

Commissioner's Interpretation Statement: Health Promotion Charities

The purpose of this Commissioner's Interpretation Statement is to provide guidance to ACNC staff, charities and the public on the meaning and scope of the charity subtype of 'health promotion charity' (HPC).

Health Promotion Charity description in the ACNC Act:

An institution whose principal activity is to promote the prevention or the control of diseases in human beings

1. Background

- 1.1. The concept of an HPC was introduced as a tax endorsement category by the *Taxation Laws Amendment Act (No.2) 2001* (Cth).
- 1.2. The introduction of the HPC category recognised that there are charities that promote the prevention or control of diseases which did not come within the tax endorsement category of a public benevolent institution (PBI).
- 1.3. From its introduction, HPCs were endorsed by the Australian Tax Office and receive the same tax concessions as PBIs. From the commencement of the ACNC on 3 December 2012, charities have been able to apply to be registered with the subtype of HPC.

2. How does the ACNC approach the description of an HPC?

- 2.1. The description of an HPC – an *institution whose principal activity is to promote the prevention or the control of diseases in human beings* – is statutory¹ and can only be altered by Parliament amending the legislation. In this statement, the word 'disease(s)' means a disease or diseases.

¹ See item 13 in the table in s.25-5(5) of *Australian Charities and Not-for-profits Commission Act 2012*

- 2.2. The ACNC will generally give the words their ordinary meaning. We will take into account any developments in case law and changes in society, including developments in medical or health research (e.g. the recognition of new 'disease(s)'). Sometimes changes in society will be evidenced by government policy.
- 2.3. The ACNC will consider the concept as a whole, rather than as a statement containing distinct terms which are separate from each other.
- 2.4. There has not yet been a court decision on the relatively new concept of HPC, though there have been Administrative Appeals Tribunal (AAT) decisions². The ACNC will be guided by those AAT decisions but they are not binding.
- 2.5. The description of an HPC may be narrower than the description of a charity with 'the purpose of advancing health'³, as it sets out requirements of promoting the prevention or control of disease(s), not merely an improvement to general health.
- 2.6. To be recognised as an HPC, it must satisfy all the elements of the description. There will be cases where a charity may satisfy only part of the description but not all of it; for example, if it were not an institution, it would not be an HPC.

3. Charity

- 3.1. In order to be registered as an HPC, an organisation must already meet the eligibility criteria to be registered as a 'charity' under the *Australian Charities and Not-for-profits Commission Act 2012* (the ACNC Act). This means it must meet the definition of a 'charity' in s.5 and so must have a 'charitable purpose' as set out in s.12 of the *Charities Act 2013* (C'th) (Charities Act).
- 3.2. It must meet all the entitlement criteria in s.25-5 of the ACNC Act, including the conditions set out in subsection (3):
- (a) the entity is a not-for-profit entity;
 - (b) the entity is in compliance with the governance standards and external conduct standards (see Part 3-1);
 - (c) the entity has an ABN;

² See *Healthy Cities v FC of Taxation* 2006 ATC 2259; *Bicycle Victoria v Commissioner of Taxation* 2011 ATC 10-188; *Krishnamurti Australia Inc. v FC of Taxation* 2011 ATC 10-194

³ See ss.12(1)(a) and s.14 of the *Charities Act 2013*

- (d) the entity is not 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.

3.3. While it must have a charitable purpose, the ACNC does not consider that the purpose (or purposes) of the HPC need necessarily be the advancement of health. For example, a charity that is for the advancement of education that focuses its main educational activity on promoting safe sex in order to prevent sexually transmitted diseases can also be an HPC.

4. *Institution*

4.1. An HPC must meet the legal requirements of being an 'institution'. There is no technical legal definition of the term 'institution' and it therefore takes its ordinary meaning.

4.2. A charitable institution is created and exists to bring into being the charitable purposes and intentions of its founders.⁴ It was expressed as follows by Lord MacNaghten in *Mayor of Manchester v McAdam* [1896] AC 500:

'It is the body (so to speak) called into existence to translate the purpose as conceived in the minds of the founders into a living and active principle.'⁵

4.3. A new organisation that is yet to commence operating may be eligible for registration as an HPC. To qualify, it must demonstrate that it has concrete plans to operate in the foreseeable future (within one year of establishment) in order to evidence the bringing of its founders' purposes and intentions into being.

4.4. There are a number of ways in which new organisations may demonstrate that they have concrete plans to operate in the foreseeable future:

⁴ *Mayor of Manchester v. McAdam* [1896] AC 500 at 511.

⁵ *Ibid* 511.

4.4.1. The provision of an operational, strategic or business plan (two or more pages) outlining what it proposes to do, the resources it requires and how it will obtain them, the personnel it will engage, its financial projections and the third parties it may involve; and/or

4.4.2. The provision of agreements with other organisations setting out how the organisations intend to work together to promote the prevention or control of diseases in human beings.

In addition, evidence of in-principle financial support or seed funding will be advantageous. The more rigorous the above documents are, the more readily the organisation will be able to evidence that it was established to bring the purposes and intentions of its founders into being.

4.5. If an entity that was registered as an HPC, fails to commence operating within one year and cannot explain why its plans have not been realised, the ACNC may review its registration as an HPC subtype of charity. Similarly the ACNC may review the registration of an existing HPC that has not been operating for six or more months and cannot explain how it nevertheless evidences the bringing of its founders' purposes and intentions into being.

4.6. In bringing purposes and intentions into being, it is acknowledged that the nature of the purposes and intentions and the mode of effecting them may require different levels of activity from time to time.⁶ In addition, it may be that external circumstances, such as damage to an HPC's premises or equipment or loss of contracts, mean that an HPC's usual operations are suspended while it carries out alternative operations such as obtaining replacement equipment, premises or contracts.⁷

4.7. A mere trust⁸ or a fund is not an institution. Therefore where an entity merely manages trust property which is applied for a charitable purpose, it is not an institution.⁹

4.8. An HPC can assume any legal structure, whether a corporation, trust or unincorporated association, as long as it has a distinct identity.

⁶ *Avondale Motors (Parts) P/L v FCT* (1971) 124 CLR 97 per Gibbs J at 103-4 (and the cases there cited). By analogy with carrying on a business.

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⁸ *Stratton v. Simpson* (1970) 125 CLR 13 per Gibbs J at 158.

⁹ See for example *Commissioner of Land Tax v. Joyce* (1974) 132 CLR 22.

Nevertheless incorporation on its own will not be sufficient; so not all corporations will be institutions.

5. *Principal activity*

- 5.1. The description of HPC focuses on ‘activity’. It is possible that a charity that fits within the description of an HPC at one point in time may not do so at another time if it has changed its activities.
- 5.2. The principal activity is the main activity conducted by the charity, or the activity that it conducts more than any other activity. While most often it will take the majority of the charity’s time or resources, there may be cases where it does not. An HPC can undertake other activities, but promoting the prevention or control of disease(s) in human beings must be its *main* activity. For example, if a charity had five activities, four of which each took 15% of its time and resources, and a fifth which took up 40% of its time and resources, it is the fifth which would be considered its “principal activity”.
- 5.3. The principal activity must be conducted in order to promote the prevention or control of disease(s). What is considered to be the principal activity will vary depending on the facts of each case.

6. *Diseases in human beings*

- 6.1. The disease(s) must affect human beings – diseases affecting animals, but not humans, will not meet this description.
- 6.2. The Macquarie Online Dictionary defines ‘disease’ as “a morbid condition of the body, or of some organ or part; illness; sickness; ailment”.
- 6.3. The Oxford Concise Medical Dictionary defines ‘disease’ as “a disorder with a specific cause (which may or may not be known) and recognisable signs and symptoms; any bodily abnormality or failure to function properly, except that resulting directly from physical injury (the latter, however, may open the way for disease).”
- 6.4. ‘Disease’ is a broad term that encompasses both physical and mental illnesses. It must be a disease, rather than a general health condition or symptom. However, where a health condition or symptom, if untreated, will degenerate into an identified disease(s), activities to prevent or control that condition or symptom could be viewed as prevention or control of the disease(s). An example could be activities working to reduce or prevent tobacco use, based on evidence that links tobacco use with a range of cancers.

6.5. The Australian Institute of Health and Welfare¹⁰ provides comprehensive information and research about health and diseases affecting Australians. The National Health and Medical Research Council is a leading Australian expert body promoting the development and maintenance of public and individual health standards¹¹. The World Health Organisation was established in 1948 with the primary role of directing and coordinating international health within UN system¹². It publishes the annual World Health Report and the International Classification of Diseases¹³.

6.6. The ACNC will be guided by the work of these organisations on any existing, new or emerging definition of disease(s) or consideration of disease(s). The ACNC may have regard to relevant work of similar reputable organisations such as the U.S. Centers for Disease Control and Prevention.

6.7. While the definition does not appear to restrict the number of diseases or groups of diseases that a charity could promote the prevention or control of, the ACNC considers that where possible there should be identification of the disease(s), whose control or prevention the charity is promoting. For example, to be an HPC it would not be sufficient for a charity to promote appropriate weight reduction or increased physical activity, without identifying the disease(s) that are being prevented or controlled through this promotion activity.

7. Promote the prevention or control

7.1. It is important that the principal activity is to 'promote the prevention or control' of disease(s). It is clear that the use of the word 'promote' may capture a wider category of charities than those that engage directly in activities to prevent or control disease(s) (such as research into the prevention of certain types of cancer).

¹⁰ The national independent statutory authority was set up in 1987 by the Australian Government. Its role was expanded in 1992 to include providing information and statistics on Australia's health and welfare. The legislation is now called the [Australian Institute of Health and Welfare Act 1987 \(C'th\)](#).

¹¹ The NHMRC was established by the *National Health and Medical Research Council Act 1992 (C'th)*. One of the functions of the CEO is to advise on 'the prevention, diagnosis and treatment of disease' (s.7(1)(a)(ii)).

¹² <<http://www.who.int/about/en/>>

¹³ <<http://www.who.int/publications/en/>> The international standard diagnostic classification for epidemiological and health management purposes, monitoring prevalence of diseases and other health problems.

- 7.2. 'The definition of 'promote' includes to further the growth, development or progress of; to encourage¹⁴; to foster; to support or actively encourage¹⁵. As 'promote' is to be understood by its ordinary meaning, there could be many ways in which a charity's activities may in fact promote the prevention or control of disease(s). For example, a charity involved mainly in public awareness raising activities about the importance of immunising against certain diseases would fit within this definition.
- 7.3. The use of the word 'promote' does not apply broadly to general health and wellbeing programs. The promotion must relate to prevention or control of disease(s).
- 7.4. Prevention or control of disease(s) includes, but is not limited to, taking action to reduce the spread of disease(s), research into management and treatment of disease(s), managing and treating disease(s) and activities to alleviate suffering or distress caused by disease(s).
- 7.5. This does not mean that a charity has to demonstrate its success in promoting the prevention or control of disease(s), or its success in actually preventing or controlling disease(s). However, the charity needs to show that the nature of its activities can be considered to promote the prevention or control of disease(s). For example, a research institution with the purpose of developing treatment for a particular cancer or cancers or another disease could be an HPC.

Promote through fundraising organisations

- 7.6. An organisation that fundraises for charities without identifying, explicitly or by implication, the disease(s) that it seeks to promote the control or prevention of will not be eligible to be registered as an HPC.
- 7.7. An organisation that meets all the other HPC criteria set out above (including being an 'institution') and which promotes the control or prevention of disease(s) through its fundraising activities will be eligible to be registered as an HPC. For example, an organisation whose principal activity is fundraising for heart disease research in major shopping centres by having a stall displaying a range of educational materials and providing pamphlets while collecting donations would be an HPC.
- 7.8. An organisation that promotes the prevention or control of a disease by fundraising for another organisation can itself be an HPC if it meets all the

¹⁴ Defined in *The Macquarie Dictionary Online* © Macquarie Dictionary Publishers Pty Ltd. and quoted in *Healthy Cities Illawarra Inc v Commissioner of Taxation* [2006] AATA 522, para 46.

¹⁵ The Oxford online dictionary

other criteria and the organisation it is fundraising for is an HPC. For example, a fundraising organisation that is collecting money for a major cancer research institution that is an HPC could be an HPC itself.

7.9. An organisation that meets the other HPC criteria set out above and that carries out activities for the promotion of the prevention or control of disease(s) through its fundraising activities may be entitled to be an HPC; it will be a question of degree and the purpose of the fundraising.

8. Examples of principal activities carried out by ACNC registered HPCs:

- Research into and education about the treatment and care for people suffering from brain cancer.
- Provision of mental health nurses and paediatric staff to rural communities
- Cancer awareness programs conducted in rural areas
- Providing sexual health and STI awareness classes for young people
- Providing behavioural therapy for serving and retired military personnel suffering from post-traumatic stress disorder and military-induced stress illness.

Version	Date of effect	Brief summary of change
Version 1 – Initial statement	12/05/2015	Initial statement endorsed by Commissioner on 12/05/2015
Version 2 - Amendment	19/12/2016	Amendments made to point 4 to provide consistency with CIS 2016/03 – Public Benevolent Institutions
Version 3 – Minor amendment	02/03/2017	Minor amendment to point 4.4.2 to correct a drafting error.