p>PBIs may undertake a combination of direct relief work and advocacy work where the advocacy work includes advocating for legislative change or government policy to assist in relieving the needs of the persons to whom the PBI provides direct relief. The PBI CIS should state that in such circumstances, the advocacy work of the PBI does not disqualify it from being a PBI.</p>	<p>contrasting decision in <i>Equality Australia Ltd v Commissioner of the ACNC</i> [2023] AATA 2161.</p>
6.	<p>The redrafted PBI CIS should recognise and set out a greater range of preventative actions that may be undertaken by PBIs to assist in reducing poverty or distress experienced by vulnerable communities. This would give clarity to the sector, therefore allowing PBIs to be more effective in meeting their charitable purposes and leading to greater positive impacts. Further, <i>Global Citizen</i> has highlighted that the concept of a PBI needs to align with contemporary standards.</p> <p>In this context, the redrafted CIS should include a statement in the following terms:  The ACNC recognises that activities which seek to prevent poverty or distress from arising can, in certain circumstances, be consistent</p>	<p>We consider PBIs may undertake some activities that may be regarded as ‘preventative’ under certain circumstances.</p> <p>Paragraphs 60 to 63 of the updated PBI CIS provide guidance regarding the extent to which a PBI can engage in preventative activities.</p>

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	<p>with PBI status. This will be the case where the preventative activities of the charity are:</p> <p>a. Undertaken in aid of or further to the entity's main benevolent purpose; or</p> <p>b. Incidental or ancillary to the entity's main benevolent purpose; or</p> <p>c. Targeted at 'at risk' people or communities whose experiences or conditions arouse compassion in the community (such as individuals who suffer from addictions or mental illnesses).</p>	
7.	<p>The redrafted PBI CIS appears to indicate that a charity cannot be registered as both the PBI subtype of charity and as other subtypes of charity. This does not reflect the law.</p>	<p>We accept that a charity may be registered as a PBI and as other subtypes of charity. For a charity to be entitled to registration as a subtype of charity, it must have the charitable purpose that corresponds to the relevant Item in the table in s 25-5(5) of the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth).</p> <p>Paragraphs 81 to 87 of the updated PBI CIS contain guidance about registration as a PBI and as other subtypes of charity.</p>
8.	<p><i>Pamas Foundation v Commissioner of Taxation</i> (1992) 35 FCR 117 (<i>Pamas</i>) has been misapplied in various ATO guidance as meaning that a structure controlled by a family and friends cannot be an 'institution'.</p> <p>The Court actually took all relevant circumstances into account in determining that Pamas Foundation was not an institution, including the</p>	<p>We consider that the closeness of ties between controllers is one of several factors to take into account, but is not determinative.</p> <p>Paragraphs 72 and 73 of the updated PBI CIS discuss the decision in <i>Pamas</i> and the ACNC's approach to applying this decision.</p>

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	<p>small scale of its activities, the fact that the activities were intertwined with the business interests of its founder and the fact that it was substantially engaged in commercial activities. The constitution also entrenched family control.</p> <p>Therefore, the redrafted PBI CIS should not include a statement that an entity controlled by family members and close friends cannot be an institution. Rather than explaining the meaning of ‘institution’, including reference to <i>Pamas</i> in the PBI CIS may lead to the inappropriate exclusion of entities solely on the basis of close control rather than the holistic approach required by the case law.</p> <p>In paragraph [57] of the redrafted CIS, one of the dot points is ‘the number of responsible people and their relationship to one another’. This should not be relevant in determining whether an entity is an institution as per the comments about <i>Pamas</i>.</p>	
9.	<p>The following text should be added to paragraph 28 of the redrafted PBI CIS to include further explanation of “development assistance” which falls within the scope of PBI activities:</p> <p>28. A charity that provides goods or services to an entire community may have a purpose of benevolent relief if the whole community (or the vast majority of the community) are people in need. For example, in developing countries, entire communities may be living in poverty. Development assistance provided to such communities is likely to be a purpose of benevolent relief. <i>The</i></p>	<p>Paragraphs 51 to 53 of the updated PBI CIS provide guidance on development assistance which falls within the scope of PBI activities.</p>

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	<p><i>term ‘development assistance’ is understood as comprising activities that improve the long-term well-being of a group of people by building their capacity and providing long-term sustainable solutions to serious needs (such as those stemming from poverty and distress). Development assistance may in this context have elements that are preventative in nature, as they not only provide relief to people in need but also seek to stop serious needs from recurring in future [suggested added text in italics].</i></p> <p>This language is adopted from paragraph 5.9.6.2 of the current CIS 2016/03, which was cited with approval in <i>Global Citizen</i>. Retaining this clarificatory language regarding ‘developmental assistance’ would retain useful and current guidance for the sector.</p> <p>The redrafted PBI CIS should also provide more guidance on when community development activities to benevolent Aboriginal and Torres Strait Islanders Peoples (in the form of economic development) will be regarded as sufficiently targeted towards those in need.</p>	
10.	<p>The redrafted PBI CIS states that ‘an organisation that provides general advice, information, research and advocacy services to the whole or part of the community is unlikely to be a PBI.’</p> <p>The ACNC should provide more detail about what this means in practice, particularly in modern times where websites, podcasts, electronic newsletters and other digital media are common and efficient means of providing information and advice. The ACNC should also clarify the</p>	<p>We agree that entities that have materials that can be accessed by the general public can be PBIs.</p> <p>Paragraphs 48 to 50 of the updated PBI CIS provide guidance about what the ACNC will take into account when determining whether an organisation that provides information that is available to the public generally is organised, conducted, or promoted for benevolent relief.</p>

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	<p>principles in <i>ACOSS</i> that are being relied upon. In particular, the CIS should not be able to be interpreted that <i>ACOSS</i> stands for the point that an organisation that provides information which is accessible to the general public is not eligible to be a PBI. The question of whether information or advice is 'targeted or directed' towards disadvantaged groups is significantly more nuanced than simply considering who can access the information or advice.</p> <p>The redrafted PBI CIS should clarify that a PBI that provides information and advice, which can be accessed by the general public (for example, because it is available on its website or through a podcast) is still a PBI if the reason it provides that information advice is to assist people in need of benevolent relief.</p>	
11.	<p>Paragraph 39 of the redrafted PBI CIS states:</p> <p style="padding-left: 40px;">A PBI may conduct commercial activities if they are merely a means by which the charity raises funds for its purpose of benevolent relief. In this situation, the commercial activities are regarded as a means of supporting the achievement of a purpose of benevolent relief, rather than an independent commercial purpose.</p> <p>This guidance would be more helpful if it incorporated the points that a PBI would not be regarded as having an independent commercial purpose if:</p>	<p>Paragraph 59 of the updated PBI CIS reflects the ACNC's view about PBIs conducting commercial activities.</p>



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	<p>(a) it undertakes commercial activities the surplus from which increases the funds available to the PBI to assist it in undertaking other activities in furtherance of its benevolent purpose; or</p> <p>(b) the activities it undertakes are intrinsically benevolent activities (i.e. relief work) and are being carried on in a way that is commercial.</p> <p>It would also be helpful to understand if the ACNC considers that such activities must only make up a minor portion of the activities of a charity endorsed as a PBI or if they may make up a significant portion of the activities of such a charity.</p>	
<p><b>12.</b></p>	<p>Paragraph 30 of the redrafted PBI CIS provides that “[if] a charity’s purpose is to provide benevolent relief of poverty, its fees for the services that provide relief must be below the market rates for comparable services”, and “For example, a charity with a purpose of relieving poverty by providing rental housing must charge its tenants rent at below market rates.”</p> <p>The position in the current ACNC PBI CIS should be retained – that is, per paragraph 5.2.2 of the current ACNC PBI CIS, “the fact that an organisation charges a fee, or partial fee, does not preclude it from being eligible for registration as a PBI.” This would align paragraphs 30 and 31 of the updated ACNC PBI CIS (given that paragraph 31 of the updated ACNC PBI CIS provides that the relief of another benevolent need can be provided through charging fees at market rates).</p>	<p>Paragraphs 56 to 58 of the updated PBI CIS provide guidance regarding PBIs that charge fees for relief (as opposed to PBIs that engage in ancillary commercial activities to raise funds in order to provide relief).</p> <p>Paragraph 59 of the updated PBI CIS provides guidance regarding conducting commercial activities to raise funds for relief.</p>

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	<p>Paragraph 30 should be further clarified to ensure that charities providing benevolent relief can provide services at market rates as a means for funding the below market rate activity. This would be applicable where the provision of the relevant service is ancillary to the charity's main purpose of providing benevolent relief, and market value income is used to subsidise the provision of the service to those requiring benevolent relief.</p> <p>In the context of the example provided in this paragraph in relation to the provision of rental housing, it would be helpful to clarify that a charity can, in certain circumstances, provide housing at market rates as a means of funding the provision of housing below market rates to those in need of benevolent relief. This would be the case where a charity has as its main purpose the provision of benevolent relief from poverty through the provision of housing, and as an ancillary purpose provides housing at market rates and uses the market value rental income to subsidise the provision of housing to tenants requiring benevolent relief.</p>	
13.	<p>The redrafted PBI CIS appears to assume that the relevant entity is already a registered charity and is seeking to add or change to the PBI subtype. From the perspective of a new organisation, attempting to understand how they fit within the charity system, there is likely too much assumed knowledge about the necessary steps to become a charity and, subsequently, a PBI. Feedback indicates that a significant portion of the users of the CIS PBI will not be existing registered charities.</p> <p>The background section should be expanded to include how organisations can register as a charity and a PBI at the same time. The existing CIS</p>	<p>Paragraphs 6 and 7 of the updated PBI CIS provide basic information about the requirements for registration as a charity, and refer readers to the more detailed guidance on our website.</p> <p>Paragraph 3 of the updated PBI CIS explains that an organisation can apply to register as a charity and PBI at the same time.</p> <p>Paragraph 4 of the updated PBI CIS explains that an organisation that is already registered as a charity can apply to the ACNC to add the PBI subtype to its registration.</p>

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	<p>2016/3 contains this information. It may be possible to utilise the language and descriptions contained in section 3 of CIS 2016/3 for this purpose.</p>	
<p><b>14.</b></p>	<p>Paragraph 8 of the redrafted PBI CIS states that ‘the meaning of ‘benevolent’ in the PBI context is more restricted than its ordinary meaning.’ The paragraph cites <i>Perpetual Trustee</i> at page 233 to support this statement.</p> <p>Dixon J in <i>Perpetual Trustee</i> states:</p> <p style="padding-left: 40px;">It is said, however, that after all “benevolent” is an ordinary English adjective, and that frequent application of a compound expression of which it forms a part to one or some of many classes of things possessing the attributes it connotes affords no sufficient reason for restricting the meaning of the expression.</p> <p>Dixon J further states that the use of the qualifier ‘public’ is the only factor that narrows the scope of a PBI. Further, paragraph 4.2 of the <i>Hunger Project Case</i> CIS refers to <i>Perpetual Trustee</i> and specifically states that the term benevolent does not support a restrictive interpretation of the ordinary meaning of the expression ‘public benevolent institution.’ There has not been a change in the underlying case law highlighting this point.</p>	<p>Paragraph 24 of the updated PBI CIS explains that an organisation will not be ‘benevolent’ in the required sense if it is only benevolent in the sense that it is conducted out of goodwill. We have relied on the judgments in <i>Perpetual Trustee</i> (Starke J at 232; Dixon J at 233; Evatt J at 236; McTiernan J at 241).</p>

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	<p>The wording of paragraph 8 in the redrafted PBI CIS is therefore not an accurate reflection of Dixon J’s analysis and should be replaced with:</p> <p style="padding-left: 40px;">The meaning of ‘benevolent’ takes its ordinary meaning. However, in the context of a PBI, its application is restricted by the accompanying words creating the compound expression.</p>	
15.	<p>Paragraph 14 of the redrafted PBI CIS provides that a charity will not have a purpose of relieving poverty if it:</p> <ul style="list-style-type: none"> <li>• provides good or services not necessary for a modest standard of living; or</li> <li>• provides goods or services to people who already live a modest standard of living.</li> </ul> <p>The purpose of the redrafted PBI CIS to provide guidance on qualifying for registration as a PBI, which is different from a charity for the relief of poverty. These two concepts overlap significantly however it is pertinent that the language in the redrafted PBI CIS does not confuse these terms.</p> <p>The redrafted PBI CIS does not provide guidance as to what factors indicate what a ‘modest standard of living’ is, aside from the cases that have considered this term. The term ‘modest standard of living’ is subjective and is open to interpretation by users if guidance is not provided.</p>	<p>A PBI may be organised, conducted, or promoted to relieve poverty. Therefore, we consider that it is important to provide guidance on the relevant meaning of ‘poverty’ and how we approach our consideration of whether an organisation is organised, conducted, or promoted to relieve poverty.</p> <p>Paragraphs 25 to 29 of the updated PBI CIS provide this guidance.</p>

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16.	<p>The redrafted PBI CIS states at paragraph 51 that an institution must have a distinct identity, and so cannot be merely a section of another organisation.</p> <p>Paragraph 51 of the redrafted PBI CIS should be amended to delete “so it cannot be merely a section of another organisation” and to acknowledge that a PBI can exist as a part of another organisation where a separate identity is evident. Separate constituent documents would not necessarily be required, but the establishment and terms of a PBI could be included in the constituent document of the entity of which it forms part.</p>	<p>A PBI must be entitled to registration as a charity and must therefore meet the relevant definition of ‘entity’. A body that is a section of another organisation will not meet the relevant definition of ‘entity’.</p> <p>Paragraph 6 of the updated PBI CIS explains that, to be entitled to registration as a charity, an organisation must meet the definition of ‘entity’.</p>
17.	<p>Paragraph 53 of the redrafted PBI CIS appears to suggest that a corporate trustee could never be an institution. Paragraph [53] should be amended to clarify that a body incorporated only to be the corporate trustee for a charitable trust could be an institution if it undertakes charitable activities beyond the mere distribution of funds or passive holding of property for charitable purposes.</p>	<p>We consider that a corporate trustee may be an institution, but that a corporate trustee that acts only as a trustee will not be an institution.</p>
18.	<p>The authority provided for the term PBI being a ‘compound phrase’, at paragraph 6 of the redrafted PBI CIS is an inferior authority to that provided in the current PBI CIS at paragraph 2.2., being, <i>Public Trustee (NSW) &amp; Ors v Federal Commissioner of Taxation</i> (1934) 51 CLR 75 (<i>Public Trustee</i>) at 103.</p>	<p>The updated PBI CIS no longer discusses the fact that ‘PBI’ is a ‘compound expression’ but instead states that an organisation must meet all three elements of the phrase ‘public benevolent institution’ to be a PBI.</p>
19.	<p>It is likely that the criteria other than the public nature of those for whom the purpose is to benefit will only be relevant if the entity is concerned only with the relief of poverty to a small number of people. If the ACNC</p>	<p>While generally we would expect an extensive beneficiary class, there are instances where a smaller beneficiary class may be adequate.</p>

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	<p>considers such an entity could be a PBI, the ACNC may consider the discussion of other characteristics of ‘public’ in the limited context where the extensiveness of the beneficiary class is not demonstrated.</p>	<p>Paragraphs 14 and 15 of the updated PBI CIS provide guidance regarding this matter.</p>
<p><b>20.</b></p>	<p>The original CIS states ‘the focus overall should be on an organisation’s purposes, rather than its activities in isolation. The activities are relevant insofar as they are a signpost to the organisation’s purposes.’ However, the redrafted PBI CIS states ‘the focus overall is on the charity’s purposes, rather than its activities in isolation.’</p> <p>Given the common and persistent muddling of purposes and activities in the assessment of charity status, the omitted sentence provides a valuable reminder and a guide to the statement of principles, and should be restored.</p>	<p>The updated PBI CIS no longer focuses on purposes and instead focuses on whether an organisation is ‘organised, conducted or promoted’ for benevolent relief (see paragraph 23).</p> <p>Paragraphs 33 to 38 of the updated PBI CIS provide guidance regarding how to determine whether an organisation is organised, conducted, or promoted for benevolent relief.</p>
<p><b>21.</b></p>	<p>The redrafted PBI CIS does not refer to TR 2005/21 Income tax and fringe benefits tax: charities (TR 2005/21) regarding the definition of an ‘institution.’ Noting Australia’s multiagency approach to the administration and oversight of the not-for-profits and charities sector, core principles should remain consistent. This will reduce the complexity and administrative burden on charitable institutions, and reduce the likelihood of inconsistent and unfair outcomes resulting from potentially differing approaches.</p> <p>The redrafted PBI CIS should refer to TR 2005/21, where needed to align the definitions. The redrafted PBI CIS should also explicitly note and</p>	<p>Where we understand core principles are consistent across legislation, we will interpret consistently and reflect this in the CIS. As TR 2005/21 was withdrawn in 2011, we have not referred to it in the CIS.</p>

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	<p>explain any concepts or definitions that are not consistent with TR 2005/21.</p>	
<p><b>22.</b></p>	<p>The examples provided at the end of the redrafted PBI CIS are important, but could be improved in many ways, including:</p> <ul style="list-style-type: none"> <li>• ensuring that the purposes are clearly articulated</li> <li>• including an example about aged care</li> <li>• including an example of a PBI that also has a purpose of advancing religion</li> <li>• revisiting Example 7, as the authorities do not appear to support the conclusion regarding this organisation</li> <li>• aligning all examples with the redrafted PBI CIS, once the substantive guidance in the CIS is finalised</li> <li>• ensuring the names of the organisations in the examples are not too similar to one another</li> <li>• adding to Example 8 information about the provision of financial grants to relieve distress of people who are facing financial hardship as a result of the natural disaster</li> <li>• including an example about a faith-based school that is a PBI</li> <li>• including an example about a housing charity that engages in significant commercial activities to generate funds to apply to its purpose of benevolent relief.</li> </ul> <p>It is appreciated that examples of how the ACNC will apply the redrafted PBI CIS have been included at the end of the document, however, these are more in relation to the application of the redrafted PBI CIS rather than</p>	<p>We have incorporated examples throughout the updated PBI CIS where we think they will assist in illustrating how the principles described will apply in practice.</p>

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	specific examples of the types of organisations that may be endorsed as PBIs or organisations that are unlikely to be endorsed as PBIs.	
23.	Paragraph 7 of the redrafted PBI CIS states that the paragraphs that follow explain each element of PBI with references to the findings of courts and tribunals that have considered the meanings of these terms in this context. However, some of the authorities cited are not PBI cases. Preference should be given to PBI authorities and other authorities should be used cautiously, with a note to warn readers that they are not PBI cases. Most have limited precedential value in expounding the definition of a PBI.	The wording used in paragraph 7 of the exposure draft of the PBI CIS which was released for public consultation is not used in the updated PBI CIS. The updated PBI CIS gives preference to PBI authorities where appropriate and available.
24.	There is a concern with the inconsistent approach taken by the CIS with respect to the issue of independent purposes. For example, the CIS references a primary school in paragraph 23 as having a benevolent purpose and then later in paragraph 37 strikes out this organisation as a potential PBI. We are unsure whether this is an oversight during the drafting of the CIS.	The examples in paragraphs 23 and 37 of the exposure draft of the PBI CIS that was released for public consultation are no longer included in the updated PBI CIS.
25.	<p>The PBI CIS should include a paragraph which:</p> <p>(a) articulates the approved judicial methods of establishing an organisation's purpose; and</p> <p>(b) concerning web and social media, specifies the giving of notice of its use and seeking the applicant's informed response.</p>	<p>The updated PBI CIS is intended to cover (a) in setting out how the ACNC interprets PBI and that it is a holistic assessment.</p> <p>Paragraphs 79 and 80 of the updated PBI CIS provide guidance about how the ACNC assesses whether a charity is a PBI.</p>



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26.	<p>The following guidance in the CIS should be supported by case authority:</p> <p>Paragraph 10 – ‘A charity is “benevolent” in the required sense, if it has a main purpose of providing relief from poverty.’</p> <p>Paragraph 14 - ‘It provides goods or services to people who already have what they need for a modest standard of living.’</p> <p>Paragraph 15 – ‘These conditions include, but are not restricted to, sickness, disability, misfortune and helplessness.’</p> <p>Paragraph 20 – ‘If a charity provides benevolent relief by sending funds or resources to another organisation that is not a PBI, the charity must demonstrate how it ensures the other organisation will use the funds and resources only for benevolent relief. It could do this by establishing partnership agreements or memorandums of understanding with partner organisations.’</p> <p>Paragraph 26 – ‘The charity's benevolent relief must be targeted or directed to people in need and not the broader general community, even though the general community includes people in need.’</p> <p>Paragraph 28 – ‘A charity that provides goods and services to an entire community may have a purpose of benevolent relief if the whole community (or the vast majority of the community) are people in need. For example, in developing countries, entire communities may be living in</p>	<p>The updated PBI CIS addresses this feedback (much of the wording of concern no longer forms part of the PBI CIS).</p> <p>The updated PBI CIS relies upon the most appropriate authorities for the guidance provided.</p>

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	<p>poverty. Development assistance provided to such community is likely to be a purpose of benevolent relief.’</p> <p>Paragraph 29 – ‘A charity that charges for its services may have a purpose of benevolent relief. But it depends on the nature of the service, the need it intends to relieve and the fees charged.’</p> <p>Paragraph 37 – ‘If a charity has an independent purpose that is not benevolent relief, it is not entitled to registration as a PBI. For example, if a charity has an independent purpose of advancing religion or advancing the natural environment, it is not entitled to registration as a PBI.’</p>	
27.	The ACNC has been inconsistent with its use of AAT decisions. AAT decisions should effectively be considered precedents.	The ACNC relies on AAT decisions to inform decision-making. However, they do not have the same precedential value as judicial decisions.
28.	The selection of multiple sub-types is often a confusing ‘trap’ for many small to medium sized charities who believe they are doing a ‘good thing’ by selecting more subtypes. It can also be extremely difficult for charities who do not have legal representation to understand the difference between ‘activities’ and ‘purposes’, leading to an over-selection of subtypes.	We acknowledge there may be confusion. The ACNC works with applicants who have applied for subtypes which do not reflect their purposes to ensure that they are registered with the subtypes to which they are entitled under the ACNC Act.