



THE TAX INSTITUTE

14 December 2020

Joanna Austin
Director, Legal
Australian Charities and Not-for-profits Commission

By email: joanna.austin@acnc.gov.au

Dear Ms Austin

PROVISION OF HOUSING BY CHARITIES AND THE HUNGER PROJECT CASE

The Tax Institute refers to the following submissions prepared by the Law Council of Australia and submitted to the Australian Charities and Not-for-Profits Commission (together, the **LCA Submissions**):

1. the submission entitled "Revision of Commissioner's Interpretation Statement CIS 2014/02 Provision of Housing by Charities" dated 10 September 2020 (**LCA Housing CIS Submission**); and
2. the submission entitled "Commissioner's Interpretation Statement: The Hunger Project Case" dated 8 September 2020 (**LCA PBI CIS Submission**).

The Tax Institute fully endorses the LCA Housing CIS Submission. In summary, in relation to the Housing CIS we would like to see:

1. clearer guidance on the provision of housing by ownership, in particular a clear statement by the Commissioner that provision of home ownership can be compatible with a charitable purpose;
2. clarification of the reference to not-for-profit in paragraph 5.2 as outlined in the LCA submission; and
3. a clear statement of the important place of the provision of housing as charitable beyond the relief of poverty context. In the LCA Housing CIS Submission this is covered under the heading "Fourth Head". We strongly endorse the statements made in that section of the LCA Housing CIS Submission.

The Tax institute fully endorses the LCA PBI CIS Submission. In particular, we endorse the following points specifically made in the LCA PBI CIS Submission:

1. the PBI CIS should be updated to articulate when prevention activities are benevolent;
2. paragraph 5.6.3 of the PBI CIS and paragraph 6.5 of the Hunger Project CIS should reflect the fact that the Hunger Project case expressly sought to provide an inclusive and not an exclusive definition of PBI;
3. paragraph 5.6.3.2 should be deleted from the PBI CIS and paragraph 6.5.2 should be deleted from the Hunger Project CIS, and any reference to a clear mechanisms test should be removed from the PBI CIS as there simply is no such test at common law;
4. example 2 should be amended to state that the entity in the example, Benevolent Care Ltd is a PBI and that the 5 dot points are not purposes but activities which are a manifestation of the exercise of Benevolent Care's benevolence; and

5. the PBI CIS should clarify that an entity can be registered with the PBI subtype and with another subtype, so long as the purposes that form the basis for that other subtype are incidental or ancillary to the PBI purposes.

If you would like to discuss any of the above, please contact either myself or Tax Counsel, Angie Ananda on 02 8223 0000.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Peter Godber', with a stylized, flowing script.

Peter Godber
President