

1 September 2022

Deborah Jenkins
Acting Commissioner
Australian Charities and Not-for-profits Commission
Melbourne VIC 3001

By email: cis@acnc.gov.au

Dear Ms Jenkins

**Commissioner's Interpretation Statement: Public Benevolent Institutions and
Commissioner's Interpretation Statement: Health Promotion Charities**

The Tax Institute welcomes the opportunity to make a submission to the Australian Charities and Not-for-profits Commission (**ACNC**) in relation to the draft Commissioner's Interpretation Statement: Public Benevolent Institutions (**draft CIS PBI**) and draft Commissioner's Interpretation Statement: Health Promotion Charities (**draft CIS HPC**).

In the development of this submission, we have closely consulted with our National Not-for-profit Committee to prepare a considered response that represents the views of the broader membership of The Tax Institute.

Given that the draft CIS PBI will effectively replace the existing Commissioner's Interpretation Statement: Public Benevolent Institution (**CIS 2016/3**), it is important to ensure that charities will continue to have access to the relevant information and be able to effectively transition from the existing guidance to the new guidance. In particular, this will involve ensuring that any existing eligibility requirements continue to be in place, unless evidenced by case law. Otherwise, charities may risk being unfairly penalised for following and applying historical ACNC guidance.

It is also important for the ACNC to ensure that if the Commissioner's Interpretation Statement: The Hunger Project Case (**Hunger Project Case CIS**) is withdrawn, no analysis is lost from the existing guidance.

We support the replacement of the Commissioner's Interpretation Statement: Health Promotion Charities (**CIS 2015/1**) with the draft CIS HPC. The addition of examples for when an institution could register as a health promotion charity (**HPC**) are as particularly useful from the perspective of a new organisation considering their eligibility.

We would be pleased to continue to work with the ACNC on the further development of the draft CIS PBI and draft CIS HPC, to ensure they provide the most useful advice and guidance for charities and their advisers. In particular, we wish to extend an offer of an open discussion to work collaboratively with the ACNC in relation to any revisions to the drafting of these important guidance products as suggested in this submission.

Our detailed response is contained in **Appendix A**.

The Tax Institute is the leading forum for the tax community in Australia. We are committed to shaping the future of the tax profession and the continuous improvement of the tax system for the benefit of all. In this regard, The Tax Institute seeks to influence tax and revenue policy at the highest level with a view to achieving a better Australian tax system for all. Please refer to **Appendix B** for more about The Tax Institute.

If you would like to discuss any of the above, please contact Tax Counsel, Julie Abdalla, on 02 8223 0058.

Yours faithfully,



Jerome Tse

President

APPENDIX A

We have set out below our detailed comments and observations for your consideration to ensure that the draft CIS PBI and draft CIS HPC provide the most effective and practical advice for taxpayers and their advisers. Our comments broadly follow the layout of the questions contained in the ACNC Request for comments: Commissioner's Interpretation Statements, followed by additional comments on the draft CIS PBI and the draft CIS HPC.

Our comments are predominantly focused on the draft CIS PBI, highlighting areas that we consider may inadvertently be interpreted inaccurately by a user of the draft CIS PBI. Where we have identified that this issue may relate to a certain paragraph, we have identified the specific paragraph and suggested wording to further clarify the meaning of the paragraph.

Questions

1. Do you think there are any issues with withdrawing Commissioner's Interpretation Statement: The Hunger Project Case'?

The background information and analysis contained in the Hunger Project Case CIS is not entirely reflected in the draft CIS PBI but is still relevant for impacted charities.

We consider that the analysis of the *Australian Council of Social Service v. Commissioner of Pay-roll Tax* [1985] NSWLR 567 (**ACOSS**) in the Hunger Project Case CIS is helpful and assists charities to understand and apply the law. Paragraphs 3.3 and 3.4 of the Hunger Project Case CIS contains Perram J's analysis of **ACOSS**. This is useful for demonstrating that the directness test for public benevolent institutions (**PBIs**) was not a clear requirement for a PBI even before the decision in *Commissioner of Taxation v Hunger Project Australia* [2014] FCAFC 69 (**Hunger Project**).

Paragraphs 4.4 to 4.7 of the Hunger Project Case CIS contain important and useful excerpts from the *Hunger Project* case decision that are not included in the draft CIS PBI. Broadly, these paragraphs confirm that the meaning of PBI does not have a technical legal definition and therefore takes its ordinary meaning. These paragraphs recognise that the ordinary meaning of the words PBI may change over time and caters for the modernisation of legal structures and changing community expectations. Accordingly, we consider the draft CIS PBI should be amended to include this analysis. If this analysis is not included in the draft CIS PBI, we consider that the Hunger Project CIS should not be withdrawn and should remain available as guidance for charities taxpayers and their advisers. Importantly though, if the Hunger Project Case CIS is not withdrawn, those paragraphs within it which suggest the existence of a 'clear mechanisms' test, particularly paragraph 6.5, for PBI should be deleted.

2. Which introductory statement do you consider more appropriately reflects the position of Commissioner's Interpretation Statements as guidance documents?

We consider that the new statement more accurately reflects the purpose and role of a Commissioner's Interpretation Statement (**CIS**). In particular, we note the new statement which removes any reference to a CIS being binding on ACNC staff. The Tax Institute is of the view that although a CIS outlines the ACNC's interpretation and proposed application of the relevant law, it only guides the decision maker but does not bind them. The relevant legislation and case law should remain the binding authority on all decision-makers and ACNC staff.

3. To help explain and clarify the meaning of 'institution', should the principles expressed in *Pamas* be included in the two revised Commissioner's Interpretation Statements?

Pamas Foundation v Commissioner of Taxation (Pamas) (1992) 35 FCR 117 was a case about whether the Pamas Foundation was a religious institution. The decision includes many statements on what an institution is, including, at paragraph 26:

The context in which the expression "religious institution" appears includes the juxtaposed term "public benevolent institution" which tends to suggest that the word "institution" is to be given a meaning greater than a structure controlled and operated by family members and friends.

However, the judgement goes on to say:

The Foundation has a small and exclusive membership which is limited to Dr. Staer, his family and some close friends. The scale of its activities is relatively small. Looking at the whole of the circumstances, in our opinion, the Foundation is not a religious institution to which s.3 of the Debits Tax Administration Act 1982 applies. We would dismiss the appeal accordingly.

We consider that the holistic analysis of the Foundation's circumstances was imperative in their honours' arriving at their decision in that case. Furthermore, the decision in *KinCare Community Services Limited v Chief Commissioner of State Revenue (KinCare)* [2019] NSWSC 182 referred to these more extensive considerations in paragraph 212 of the decision. As held in the *KinCare* judgement, the fact that a structure was controlled and operated by family members, was only one factor to consider in ascertaining if the entity was an institution.

The Tax Institute considers that the decision in *Pamas*, as restated in *KinCare*, should only be included in either CIS where the full context underlying the decision is also included. We consider that the inclusion of the facts and circumstances underpinning the decision will provide additional context for users when contemplating the meaning of 'institution'.

4. What weight does the law give to factors other than extensiveness of the beneficiary class when determining whether an entity is ‘public’ in the sense of a Public Benevolent Institution? Should this be covered in the Commissioner’s Interpretation Statement: Public Benevolent Institutions?

Paragraph 47 of the draft CIS PBI provides a non-exhaustive list of factors that can indicate if a PBI is ‘public’. Paragraph 48 goes on to refer to the importance of the extensiveness of the class of potential beneficiaries. Each characteristic of a PBI contained in paragraph 47 is limited in its description to a single line without further explanation. We consider that a large portion of users applying the draft CIS PBI will be members of the public with limited background knowledge of the legal requirements for a PBI. It would therefore be helpful to provide some further explanation of the various characteristics. We also consider that the draft CIS PBI should be clear that the factors listed in paragraph 47 are examples and none in particular must necessarily be demonstrated to satisfy the public requirement. The suggested approach would provide greater ‘upfront’ clarity to users and enable them to make accurate decisions with complete information.

Feedback from our members has indicated concern regarding the reference to *Re Income Tax Acts No. 1 (Re Income Tax Acts No 1)* [1930] VLR 211. In that case there was an overlap between issues of member benefit and issues of whether the entity was a private benevolent asylum. We consider that users, particularly those who do not have the benefit of professional advice, may interpret the reference to *Re Income Tax Acts No 1* to mean that there is a requirement for open membership to satisfy the ‘public’ test for charity or for PBI. We recommend that the draft CIS PBI clarify that an open membership is not a requirement for satisfying the ‘public’ test. We would be pleased to provide a detailed submission on this specific concept if this would be helpful for the ACNC.

Additional comments – draft Commissioner’s Interpretation Statement: Health Promotion Charities

Feedback from our members indicates that institutions who apply for eligibility as an HPC have often been required by ACNC staff to specify a particular disease or illness that is being targeted. We note that the draft CIS HPC correctly states:

A charity may be an HPC even if its activities are directed towards promoting the prevention of the control of a set of symptoms that may not be recognised widely by health authorities as a disease.

Accordingly, we consider that the draft CIS HPC should provide guidance on what the ACNC will expect to sufficiently demonstrate that an entity is an HPC. It is important that any such requirements are not excessive to those prescribed by the law.

We recommend that more detailed additional analysis regarding the specificity of the illness or disease required for an eligible health promotion charity (**HPC**) be included in the draft CIS HPC. We consider that this would better assist users in ensuring they understand what information is required in their HPC applications. We also consider that the inclusion of the guidance suggested above will likely reduce the compliance efforts of the ACNC staff when reviewing HPC applications.

Additional comments – draft Commissioner’s Interpretation Statement: Public Benevolent Institutions

Assumed knowledge for new charities

The draft CIS PBI appears to infer that the relevant entity is already a registered charity and is seeking to add or change to the PBI sub-type. 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 from our members indicates that a significant portion of the users of the CIS PBI will not be existing registered charities.

We recommend that the Background section should be expanded to include how organisations can register as a charity and a PBI at the same time. We note that the existing CIS 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.

Main purpose of benevolent relief

The draft CIS PBI regularly states that a PBI must have a ‘main purpose of providing relief.’¹ The Tax Institute is of the view that this is not the correct test to be applied for a PBI and alters the language of the High Court in *Perpetual Trustee*. We note that paragraph 34 of the draft CIS PBI states the correct test and nuanced language of the courts: [footnotes omitted]

In *Perpetual Trustee Co Ltd v Federal Commissioner of Taxation* the members of the High Court stated that a PBI is an organisation that is ‘organised’ for the relief of poverty, sickness, destitution or helplessness or ‘promoted’ or ‘conducted for’ the relief of poverty, distress, suffering or misfortune.

This view was reiterated in the *Hunger Project* case:²

In our opinion, whilst there is no single or irrefutable test or definition, the ordinary meaning or common understanding of a public benevolent institution includes (to adapt the words of Starke and Dixon JJ in *Perpetual Trustee*) an institution which is organised, or conducted for, or promotes the relief of poverty or distress. To adapt the words of Priestley JA in *ACOSS*, such an institution conducts itself in a public way towards those in need of benevolence, however that exercise of benevolence may be manifested.

In neither *Perpetual Trustee* nor the *Hunger Project* case, did their honours hold that a ‘main purpose of providing benevolent relief’ was required. We consider that the modification of the Courts’ language in the draft CIS PBI to the expression ‘main purpose of providing benevolent relief’ may have unintended consequences for certain organisations.

We therefore recommend that the use of the phrase ‘main purpose of providing (benevolent) relief’ be replaced with ‘organised, conducted for, or promotes the relief of poverty, sickness, disability, destitution, suffering, misfortune or helplessness’. This wording would be consistent with the case law and remove the potential for unintended consequences outlined above. It is also the language that is used in the recently revised CIS: Provision of Housing by Charities at paragraph 33.

¹ For example, see paragraphs 9, 10 and 18 of the draft CIS PBI.

² *Hunger Project* case, paragraph 66.

Clear connection test

Citing the decision of *Global Citizen Limited v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313 (*Global Citizen*) at paragraph 113, paragraph 17 of the draft CIS PBI states:

A charity can choose how it furthers its purpose of benevolent relief. It does not need to prove that its activities are effective at providing relief. Rather, it needs to show that there is a clear connection between its activities to achieve its purpose and the relief.

This paragraph has the effect of introducing a ‘clear connection’ test in the demonstration of the purpose of benevolent relief. The Tax Institute is of the view that this test is not present in the case law for demonstrating a benevolent purpose. We note that *Global Citizen* at paragraph 113 states:

...[previously cited cases] are clear authority for the proposition that relief can be provided by a PBI indirectly. In both cases it was accepted others would provide the relief, although few details are provided of how that would occur. However, the cases do not suggest it is necessary to require proof of the link between the activities of the entity and the provision of relief. Nor are the cases prescriptive about the relationship between the relevant entities... In *The Hunger Project* case, the Court spoke of an entity conducting ‘itself in a public way towards those in need of benevolence however that exercise of benevolence may be manifested’ and in *Australian Council for Overseas Aid*, Connor ACJ said the relationship between the parties should be one that shows they have ‘a common benevolent purpose’.

The draft CIS PBI requests additional substantiation of a test that is beyond what is described in *Global Citizen*. We consider that references to a clear connection test should be removed and replaced with the wording of the relevant case law. That is, the draft CIS PBI should state that it is not necessary to require proof of the link between the activities of the entity and the provision of relief.

Paragraph 8

Paragraph 8 of the draft CIS PBI states that ‘the meaning of ‘benevolent’ in the PBI context is more restricted than its ordinary meaning. The paragraph cites *Perpetual Trustee* at paragraph 232 to support this statement. Dixon J in *Perpetual Trustee* states:³

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.

Dixon J further states that the use of the qualifier ‘public’ is the only factor that narrows the scope of a PBI.⁴ Further, paragraph 4.2 of the Hunger Project Case CIS refer to *Perpetual Trustee* and specifically states that the term benevolent does not support a restrictive interpretation of the ordinary meaning of the expression ‘public benevolent institution.’ The Tax Institute is of the view that there has not been a change in the underlying case law highlighting this point.

We consider that the wording of paragraph 8 in the draft CIS PBI is therefore not an accurate reflection of Dixon J’s analysis and should be replaced with:

³ *Perpetual Trustee*, pages 232-3.

⁴ *Ibid*, page 232-3.

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.

The amended paragraph demonstrates the appropriate nuance and would be consistent with *Perpetual Trustee*. It would also reflect the ACNC's existing view as expressed in the Hunger Project Case CIS.

Paragraphs 14

Paragraph 14 of the draft CIS PBI provides that a charity will not have a purpose of relieving poverty if it:

- provides good or services not necessary for a modest standard; or
- provides goods or services to people who already live a modest standard of living.

Feedback from our members highlights two key concerns, these being:

- The guidance implies that charities engaging in certain activities are precluded from having a specific purpose. We do not consider this is supported by case law.
- The paragraph focuses on a charity with the purpose of relieving poverty. We consider that the purpose of the draft CIS PBI 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 we consider it pertinent that the language in the draft CIS PBI does not confuse these terms.
- The draft CIS PBI 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. We consider that the Commissioner's Interpretation Statement: Provision of Housing by Charities (**CIS PHC**) provides a preferable explanation of what a modest standard of living is, particularly the factors identified in paragraph 24. We recommend that the information contained in paragraphs 11 to 26 of the CIS PHC be restated in the draft CIS PBI.

We reiterate that a large portion of the users of the draft CIS PBI will be members of the public with limited background knowledge of the legal requirements for a PBI. Accordingly, we consider that clear usage of expressions is imperative for this audience to accurately understand and apply the draft CIS PBI.

Paragraph 22

We consider that paragraph 22 of the draft CIS PBI should contain a reference to the relevant legislation or law to support the stated position. The Tax Institute is of the view that the adopted position is not supported by the relevant legislation or case law. If the appropriate supporting reference is not found, we consider that this paragraph should be omitted from the draft CIS PBI.

Paragraph 23

Paragraph 23 of the draft CIS PBI states: [footnote omitted] [emphasis added]

There are certain activities that may further a purpose of benevolent relief in some circumstances, but not in others. This concept is best illustrated with examples.

Providing training, education and improvement will not generally further a purpose of benevolent relief because people who seek these services generally do not have a need that arouses compassion within the community. However, if the target beneficiaries have needs that would arouse compassion within the community, and the charity seeks to relieve the distress arising from those needs through training or educational activities, it is likely have a purpose of benevolent relief. For example, operating a primary school in a major city of Australia is unlikely to further any purpose of benevolent relief because Australian cities have many public schools that children can attend. However, operating a primary school in a remote area of Australia for children who would otherwise miss out on attending primary schooling may be a purpose of benevolent relief purpose because the children it benefits suffer from a disadvantage in accessing education compared to children in major cities.

We understand that the intention of this paragraph is to distinguish between circumstances in which services may be treated as furthering a purpose of benevolent relief, and when they may not. We suggest that this may be better achieved by reordering the paragraph with some minor amendments, to read as follows:

There are certain activities that may further a purpose of benevolent relief in some circumstances, but not in others. If the target beneficiaries have needs that would arouse compassion within the community, and the charity seeks to relieve the distress arising from those needs through training or educational activities, it is likely have a purpose of benevolent relief. However, providing training, education and improvement will not generally further a purpose of benevolent relief if people who seek these services do not have a need that arouses compassion within the community.

This concept is best illustrated with examples. For example, operating a primary school in a major city of Australia is unlikely to further any purpose of benevolent relief because Australian cities have many public schools that children can attend. However, operating a primary school in a remote area of Australia for children who would otherwise miss out on attending primary schooling may be a purpose of benevolent relief purpose because the children it benefits suffer from a disadvantage in accessing education compared to children in major cities.

We received some feedback that the statement emphasised in bold text above may be perceived in a highly subjective manner and, may be considered offensive where it is taken to suggest that the community is indifferent to, or does not, feel compassion or act in a benevolent manner towards certain segments of the community. We consider that amending the paragraph as suggested above reduces the risk of it being interpreted in this way because it does not imply that certain sectors will generally do not have a need that arouses compassion within the community. Rather it allows for consideration of whether they do and therefore whether the relevant service may further a purpose of benevolent relief.

Paragraph 30

We consider that 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.

In the context of the example provided in this paragraph in relation to the provision of rental housing, we consider that 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.

Paragraph 37

Paragraph 37 of the draft CIS PBI disallows an institution from registration as a PBI where it has a purpose that is independent to benevolent relief. However, our understanding is that the existing case law does not preclude a charity from registering as a PBI where it meets the relevant conditions and also has minor purposes other than benevolent relief.

As highlighted in *Global Citizen* at paragraph 88:

when the Commissioner of Taxation was responsible for determining PBI status before arrangements changed in 2012 he took the view that 'any other purposes and operations must be incidental to the public benevolence or of minor extent and importance'.

We consider that the view taken in *Global Citizen* is that an 'exclusivity of purpose' test should not apply in relation to PBIs.⁵ We recommend that the requirement that a PBI cannot have any independent charitable purpose should be omitted from the draft CIS PBI.

Paragraphs 54 and 55

Paragraph 54 of the draft CIS PBI details how existing charities can demonstrate they are institutions. However, where a charity is starting up or has not yet undertaken any charitable activities, they are required to demonstrate they are an institution based on a detailed plan. We consider that the requirements of the plan, contained in paragraph 55 of the draft CIS PBI, are considerably more onerous than the requirements for existing charities. For example, the detailed plan requires considerable forecasting which an institution is generally not able to easily or accurately predict.

New charities face considerable existing challenges when trying to enter the sector. We consider that the imposition of additional requirements is particularly burdensome on these institutions, that are generally providing a needed service to the community. It is important that new institutions seeking to provide relief to the public are not disincentivised from doing so. We therefore recommend that paragraph 55 of the draft CIS PBI be replaced with the requirements of paragraph 54 with minor amendments to the wording. We have set out below suggested wording:

A charity that is just starting up and has not yet undertaken any activities could demonstrate that it is an institution by:

- describing its activities (or intended activities) to show that it does more than merely manage trust property and make distributions; and
- explaining ways its activities (or intended/proposed activities) are beneficial to the community.

⁵ *Global Citizen*, paragraph 88.

We consider that the above amendment would ensure a unified set of requirements are applied to both existing and new charities.

Paragraphs 58 and 59

Paragraph 58 of the draft CIS PBI states: [footnotes omitted] [emphasis added]

We observe the following principles when deciding whether a charity is entitled to be registered as a PBI:

- As PBI is defined according to its ordinary meaning; that meaning will evolve over time as people's understanding of PBIs and how they provide relief changes. While we must follow past judicial statements that establish clear legal principles, it is not appropriate to apply them mechanically.
- **The focus when determining whether a charity is a PBI is on the substance of its purposes and activities rather than its structure.**

This is followed by paragraph 59 which states: [footnote omitted]

The focus overall is on the charity's purposes, rather than its activities in isolation.

Both paragraph 58 and 59 explain the 'focus' for determining whether a charity is a PBI however, paragraph 58 explains the concept of substance, and in particular, that the substance of a charity's purposes and activities is more important than its structure. Paragraph 59 suggests that of the two of these factors, the focus will be on the charity's purposes.

We note that these concepts (purposes and activities) have different applications. However, the immediate proximity in the draft CIS PBI and the use of the word 'focus' may confuse taxpayers who do not have a knowledge of the relevant background. We recommend expanding on these paragraphs further. This will improve understandability, particularly for new users of the draft CIS PBI.

Reference to TR 2005/21

We note that the draft CIS PBI 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 multi-agency approach to the administration and oversight of the not-for-profits and charities sector, we consider that 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.

The Tax Institute is of the view that the draft CIS PBI should refer to TR 2005/21, where needed to align the definitions. The draft CIS PBI should also explicitly note and explain any concepts or definitions that are not consistent with TR 2005/21.

Examples

We make the following comments in relation to the Examples in the draft CIS PBI.

- Example 1 — We consider that this example could be interpreted as listing activities as though they were purposes and may be confusing for the public who are relying on these examples for clear guidance. A charity could conceivably undertake each of the listed activities with the appropriate purpose. However, the example does not include a purpose for the charity, rather only lists activities. Accordingly, we recommend that the example is removed to prevent confusion for users.

- Example 4 — We consider that irrespective of a memorandum of understanding, the entity would still be considered a PBI in this example. Furthermore, this example references a clear connection test which is not found in the case law. We recommend the removal of this example as it could be subject to inaccurate interpretation by users.
- Example 6 — We consider that this example is confusing to understand and that the purpose of the fundraising for a benevolent purpose is clear. The user may interpret the example as indicating that the fundraising activity may be a new purpose of promoting a coffee company and subsequently the PBI status may be removed. We consider the statement that the program is “unlikely to impact” Affordable Housing for All Ltd’s registration as a BPI is unnecessarily confusing and recommend the removal or rewording of the example.
- Example 7 — Feedback from our members indicates that case law may not support the conclusion that the Climate Response Team Ltd would not be a PBI. The judgment in *Global Citizen* expressly stated that this question did not need to be decided in that case.⁶ We consider that an organisation focussed on relieving those in poverty from the impact of climate change, that will be most acutely felt by such communities, could be an organisation that is ‘organised’ for the relief of poverty, sickness, destitution or helplessness⁷ or ‘promoted’ or ‘conducted for’⁸ the relief of poverty, distress, suffering or misfortune. Accordingly, we recommend this example is removed as we consider it does not accurately reflect the existing case law.
- Additional examples — We consider it would be beneficial to provide an example of a religious organisation that would be considered a PBI. Example 3 is a clear example of a non-PBI religious organisation. However, the most useful examples are often those that explore where the lines in the law are most difficult to navigate and an example which grappled with this grey area would be of assistance.

We would be pleased to engage further with the ACNC and assist with the development of alternative examples or, where possible, improvements to those identified above.

⁶ Global Citizen, paragraph 125.

⁷ Ibid, page 232.

⁸ Ibid, pages 232-3.

APPENDIX B

About The Tax Institute

The Tax Institute is the leading forum for the tax community in Australia. We are committed to representing our members, shaping the future of the tax profession and continuous improvement of the tax system for the benefit of all, through the advancement of knowledge, member support and advocacy.

Our membership of more than 11,000 includes tax professionals from commerce and industry, academia, government and public practice throughout Australia. Our tax community reach extends to over 40,000 Australian business leaders, tax professionals, government employees and students through the provision of specialist, practical and accurate knowledge and learning.

We are committed to propelling members onto the global stage, with over 7,000 of our members holding the Chartered Tax Adviser designation which represents the internationally recognised mark of expertise.

The Tax Institute was established in 1943 with the aim of improving the position of tax agents, tax law and administration. More than seven decades later, our values, friendships and members' unselfish desire to learn from each other are central to our success.

Australia's tax system has evolved, and The Tax Institute has become increasingly respected, dynamic and responsive, having contributed to shaping the changes that benefit our members and taxpayers today. We are known for our committed volunteers and the altruistic sharing of knowledge. Members are actively involved, ensuring that the technical products and services on offer meet the varied needs of Australia's tax professionals.