

Commissioner's Interpretation Statement: Public Benevolent Institutions

The purpose of this Commissioner's Interpretation Statement is to provide guidance about how to determine whether an organisation is a Public Benevolent Institution (PBI).

This Interpretation Statement was initially published on 19 December 2016. The current version was published on 31 August 2023 and reflects the Commissioner's understanding of the law regarding PBIs on that date.

Background

1. A PBI is an institution that is organised, conducted or promoted for the relief of poverty, sickness, destitution, helplessness, suffering, misfortune, disability or distress.¹
2. To be recognised as a PBI for Commonwealth purposes, an organisation must first be registered with the ACNC as a charity and as the PBI subtype of charity.²
3. An organisation that is not yet registered as a charity with the ACNC can apply to register as a charity and as the PBI 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 PBI subtype to its registration.
5. The purpose of this Commissioner's Interpretation Statement is to explain the definition of PBI.

¹ See *Perpetual Trustee Co Ltd v Federal Commissioner of Taxation* (1931) 45 CLR 224, 232 (Starke J); 233 (Dixon J); 235-6 (Evatt J); 241 (McTiernan J).

² PBI is a category of organisation that is entitled to certain tax concessions. For example, a PBI can apply for endorsement as a deductible gift recipient (DGR) under the PBI DGR category in the *Income Tax Assessment Act 1997* (Cth). A PBI 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 Commonwealth tax concessions available to PBIs is available from the Australian Taxation Office. Further information regarding State or Territory tax concessions available to PBIs is available from the tax authority of the relevant State or Territory.



How to determine if an organisation can be registered as a PBI

Requirements for registration as a charity

6. All organisations that apply for registration with the ACNC as a PBI must meet the general requirements for registration as a charity. These include that the organisation must:
 - a. meet the definition of 'entity'³
 - b. be a not-for-profit
 - c. be in compliance with the Governance Standards and, if applicable, the External Conduct Standards
 - d. have an Australian Business Number (ABN)
 - e. meet the definition of 'charity', and
 - 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.⁴
7. The ACNC website provides [detailed guidance on charity registration requirements, as well as how to apply for registration](#).⁵

Meeting the description of a PBI

8. To be entitled to registration with the ACNC as the PBI subtype of charity, an organisation must also demonstrate that it meets all three elements of the description of a 'Public Benevolent Institution'. That is, the organisation must be, in the relevant sense:
 - 'public'
 - 'benevolent', and
 - an 'institution'.

³ *Australian Charities and Not-for-profits Commission Act 2012* (Cth) s 205-5. The note to this section states that the concept of 'entity' covers groups of legal persons and other things that, in practice, are treated as having a separate legal identity in the same way a legal person does. This means that an 'entity' cannot be merely a section or division of a larger organisation. It must be separately identifiable.

⁴ *Australian Charities and Not-for-profits Commission Act 2012* (Cth) s 25-5.

⁵ 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>.



9. The meaning of the phrase 'PBI' when it appears in legislation was first described by the High Court in *Perpetual Trustee Co Ltd v Federal Commissioner of Taxation*⁶ and has since been developed by decisions of subsequent courts. The ACNC must apply past judicial statements that establish clear legal principles. We apply past decisions in a way that acknowledges the meaning of the expression 'PBI' has evolved over time and will continue to evolve.⁷
10. In the sections that follow, each element of the description of a PBI will be explained.

Public

11. The most important characteristic to determine if an organisation is 'public' in the sense required for registration as a PBI is whether the beneficiaries it aims to help form a 'section of the community'⁸ that is 'appreciable'.⁹
12. Whether a group of beneficiaries is a 'section of the community' depends on the criteria the organisation uses to choose who it will help. If the organisation aims to help any person who has the need it aims to relieve, taking into account its capacity to do so, its beneficiaries will be a section of the community.¹⁰ The organisation does not need to show that it can help all possible people who may need its assistance.¹¹
13. However, if the organisation chooses who to help based on criteria that are unrelated to the need it aims to relieve and its capacity to provide relief, its beneficiaries will not be a section of the community, even if the potential number of beneficiaries is large.¹²
14. Whether a group of beneficiaries is 'appreciable' is a matter of degree, depending on the nature of the need the organisation aims to relieve and the means that it uses to relieve it. The total number of beneficiaries does not necessarily need to be very large for the beneficiary class to be 'appreciable'. For example, in *Trustees of the Indigenous Barristers' Trust v Federal Commissioner of Taxation*, Gyles J had to consider whether an organisation which aimed to help Aboriginal and Torres Strait Islander people who wished to become barristers at the New South Wales Bar by providing them with financial support was 'public' in the required sense. The Federal Commissioner

⁶ *Perpetual Trustee Co Ltd v Federal Commissioner of Taxation* (1931) 45 CLR 224.

⁷ See *Federal Commissioner of Taxation v The Hunger Project Australia* (2014) 221 FCR 302, 309 [38] (the Court).

⁸ *Re Income Tax Acts No. 1* [1930] VLR 211, 215 (Irvine CJ); 216-217 (Macfarlan J).

⁹ *Maughan v Federal Commissioner of Taxation* (1942) 66 CLR 388, 398 (Williams J); *Northern Land Council v Commissioner of Taxes* (2002) 12 NTLR 86, 93-4 [17] (Mildren J).

¹⁰ See, for example, *Lemm v Federal Commissioner of Taxation* (1942) 66 CLR 399, 410-411 (Williams J).

¹¹ *Trustees of the Indigenous Barristers' Trust v Federal Commissioner of Taxation* (2002) 127 FCR 63, 72 [13] (Gyles J).

¹² See, for example, *Re Income Tax Acts No. 1* [1930] VLR 211, 215 (Irvine CJ); 216-217 (Macfarlan J); 222-223 (Lowe J).



of Taxation argued that the organisation was not public because the beneficiary class was too narrow – the organisation did not help all Aboriginal and Torres Strait Islander Peoples, nor all Aboriginal and Torres Strait Islander people pursuing a legal career, nor all Aboriginal and Torres Strait Islander people pursuing a career as a barrister.¹³ However, Gyles J accepted the organisation’s argument that the potential beneficiaries included any needy Aboriginal or Torres Strait Islander person who wished to pursue a career at the New South Wales Bar and who had the qualifications to do so, even though the number of potential beneficiaries at that time was small. Gyles J stated that the relevant question is who *might* be benefited by the organisation. The fact that not everybody within that class could be helped was not to the point.¹⁴

15. If there will only ever be a small number of potential beneficiaries due to the nature of the need an organisation relieves, that will not prevent the organisation from meeting the ‘public’ requirement. For example, if an organisation aims to provide relief to all sufferers of a disease, but the disease is very rare and only a few people are diagnosed with it each year, the ACNC will accept that the organisation is ‘public’ in the required sense. In this situation, the organisation helps anyone in the public who needs its assistance, even though that number of people is small, rather than just choosing to help a small number of people. The total number of beneficiaries is small only because of the nature of the need the organisation aims to relieve.
16. Other characteristics that can indicate that an organisation is ‘public’ in the relevant sense include:
 - a. receipt of financial support from members of the public¹⁵
 - b. receipt of financial or other support from the government¹⁶
 - c. evidence of control by members of the public as distinct from control by people who are related to one another.¹⁷
17. But, as long as an organisation aims to help an appreciable section of the community, the fact that it may lack these other characteristics will not necessarily prevent it from being ‘public’.

¹³ *Trustees of the Indigenous Barristers’ Trust v Federal Commissioner of Taxation* (2002) 127 FCR 63, 72 [12] (Gyles J).

¹⁴ *Trustees of the Indigenous Barristers’ Trust v Federal Commissioner of Taxation* (2002) 127 FCR 63, 72 [13] (Gyles J). Note that although Gyles J’s decision was that the Indigenous Barristers’ Trust was not a PBI, that decision was made on the basis that it was a ‘mere fund’ and so did not meet the ‘institution’ aspect of PBI.

¹⁵ *Maughan v Federal Commissioner of Taxation* (1942) 66 CLR 388, 397 (Williams J).

¹⁶ See, for example, *Perpetual Trustee Co Ltd v Federal Commissioner of Taxation* (1931) 45 CLR 224, 232 (Dixon J); *Tangentyere Council Inc v Commissioner of Taxation* (1990) 21 ATR 239, 242-243 (Angel J).

¹⁷ *Maughan v Federal Commissioner of Taxation* (1942) 66 CLR 388, 397 (Williams J).



18. 'Public' in the sense relevant to PBI means it cannot be part of, or controlled by, government.¹⁸ A PBI must meet the definition of 'charity' in the *Charities Act 2013* (Cth) and this definition provides that the charity cannot be a 'government entity'.¹⁹

Examples

19. The following groups of beneficiaries have been accepted by courts and tribunals as appreciable sections of the community:
- a. boys aged between eight and 14 living in two poverty-stricken areas of Sydney²⁰
 - b. women over the age of 50 in 'straitened' financial circumstances²¹
 - c. people in Victoria who need the assistance of a lawyer and who cannot afford to pay for it²²
 - d. people who have been diagnosed with a mental illness requiring psychotherapeutic treatment²³
 - e. holders of native title in the Northern Territory²⁴
 - f. the permanent and temporary residents of town camps in the Northern Territory²⁵
 - g. widows and dependants of deceased ex-servicemen²⁶
 - h. Aboriginal and Torres Strait Islander Peoples.²⁷
20. The ACNC accepts that the following groups of beneficiaries are sections of the community:
- a. people in poverty
 - b. people living with a disability

¹⁸ *Ambulance Service of New South Wales v Deputy Commissioner of Taxation* (2003) 130 FCR 477, 492 [44] (the Court).

¹⁹ *Charities Act 2013* (Cth) s 5, paragraph (d) of the definition of 'charity'. See also s 4.

²⁰ *Maughan v Federal Commissioner of Taxation* (1942) 66 CLR 388.

²¹ *Lemm v Federal Commissioner of Taxation* (1942) 66 CLR 399.

²² *Legal Aid Commission of Victoria v Commissioner of Pay-roll Tax (Vic)* (1992) 92 ATC 2053.

²³ *Commissioner of Pay-roll Tax (Vic) v Cairnmillar Institute* (1990) 21 ATR 665.

²⁴ *Northern Land Council v Commissioner of Taxes* (2002) 12 NTLR 86.

²⁵ *Tangentyere Council Inc v Commissioner of Taxes* (1990) 21 ATR 239.

²⁶ *Federal Commissioner of Taxation v Launceston Legacy* (1987) 15 FCR 527.

²⁷ *Trustees of the Indigenous Barristers' Trust v Federal Commissioner of Taxation* (2002) 127 FCR 63.



- c. people suffering from the effects of a disease
 - d. victims of crime
 - e. people living with an addiction
 - f. refugees and asylum seekers
 - g. people who face barriers to obtaining and maintaining employment
 - h. people who are in prison
 - i. people who are reintegrating into the community following release from prison
 - j. people who are leaving a situation of domestic violence
 - k. elderly people who need support with completing daily tasks
 - l. people living in remote parts of Australia who face barriers to obtaining basic goods and services that are readily available in less remote communities.
21. The ACNC considers that the following groups of beneficiaries are not sections of the community:
- a. the members of a club or society that has the power to include or exclude new members²⁸
 - b. the employees of a specific company or group of companies²⁹
 - c. one or more named individuals or the descendants of one or more named individuals³⁰ (except in the case of descendants of apical ancestors).³¹
22. The lists in the paragraphs above are provided as examples and are not exhaustive.

Benevolent

23. A PBI must also be 'benevolent'. In *Perpetual Trustee Co Ltd v Federal Commissioner of Taxation*, the High Court stated that an organisation will be 'benevolent' in the sense required to be a PBI if it is organised, conducted or promoted for the relief of poverty, sickness, destitution, helplessness, suffering, misfortune, disability, or distress.³² In this Commissioner's Interpretation Statement, relief of any of these conditions is referred to as 'benevolent relief'.

²⁸ *Re Income Tax Acts No. 1* [1930] VLR 211.

²⁹ *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297.

³⁰ *Re Compton* [1945] Ch 123.

³¹ An apical ancestor is generally understood as the earliest common ancestor of a group. For further information regarding the ACNC's approach to organisations whose beneficiaries are descendants of apical ancestors, please see Commissioner's Interpretation Statement: Indigenous Charities.

³² See *Perpetual Trustee Co Ltd v Federal Commissioner of Taxation* (1931) 45 CLR 224, 232 (Starke J); 233 (Dixon J); 235-6 (Evatt J); 241 (McTiernan J).



24. It is the nature of the condition or need to be relieved that is important to determining whether an organisation is 'benevolent' in the required sense. It will not be sufficient if an organisation is only 'benevolent' in the sense that it is conducted out of feelings of goodwill.³³

Poverty

25. If an organisation is organised, conducted or promoted for the relief of poverty, it will be 'benevolent' in the sense required to be a PBI.
26. A person is in poverty if they cannot afford to obtain all that they need for a modest standard of living.³⁴ To determine whether a person within a particular community is in poverty, what is needed for a modest standard of living within that community must be taken into account. Although poverty includes destitution, it is not necessary that a beneficiary group be destitute for the ACNC to accept that they are in poverty.³⁵
27. In addition to housing, groceries, clothing, utilities and medical care, the ACNC accepts that, in contemporary Australian society, a person would need access to appropriate transport and means of communication to have a modest standard of living. If a person cannot afford to obtain these things, the ACNC accepts that they are likely to be in poverty.
28. If a parent or guardian is unable to provide their child with what is needed to participate in primary or secondary education, such as electronic devices and school resources, the ACNC accepts that the family is likely to be in poverty.
29. The ACNC accepts that an organisation that is organised, conducted or promoted to provide one or more of the necessities listed above (or another good or service that the organisation can demonstrate is a necessity) to people who cannot afford to obtain them, would be 'benevolent' in the required sense.

Other conditions

30. A PBI may be organised, conducted or promoted for the relief of conditions other than poverty. These conditions include, but are not restricted to, sickness, helplessness, suffering, misfortune, disability, and distress.
31. For the relief of one of these conditions to amount to benevolent relief in the PBI context, the condition must cause suffering that goes beyond the pain and suffering of everyday life.³⁶ For example, in *Commissioner of Pay-roll Tax (Vic) v Cairnmillar Institute (Cairnmillar Institute)*,

³³ *Perpetual Trustee Co Ltd v Federal Commissioner of Taxation* (1931) 45 CLR 224, 233 (Dixon J).

³⁴ See, for example, *Ballarat Trustees Executors and Agency Co Ltd v Federal Commissioner of Taxation* (1950) 80 CLR 350, 355 (Kitto J); *Dareton Local Aboriginal Land Council v Wentworth Council* (1995) 89 LGERA 120, 125 (Bignold J).

³⁵ *Lemm v Federal Commissioner of Taxation* (1942) 66 CLR 399, 410 (Williams J).

³⁶ *Marriage Guidance Council of Victoria v Commissioner of Pay-roll Tax (Vic)* (1990) 21 ATR 1272, 1277 (McGarvie J).



McGarvie J found that people who have been diagnosed with a mental illness that requires treatment by psychotherapy are suffering from sickness and distress that goes beyond the pain and suffering of everyday life.³⁷ McGarvie J went on to find that the organisation's purpose and activity of treating mental illnesses through psychotherapy was benevolent relief.³⁸

32. In contrast, if a condition is part of the pain and suffering associated with everyday life, relief of the condition will not be benevolent relief. For example, in *Marriage Guidance Council of Victoria v Commissioner of Pay-roll Tax (Vic)*, McGarvie J found that the Marriage Guidance Council of Victoria was not a PBI. The Marriage Guidance Council of Victoria was conducted to provide guidance or counselling to couples who were contemplating entering marriage, those who wished to maintain a marriage and those who were contemplating leaving a marriage, or who had decided to leave a marriage.³⁹ Despite acknowledging that people experiencing the breakdown of a marriage would be emotionally stressed and in pain, McGarvie J stated:

I consider, however, that the community regards such emotional stress and pain as falling within the ambit of the stress and pain encountered in ordinary human experience associated with such things as failure, deception, loss of status and reputation, or bereavement. Most healthy people of their own volition recover from such hurtful experiences with the passage of time.

I am satisfied that the counselling work of the Council in many cases, by eliminating strife in marriage or preventing marriage breakdown, avoids the undesirable secondary consequences of the type to which I have referred. While entirely commendable socially, this is preventative work and different from the work of a benevolent institution. It is akin to training, education or improvement.⁴⁰

Demonstrating an organisation is 'organised, conducted or promoted' for benevolent relief

33. To meet the definition of PBI, an organisation must demonstrate that it is 'organised, conducted or promoted' for benevolent relief.
34. If an organisation's governing document states that its objects, aims or purposes are to relieve poverty or to relieve sickness, destitution, helplessness, suffering, misfortune, disability, or distress of sufficient seriousness or an analogous condition and all of its activities further its objects, the ACNC accepts that it is organised, conducted or promoted for benevolent relief.

³⁷ *Commissioner of Pay-roll Tax (Vic) v Cairnmillar Institute* (1990) 21 ATR 665, 675 (McGarvie J).

³⁸ *Commissioner of Pay-roll Tax (Vic) v Cairnmillar Institute* (1990) 21 ATR 665, 682 (McGarvie J).

³⁹ *Marriage Guidance Council of Victoria v Commissioner of Pay-roll Tax (Vic)* (1990) 21 ATR 1272, 1273 (McGarvie J).

⁴⁰ *Marriage Guidance Council of Victoria v Commissioner of Pay-roll Tax (Vic)* (1990) 21 ATR 1272, 1277 (McGarvie J).



35. An organisation's governing document may state that its objects, aims or purposes include relieving poverty, sickness, destitution, helplessness, suffering, misfortune, disability or distress or an analogous condition and also other aims that are not related to benevolent relief. The ACNC will undertake a holistic consideration of what the organisation does to achieve its objects, aims or purposes, to determine the true nature of the organisation.
36. If an organisation achieves benevolent relief of a need through pursuing a particular charitable purpose, the ACNC will accept that it is organised, conducted or promoted for benevolent relief.
37. The ACNC takes a holistic view of whether an organisation is organised, conducted or promoted for benevolent relief. If any activities that are not directed toward benevolent relief are ancillary to the pursuit of benevolent relief, the ACNC will accept the organisation is organised, conducted or promoted for benevolent relief. An activity is ancillary to benevolent relief if it is a means of achieving, or naturally tends to go with, benevolent relief.
38. The extent to which the organisation pursues benevolent relief must show that benevolent relief is the organisation's characteristic and predominant purpose and activity.⁴¹

Activities and benevolent relief

39. PBIs can engage in a wide variety of activities targeted towards benevolent relief.
40. A PBI's activities can involve the provision of material relief, for example, the provision of food or clothing to someone who cannot afford them. However, the relief does not need to be material in nature. For example:
 - In *Federal Commissioner of Taxation v Launceston Legacy*, the Federal Court found that an organisation was organised for benevolent relief where its members (who were ex-servicemen) provided moral as well as practical support to the widows and families of deceased ex-servicemen, whether or not the families were in financial need.⁴² Northrop J accepted that the beneficiaries were suffering from distress because they had lost the support of a husband or father through death. His Honour viewed the organisation as organised to relieve the needs that had arisen due to loss of that support.
 - In *Tangentyere Council Inc v Commissioner of Taxes*, the Supreme Court of the Northern Territory found that helping Aboriginal Australians to preserve their traditional culture, customs and traditions was benevolent relief.⁴³

⁴¹ *Commissioner of Pay-roll Tax (Vic) v Cairnmillar Institute* (1990) 21 ATR 665, 682 (McGarvie J).

⁴² *Federal Commissioner of Taxation v Launceston Legacy* (1987) 15 FCR 527, 541–2 (Northrop J).

⁴³ *Tangentyere Council Inc v Commissioner of Taxes* (1990) 21 ATR 239, 248 (Angel J).



41. A PBI's activities must be directed towards relieving the needs of its beneficiaries. It is not enough that an organisation's activities might benefit people who are in benevolent need.⁴⁴ An organisation that provides benefits that are not targeted at relieving need is not organised, conducted or promoted for benevolent relief.
42. The more abstract and indirect the connection between an organisation's activities and the relief of its beneficiaries, the less likely it will be regarded as organised, conducted or promoted for benevolent relief.⁴⁵ This was described in the following way in *Global Citizen v Commissioner of the ACNC*:

In the case where the entity does not provide relief directly but relies on providing relief indirectly, there is likely to be a spectrum and it is possible the activities of an applicant will be such that it is not possible to say the entity is 'organised' for, or 'concerned in' or 'promoting' the relief of poverty etc.⁴⁶

43. That spectrum was probed by the Administrative Appeals Tribunal (AAT) in *Equality Australia Ltd v Commissioner of the ACNC*,⁴⁷ where the majority spoke of a 'sufficiency of connection' between what an organisation does and the relief of its intended beneficiaries.⁴⁸ Some activities, even those that are ultimately beneficial, will lack that sufficiency of connection because 'the relief provided will simply be too indirect.'⁴⁹ The majority found that advocacy, education and campaigning for legal and social change intended to relieve the distress caused by structural discrimination to Australia's LGBTIQ+ community were too indirect for Equality Australia Ltd to be regarded as organised, conducted or promoted for benevolent relief of the LGBTIQ+ community.⁵⁰

Working with other organisations to deliver benevolent relief

⁴⁴ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161, [88] (McCabe DP; Bygrave M) (as of 31 August 2023, this decision is on appeal).

⁴⁵ *Australians for Indigenous Constitutional Recognition Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] FCA 435, [26] (Thawley J).

⁴⁶ *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [115] (McCabe DP; O'Connell SM).

⁴⁷ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161.

⁴⁸ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161, [84] (McCabe DP; Bygrave M).

⁴⁹ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161, [86] (McCabe DP; Bygrave M).

⁵⁰ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161, [88] (McCabe DP; Bygrave M).



44. PBIs can work with other organisations to deliver benevolent relief. For example, in *The Hunger Project Australia v Federal Commissioner of Taxation*, an organisation raised funds in Australia to send to partner organisations in developing countries to relieve hunger in those countries. The Federal Court accepted the organisation was organised to relieve poverty of people in developing countries because it demonstrated that the funds it raised would be used for benevolent relief by its partner organisations.⁵¹
45. In *Global Citizen Ltd v Commissioner of the ACNC*, the applicant was an organisation whose activities were directed to securing commitments, primarily financial commitments, from governments and philanthropists to organisations that carry out projects to relieve poverty. The AAT accepted that the organisation was organised or conducted for benevolent relief because it was organised for, conducted for or promotes the relief of poverty.⁵²

Relief must be directed to people in need, not the community generally

46. The 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.
47. An organisation that provides general advice, information, research or advocacy services to the whole community or a part of the community is unlikely to be organised, conducted or promoted for benevolent relief.⁵³
48. However, many organisations provide information (for example, on a website) which is directed toward the relief of those in benevolent need, but which others can also access. The fact that information may be accessible to anyone in the community will not necessarily mean that the organisation is organised to provide general advice or information to the community as a whole.
49. If an organisation provides information that is generally accessible, the ACNC will assess the nature of the information to determine whether it is directed towards benevolent relief.
50. Examples:
 - a. An organisation has a purpose of relieving the disadvantage and distress of people who have faced barriers to obtaining employment. On its website, the organisation advertises its employment assistance services and the eligibility criteria for using its services. The organisation also includes clear and concise information on its website about how to draft a resumé and how to prepare for a job interview. All of the information on the website is available to the public. The fact that the organisation includes information on its website

⁵¹ *The Hunger Project Australia v Federal Commissioner of Taxation* (2013) 94 ATR 855, [126] (Perram J).

⁵² *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [127] (McCabe DP; O'Connell SM).

⁵³ *Australian Council of Social Service Inc v Commissioner of Pay-roll Tax* (1985) 1 NSWLR 567, 575 (Priestley JA; Mahoney JA agreeing).



that may be of assistance to job-seekers generally will not, of itself, mean that the organisation is not organised, conducted or promoted for the benevolent relief of people who face barriers to obtaining employment. The information on the website naturally tends to go with the employment services the organisation provides and is directed towards the people who use its services. Any benefit that members of the public who are not in need receive from the information on the website is incidental to the organisation's aim of providing benevolent relief.

- b. An organisation has an object of relieving poverty in developing countries and engages in fundraising campaigns to generate funds to provide to partner organisations overseas which are conducting poverty relief activities. On its website, the organisation provides information about the living conditions of communities in developing countries, including statistics, copies of reports by non-government organisations, and case studies. Anyone can read the information on the website. The fact that the organisation includes information on its website that is generally accessible does not, of itself, mean that the organisation is not organised, conducted or promoted for the benevolent relief of poverty. The information on the website, provided with the goal of raising awareness so that people will be more likely to contribute to its fundraising campaigns, supports the organisation's object of relieving poverty. Therefore, the provision of the information is ancillary to benevolent relief.

Development assistance

51. An organisation that provides goods or services to an entire community may be organised, conducted or promoted for benevolent relief if the whole community (or the vast majority of the community) are people in need and the organisation's activities are directed towards relieving their needs.
52. For example, in developing countries, entire communities may be living in poverty. Development assistance provided to such communities is likely to be benevolent relief. The term 'development assistance' includes activities that improve the long-term well-being of a group of people by building their capacity and assisting with long-term solutions to serious needs (such as those stemming from entrenched poverty).⁵⁴ 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 ensure that those needs do not recur in the future.
53. Similarly, in Australia, communities of Aboriginal and Torres Strait Islander people may be living in poverty, particularly in remote communities with less access to services such as healthcare, housing and education. Development assistance provided to these communities is likely to be benevolent relief. Development assistance can include providing services that are ordinarily provided by local

⁵⁴ *Re SIM Australia As Trustee for SIMAID Trust and Federal Commissioner of Taxation* [2007] AATA 1443.



government bodies or other government authorities such as waste collection, construction and maintenance of roads and public spaces, and installation and maintenance of utilities.⁵⁵

Relief may be provided outside Australia

54. The beneficiaries of benevolent relief do not need to be in Australia.⁵⁶ If an organisation is organised, conducted or promoted to provide benevolent relief to people in need overseas, it must comply with the [External Conduct Standards](#).⁵⁷

Relief must be provided to human beings

55. To be a PBI, an organisation's benevolence must be conferred on humans. An organisation that is organised conducted or promoted for the relief of distress or suffering of animals is not a PBI.⁵⁸

Charging fees to provide relief

56. An organisation that charges for its services may be organised, conducted or promoted for benevolent relief. But it depends on the nature of the service, the need it intends to relieve, and the fees charged.
57. If an organisation is organised, conducted or promoted for the benevolent relief of poverty, its fees for the services that provide relief must be below the market rate for comparable services. For example, an organisation which is conducted to relieve poverty by providing rental housing must charge its tenants who are in poverty rent at below market rates.⁵⁹
58. If an organisation is organised, conducted or promoted to relieve a benevolent need other than poverty, such as sickness, it may charge fees for services to beneficiaries that are comparable to market rates. For example, in *Cairnmillar Institute*, the applicant organisation charged rates for psychotherapy that were comparable to rates charged by private practices for similar services.⁶⁰ The court held that Cairnmillar Institute was organised for benevolent relief because its beneficiaries were in need due to their illness.⁶¹ This decision was upheld upon appeal.⁶²

⁵⁵ See, for example, *Tangentyere Council Inc v Commissioner of Taxes (NT)* (1990) 21 ATR 239, 245 (Angel J).

⁵⁶ See, for example, *Australian Council for Overseas Aid v Federal Commissioner of Taxation* (1980) 49 FLR 278.

⁵⁷ Australian Charities and Not-for-profits Commission, 'ACNC External Conduct Standards', <https://www.acnc.gov.au/for-charities/manage-your-charity/governance-hub/acnc-external-conduct-standards>.

⁵⁸ *Federal Commissioner of Taxation v Royal Society for the Prevention of Cruelty to Animals, Queensland Inc* [1993] 1 Qd R 571.

⁵⁹ See, for example, *Maclean Shire Council v Nungera Co-operative Society Ltd* (1995) 86 LGERA 430, 431 (Handley JA; Priestley JA agreeing).

⁶⁰ *Commissioner of Pay-roll Tax (Vic) v Cairnmillar Institute* (1990) 21 ATR 665, 683 (McGarvie J).

⁶¹ *Commissioner of Pay-roll Tax (Vic) v Cairnmillar Institute* (1990) 21 ATR 665, 685 (McGarvie J).

⁶² *Commissioner of Pay-roll Tax (Vic) v Cairnmillar Institute* [1992] 2 VR 706.



Conducting commercial activities to raise funds for relief

59. A PBI may conduct commercial activities if they are merely a means by which it raises funds to be directed towards benevolent relief.⁶³ In this situation, the commercial activities are regarded as a means of supporting the achievement of benevolent relief, rather than an independent non-benevolent pursuit.

Prevention and benevolent relief

60. Although a PBI must be organised, conducted or promoted for benevolent relief, the ACNC accepts that in some circumstances PBIs can engage in activities that might be viewed as preventative.
61. A PBI seeking to relieve a benevolent need may also undertake activities intended to address other benevolent needs that the target beneficiaries are at risk of experiencing.⁶⁴ Activities directed towards beneficiaries who are 'at-risk' of experiencing a condition needing benevolent relief may amount to benevolent relief or be ancillary to it. Often, people who are 'at-risk' are already in need of benevolent relief and activities to prevent their condition from further deterioration also relieve their current needs.
62. By way of example, where an organisation works with disadvantaged young people who have disengaged from secondary school to support them to complete their education and to develop the skills to be able to obtain employment, the organisation is relieving the beneficiaries' current disadvantage. By relieving the current disadvantage, the organisation will also be helping to prevent the development of related needs that would flow from not completing secondary education. The organisation would still be regarded as organised, conducted or promoted for benevolent relief even though its activities also have this preventative effect.
63. As part of its relief, a PBI can, in some circumstances, engage in capacity-building activities intended to address entrenched need.⁶⁵ For example, development assistance in the international development and relief context includes activities that improve the long-term well-being of people in developing countries, which build their capacity and provide long-term sustainable solutions to need stemming from poverty and distress. Development assistance of this nature might be viewed as preventative because it stops these needs from recurring, but it also relieves current needs.

⁶³ See, for example, *Borough of Leichhardt v Moran* (1904) 4 SR (NSW) 361. See also *Federal Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204.

⁶⁴ *Maughan v Federal Commissioner of Taxation* (1942) 66 CLR 388, 397 (Williams J).

⁶⁵ *Re SIM Australia As Trustee for SIMAID Trust and Federal Commissioner of Taxation* [2007] AATA 1443.



Advocacy and benevolent relief

64. Advocacy is support for a particular cause or policy, which can be provided through a wide range of activities.
65. The ACNC accepts that a PBI can in some circumstances engage in some advocacy. There are two recent authorities on this issue:
 - a. In *Global Citizen Ltd v Commissioner of the ACNC*, the organisation's activities were directed to securing commitments, primarily financial, from governments and philanthropists to commit funds to specific projects that organisations were undertaking to relieve poverty around the world.⁶⁶ Advocacy engaged in under these circumstances as part of the organisation's activities was accepted to be for the benevolent relief of poverty.⁶⁷
 - b. In *Equality Australia Ltd v Commissioner of the ACNC*, the organisation engaged in advocacy (particularly legal advocacy), education and campaigning directed towards changing laws and social practices that cause harm to LGBTIQ+ people.⁶⁸ The majority of the AAT determined that there was not a 'sufficiency of connection' between the organisation's activities and the benevolent relief of its intended beneficiaries to accept that the organisation was organised, conducted or promoted for benevolent relief.⁶⁹
66. It is also possible for a PBI to engage in advocacy that is ancillary to the delivery of benevolent relief.
67. The ACNC will engage in a holistic analysis of the purpose and activities of an organisation to determine whether it can properly be characterised as benevolent.⁷⁰

⁶⁶ *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [55], [125] (McCabe DP; O'Connell SM).

⁶⁷ *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [127] (McCabe DP; O'Connell SM).

⁶⁸ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161, [80] (McCabe DP; Bygrave M).

⁶⁹ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161, [88] (McCabe DP; Bygrave M).

⁷⁰ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161, [84] (McCabe DP; Bygrave M).



Institution

68. An institution is a body created to conduct activities in furtherance of a particular purpose or aim.⁷¹ In the PBI context, the body will undertake activities directed towards benevolent relief of an appreciable class in the community.
69. An institution does not need to take any particular legal structure. For, example an institution may be:
- a. a trust
 - b. an incorporated body such as a company, Aboriginal or Torres Strait Islander Corporation,⁷² co-operative or incorporated association
 - c. an unincorporated body, such as an unincorporated association.
70. Although an institution can take any structure, it cannot be a 'mere fund' or 'mere trust'.⁷³ A mere fund or mere trust is an organisation that only exists to manage a trust fund and make distributions.⁷⁴
71. 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.⁷⁵
72. 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:
- had a small and exclusive membership
 - was controlled by the members of a family and their friends, and
 - engaged in activities on a relatively small scale that were closely aligned with the business affairs of one of its founders

⁷¹ *Mayor of Manchester v McAdam* [1896] AC 500, 511 (Lord Macnaghten).

⁷² Registered with the Office of the Registrar of Indigenous Corporations (ORIC) under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

⁷³ *The Hunger Project Australia v Federal Commissioner of Taxation* (2013) 94 ATR 855, [112] (Perram J).

⁷⁴ See, for example, *Trustees of the Indigenous Barristers' Trust v Federal Commissioner of Taxation* (2002) 127 FCR 63, [31] (Gyles J); *Trustees of the Allport Bequest v Federal Commissioner of Taxation* (1988) 19 ATR 1335, 1341 (Northrop J).

⁷⁵ See *Sargents Charitable Foundation v Chief Commissioner of State Revenue (NSW)* (2005) 60 ATR 129, 133 [23]-[25] (Gzell J).



was found not to be a religious institution in *Pamas Foundation Inc v Federal Commissioner of Taxation*.⁷⁶ An organisation operating like this would not be an institution.

73. An organisation is likely to be an institution if it undertakes a number of 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

74. An organisation that is already operating will need to demonstrate that it is an institution by clearly explaining the activities it has done over at least its past year of operation, to show that it does more than merely manage trust funds and make distributions.
75. An organisation that is just starting up and has either 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 detailed plan of the activities it plans to undertake over at least its first year of operation. The plan should include:
- a description of the activities the organisation plans to undertake and the people who will benefit from its activities
 - the staff (or volunteers) and funds the organisation needs to undertake its activities
 - where the organisation plans to obtain the funds it needs to undertake its activities, and
 - an explanation of how often the organisation will undertake its activities.
76. 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

77. The following are two examples of organisations that **would be** institutions:
- a. A trust is established for the charitable purpose of relieving poverty. 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 to operate a soup van. 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 relieving poverty in developing countries. 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 poverty in developing countries and the organisations that are acting to address it. They provide the funds that they raise to a partner organisation that

⁷⁶ *Pamas Foundation Inc v Federal Commissioner of Taxation* (1992) 35 FCR 117.



undertakes projects in developing countries to relieve poverty. The trust is an institution. By actively fundraising, the trustees are engaging in activities to achieve the trust's purpose that mean it is not a 'mere fund' or 'mere trust'.

78. The following are examples of organisations that **would not be** institutions:

- a. A trust is established for the charitable purpose of relieving disability. Under the terms of the trust, the trustees must invest the trust fund and distribute any interest it earns each year between three registered PBIs. The trustees are not permitted to undertake active fundraising 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 PBIs is not enough for the trust itself to be regarded as an institution.
- b. A trust is established for the charitable purpose of relieving disadvantage. 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 a PBI which provides support to disadvantaged people. 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 relieve poverty, which it achieves once per year by seeking donations at a trade fair which the parents attend to showcase their small business, then using whatever donations it receives to provide food parcels to needy families. The incorporated association is not an institution. With its small and exclusive membership, and limited activities tied to the business affairs of the parents, it is analogous to the Pamas Foundation Inc, which a court found was not an institution.⁷⁷

How we assess whether a charity is a PBI

79. We consider a range of information to determine whether an organisation meets the requirements to be registered as a PBI. This includes the organisation's:

⁷⁷ *Pamas Foundation Inc v Federal Commissioner of Taxation* (1992) 35 FCR 117. See paragraph 72 for further information.



- governing document
- activities
- policies and procedures
- operational, strategic or business plans
- annual reports (if any)
- financial statements (for an existing organisation) or budget (for a new organisation)
- resources such as staff, including the nature of their work, qualifications and experience⁷⁸
- relationships with other organisations and information that provides evidence of these relationships, and
- website and other publicly available information about the organisation, including social media posts.

80. We observe the following principles when deciding whether an organisation is entitled to be registered as a PBI:

- We recognise that how PBIs provide relief will change as understandings of the best ways of providing relief and technology for providing relief change. While we must follow past judicial statements that establish clear legal principles, it is not appropriate to apply them mechanically.⁷⁹
- The primary focus when determining whether an organisation is a PBI is on its substance rather than its structure.⁸⁰

Registration as a PBI and other subtypes of charity

81. As is discussed above, registration with the ACNC as a charity and as the PBI subtype of charity is necessary for an organisation to be recognised as a PBI for Commonwealth purposes.

82. The *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (ACNC Act) has a table which lists 14 possible subtypes of charity, including PBI. The ACNC Act states that charities may be registered as one or more subtypes of charity and provides the example that a charity may be

⁷⁸ See for example *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161.

⁷⁹ *Commissioner of Taxation v Hunger Project Australia* (2014) 221 FCR 302, [38] (the Court).

⁸⁰ *Commissioner of Taxation v Hunger Project Australia* (2014) 221 FCR 302, [63]–[64] (the Court) (regarding the reasoning of the majority of the High Court of Australia in *Federal Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204).



registered as the PBI subtype and as the subtype 'entity with a purpose of advancing social or public welfare'.⁸¹

83. To be entitled to registration as a particular subtype of charity, a charity will need to meet the description of the subtype in the table in section 25-5(5) of the ACNC Act. Most subtypes in the table match the charitable purposes set out in the *Charities Act 2013* (Cth). This means that, to be entitled to registration as any additional subtype of charity, a PBI will need to have the charitable purpose that matches the subtype. Further information about the [charitable purposes is provided on the ACNC website](#).⁸²
84. A charity's purposes are determined by considering the objects (or aims or purposes) set out in its governing document, its activities to achieve its objects (or aims or purposes), and other relevant information about it.⁸³
85. PBIs provide benevolent relief by pursuing one or more charitable purposes. The additional subtypes that a PBI may be entitled to will depend on how the PBI goes about providing benevolent relief.
86. For example:
 - a. a PBI's governing document states that its aim is to relieve the distress of frail aged people. To achieve its aim, the PBI provides rest home care for aged people who can no longer live independently. The PBI is organised and conducted for benevolent relief of frail aged people. It achieves this relief through pursuing a charitable purpose of caring for and supporting the aged. This charitable purpose is included within the purpose of 'advancing social or public welfare'. The PBI would also be entitled to registration as the 'advancing social or public welfare' subtype.
 - b. a PBI's governing document states that its aims are to advance religion and to relieve the distress of people who are in prison by providing chaplaincy services for inmates who wish to maintain a connection with their faith. The PBI regularly sends chaplains into prisons to provide emotional and spiritual support to prisoners of faith or prisoners interested in exploring faith. The PBI is organised for benevolent relief of people who are in prison. The prisoners have been excluded from participation in organised religion in the general public, due to their imprisonment, leading to distress. The PBI relieves the prisoners' distress and advances religion simultaneously through its chaplaincy services. The PBI

⁸¹ *Australian Charities and Not-for-profits Commission Act 2012* (Cth) s 25-5(4).

⁸² Australian Charities and Not-for-profits Commission, 'Charitable Purpose', <https://www.acnc.gov.au/for-charities/start-charity/you-start-charity/charitable-purpose>.

⁸³ *Charities Act 2013* (Cth) s 5, note 1 to the definition of 'charity'.



would be entitled to registration as the 'advancing social or public welfare' subtype and the 'advancing religion' subtype.

- c. a PBI's governing document states that its object is to relieve the disadvantage of Aboriginal and Torres Strait Islander Peoples in a particular community. Its activities include running training courses so that people can earn a qualification and obtain employment in environmental protection. Its activities also include maintaining and repairing housing and utilities and providing funding and transport so that community members can participate in cultural events and observances. The PBI is organised for benevolent relief of Aboriginal and Torres Strait Islander Peoples. It achieves this relief through pursuing charitable purposes of advancing education, relieving poverty and disadvantage (which are both included within the charitable purpose of advancing social or public welfare) and advancing culture. As well as being entitled to registration as a PBI, the organisation would also be entitled to registration with the 'advancing education', 'advancing social or public welfare' and 'advancing culture' subtypes of charity.

87. If a charity pursues charitable purposes that are not directed towards benevolent relief and those purposes are not incidental or ancillary to benevolent relief, it may not (or may no longer) be regarded as organised, conducted or promoted for benevolent relief. PBIs should regularly review how their purposes and activities contribute towards benevolent relief.

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

The following examples show how we will apply this Commissioner's Interpretation Statement in practice.

Example 1

Charity A is a public company limited by guarantee. The company pursues the following objects:

- conducting research into the causes of youth unemployment
- engaging in advocacy and lobbying government and others to influence policy
- raising awareness in the community about the incidence of youth unemployment and its effects, and
- convening forums with the public and experts to discuss issues regarding youth unemployment.

Charity A is unlikely to be a PBI because there is not a sufficient connection between its activities and relieving the needs of unemployed young people. Refer to paragraph 43 in this Commissioner's Interpretation Statement for further detail.

Example 2

Charity B is a specialist clinic in an affluent area of Melbourne. The clinic's object is to treat mental illness. The clinic relieves the suffering of its patients by providing psychiatric treatment. Most of the clinic's



patients are financially comfortable and pay a similar amount for their treatment that they would pay if they attended a private medical practice.

Charity B may be a PBI even though many of its patients are not in financial need. This is because the patients are in benevolent need because of their illness. Refer to paragraphs 56 to 58 in this Commissioner's Interpretation Statement for further detail. See also Commissioner of Pay-roll Tax (Vic) v Cairnmillar Institute (1990) 21 ATR 665 and Commissioner of Pay-roll Tax v Cairnmillar Institute [1992] 2 VR 706.

Example 3

Charity C was established to operate a church that holds weekly public worship services and holds Bible study classes and prayer meetings. In furtherance of the Christian faith, the church also runs a food bank and soup van ministry for the homeless in its neighbourhood on Tuesday nights. The objects clause of the church's constitution emphasises the advancement of the Christian religion.

Charity C is unlikely to be a PBI. Although it provides some benevolent relief, it's primarily focused on advancing religion. However, if the food bank and soup van were organised in a separate charity, that charity may be a PBI. Refer to paragraph 87 in this Commissioner's Interpretation Statement for further detail.

Example 4

Charity D operates a social enterprise. It sells secondhand textbooks, with profits distributed to organisations working in the developing world. The funds are used to support humanitarian assistance programs following natural disasters. Charity D has developed a close working relationship with the organisations it supports. It has memorandums of understanding with the organisations, is involved in planning programs and annually sends volunteers for short term trips to help with implementing the programs.

For the most part, Charity D is not directly engaged in providing benevolent relief. Nevertheless, it is likely to be a PBI because it can demonstrate that the funds that it raises are used for the relief of distress that goes beyond the kind of suffering associated with everyday life. The partner entity uses funds Charity D raises to relieve distress. Refer to paragraph 44 in this Commissioner's Interpretation Statement for further detail. See also The Hunger Project Australia v Federal Commissioner of Taxation (2013) 94 ATR 855.

Example 5

Charity E was founded by a philanthropist. After she retired, she transferred a range of personal investment assets to the charity and appointed a board of directors. The board developed an investment strategy for the charity and each year it makes distributions to various disability services organisations. The personal and social interactions of the board members help the board to decide the programs that Charity E supports.



Charity E is unlikely to be a PBI because it is not an institution. It is a 'mere fund' that manages trust property that is applied for a charitable purpose. Refer to paragraph 70 in this Commissioner's Interpretation Statement for more detail. See also Trustees of the Indigenous Barristers' Trust v Federal Commissioner of Taxation (2002) 127 FCR 63 and Trustees of the Allport Bequest v Federal Commissioner of Taxation (1988) 19 ATR 1335.

Example 6

Charity F is currently registered as a PBI. Its purpose is to provide housing to people in need. It currently manages a community housing program for low-income families.

The board of the charity was approached to consider becoming a partner in a new fundraising venture. At participating cafés on Fridays, people who buy a certain brand of coffee will be asked to donate an additional dollar, with all donations to be matched by the coffee company. The proceeds will be given to Charity F. The fundraising venture will include advertisements that the charity endorses the coffee company as a responsible corporate citizen.

While promoting a coffee company is not benevolent relief, it seems clear that the new venture is to raise funds for Charity F's community housing program and is therefore an ancillary activity. So, engaging in the program is unlikely to impact Charity F's registration as a PBI. Refer to paragraph 59 in this Commissioner's Interpretation Statement for further detail. See also Federal Commissioner of Taxation v Word Investments Ltd (2008) 236 CLR 204.

Example 7

Charity G has an object of relieving the poverty of people most affected by climate change. It achieves its object by lobbying governments around the world to adopt climate policies that seek to limit the effects of climate change.

It is unlikely that Charity G is a PBI. Although it has an object of relieving poverty, the relationship between its activities and the relief of poverty is too indirect – attempting to get governments to adopt certain environmental policies that it believes will reduce poverty if they are adopted. Furthermore, as climate change affects the community generally, not just people who are in poverty, the purpose of Charity G appears to be to promote the social welfare of the community generally. Refer to paragraphs 46 and 65 in this Commissioner's Interpretation Statement for more detail. See also Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission [2021] AATA 3313, [98] (McCabe DP; O'Connell SM); and Australians for Indigenous Constitutional Recognition Ltd v Commissioner of the Australian Charities and Not-for-profits Commission [2021] FCA 435; and Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission [2023] AATA 2161.

Example 8

Charity H has an object of relieving the distress of individuals and families affected by natural disasters. In the aftermath of a natural disaster, Charity H provides emergency clothing, food, toiletries and shelter to



people unable to return to their homes due to the disaster. Charity H does not restrict its relief only to people who are in poverty.

Charity H is likely to be a PBI. Although some of its beneficiaries would ordinarily be able to afford to purchase the necessities that Charity H distributes, they would struggle to obtain these necessities in the immediate aftermath of a disaster. Therefore, they have needs that are causing them distress that is beyond that of everyday life. Refer to paragraphs 30 to 32 in this Commissioner's Interpretation Statement for further detail.

Example 9

Charity I has an object of helping members of a community organisation who are going through cancer treatment by providing them with complementary therapies. To become a member of the organisation, a person must apply and have their application supported by two existing members. The committee of the community organisation can approve or reject an application for membership without giving reasons.

Charity I is not likely to be a PBI on the basis that it is not 'public.' Although it is organised for benevolent relief, it does not provide relief to an appreciable section of the community. It provides relief to a select group of individuals: members of the community organisation. Refer to paragraphs 11 to 22 in this Commissioner's Interpretation Statement for further detail. See also Re Income Tax Acts No. 1 [1930] VLR 211.

Example 10

Charity J has an object of relieving the distress of people subject to workplace discrimination. It achieves its object by lobbying governments to change workplace relations laws so that they provide greater protection against workplace discrimination.

Charity J is unlikely to be a PBI. Charity J has an object of relieving distress of people who are experiencing suffering that goes beyond that expected of everyday life, but the way Charity J does so – attempting to convince governments to amend laws in a way that the charity believes will lead to relief if they are amended – is too indirect to conclude that Charity J is 'organised, conducted or promoted' for benevolent relief. Refer to paragraph 65 in this Commissioner's Interpretation Statement for more detail. See also Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission [2021] AATA 3313, [98] (McCabe DP; O'Connell SM), Australians for Indigenous Constitutional Recognition Ltd v Commissioner of the Australian Charities and Not-for-profits Commission [2021] FCA 435 and Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission [2023] AATA 2161 (30 June 2023) (McCabe DP; Bygrave M).



Version history

Version	Date of effect	Brief summary of changes
Version 1 – Initial statement	19/12/2016	Initial statement endorsed by Commissioner on 19/12/2016.
Version 2 – Amendment	31/08/2023	Substantially re-written to reflect feedback on clarity and recent decisions including <i>Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission</i> [2021] AATA 3313 and <i>Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission</i> [2023] AATA 2161 (on appeal as of 31 August 2023).