

Registration Decision Form - Allow

1. Applicant information

Applicant name	<input type="text"/>
Case ID	<input type="text"/>
Applicant ABN	<input type="text"/>
Is there a decision in writing that provides for the entity to be characterised on the basis of them engaging in, or supporting, terrorist or other criminal activities?	<u>No</u>

2. Eligibility for registration as a charity

Not-for-profit requirement

Not-for-profit requirement satisfied? Select...

Winding up requirement satisfied? Select...

Applicant's objects

Charity subtype(s) from 1 January 2014

Item no.	Purpose	Applied for	Withdrawn	Entitled to	Effective date of registration
1	Advancing health	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2	Advancing education	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3	Advancing social or public welfare	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4	Advancing religion	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5	Advancing culture	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6	Promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7	Promoting or protecting human rights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8	Advancing the security or safety of Australia or the Australian public	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
9	Preventing or relieving the suffering of animals	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
10	Advancing the natural environment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
11	Any other purpose beneficial to the general public that may reasonably	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

be regarded as analogous to, or within the spirit of, any of the purposes mentioned above

- | | | | | | |
|----|--|-------------------------------------|--------------------------|-------------------------------------|----------------------|
| 12 | The purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| 13 | Institution whose principal activity is to promote the prevention or the control of diseases in human beings (Health Promotion Charity) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | |
| 14 | Public benevolent institution (PBI) | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="text"/> |

[Redacted]

[Redacted] [Redacted]

Has the Applicant only applied under the subtype(s) of PBI or HPC? Yes No

[Redacted]

[Redacted] [Redacted] [Redacted]

[Redacted]

[Redacted] [Redacted] [Redacted]

[Redacted]

[Redacted] [Redacted]

[Redacted]

[Redacted]

[Redacted] [Redacted]

Public benevolent institution analysis

Please note that there should not be a disconnect between the Applicant's objects and the subtype (public benevolent institution) applied for.

Public

A number of criteria are relevant to determining whether an entity is 'public'.

The main criterion is the extensiveness of the class of individuals that the entity benefits (*Maughan v Federal Commissioner of Taxation* (1942) 66 CLR 388).

Other criteria are relevant but not decisive in determining whether an entity is 'public' according to the decision in *Perpetual Trustee Co Ltd v Federal Commissioner of Taxation* ((1931) 45 CLR 224 at 232).

These include:

- receipt of public funds;

- control by members of the public and accountability to members of the public
- connection with government.

An entity with three or more responsible persons that are unrelated to each other (that are not family members or close friends) and that have a degree of responsibility in the community, is more likely to demonstrate the criterion of “public control and accountability”. By contrast, an entity with one or two responsible persons is less likely to do so. The latter entity may still be “public” for PBI purposes if it demonstrates the other criteria – receipt of public funds, connection with government, and especially if it demonstrates the main criterion, that the entity benefits an extensive class of individuals.

*** Type in your analysis, setting out the indicators that apply to the Applicant and, when you apply the facts of your application, whether each indicator shows that the Applicant is 'public'.

Benevolent

Needs requiring benevolent relief

The beneficiaries of a PBI must have ‘needs requiring benevolent relief’. This means that the beneficiaries must have needs arising from poverty or distress. The term ‘distress’ includes sickness, disability, destitution, suffering, misfortune or helplessness (*Perpetual Trustee Co Ltd v Commissioner of Taxation* (1931) 45 CLR 224).

Poverty and distress are relative terms. For a person suffering from poverty or distress to have needs requiring benevolent relief, their needs must be ‘of such seriousness as will arouse community compassion and thus engender the provision of relief’ (*Pay-roll Tax, Commissioner of (Vic) v The Cairnmillar Institute* (1990) 90 ATC 4752).

*** Type in your analysis, setting out the indicators that apply to the Applicant and, when you apply the facts of your application, whether each indicator shows that the Applicant meets the above criteria.

Purpose of providing benevolent relief

A PBI’s purpose must be to provide benevolent relief. This means that the entity’s services must actually be directed towards **relieving** the poverty or distress experienced by the people it assists. It is not enough for the entity’s services to be provided to people who have needs requiring benevolent relief. The entity’s services must reduce the severity of the suffering the beneficiaries are experiencing as a result of their need.

The relief provided does not need to be financial, nor does it need to be practical or material in nature. For example, the provision of psychotherapy to people with severe mental illness has been accepted as benevolent relief (*Pay-roll Tax, Commissioner of (Vic) v The Cairnmillar Institute* (1990) 90 ATC 4752).

An entity that seeks to prevent people from being in a situation where they are in need of benevolent relief may not have a purpose of providing benevolent relief (*Marriage Guidance Council of Victoria v Commissioner of Pay-roll Tax (Vic.)* 90 ATC 4770). However, people who are ‘at risk’ may be regarded as already being in need of benevolent relief, depending on all the circumstances. Preventive activities directed at people who are ‘at risk’ may therefore provide benevolent relief (*Maughan v Federal Commissioner of Taxation* (1942) 66 CLR 388).

Although it is not necessary for a PBI’s purpose to provide benevolent relief directly, the entity must be able to show demonstrate that there is a clear mechanism through which its activities result in benevolent relief (*Commissioner of Taxation v Hunger Project Australia* [2014] FCAFC 69).

*** Type out your analysis of whether the facts of your application show that the Applicant has a purpose of providing benevolent relief.

Main purpose of providing benevolent relief

The **main** purpose of a PBI must be to provide relief to people in need. If an entity has other purposes that are not the provision of benevolent relief, it will be ineligible to be a PBI unless those purposes are

ancillary or incidental to the main benevolent purpose (*Maclean Shire Council v Nungera Co-operative Society Ltd* (1995) 86 LGERA 430, 433).

The relevant inquiry to determine whether a purpose is ancillary or incidental is whether the non-benevolent purposes are only undertaken in furtherance or in aid of the purpose of providing benevolent relief. Even if a non-benevolent purpose is only undertaken to a very minor extent, it will prevent the entity from being a PBI if it is undertaken independently of the purpose of providing benevolent relief.

*** Type out your analysis of whether the facts of your application show that the Applicant has a main purpose of providing benevolent relief.

Institution

A charitable institution is created and exists to bring into being the charitable purposes and intentions of its founders (*Mayor of Manchester v McAdam* [1896] AC 500, 511). To demonstrate that it has this quality, an entity must demonstrate how it undertakes (or will undertake in the near future) its purpose of providing benevolent relief. Information regarding the levels and sources of funding, how the funding will be applied and when and how often the activities to provide benevolent relief will be undertaken will assist an entity in demonstrating that it is an institution.

An entity which has an intention to provide benevolent relief but which cannot demonstrate how it will bring that intention into being through the actual provision of benevolent relief will not be an institution.

An institution may have any legal structure, as long as it has a distinct identity. For example, an institution may be a corporation, trust or unincorporated association. However, the fact that an organisation has a certain legal structure will not be determinative of whether it is an institution.

A mere trust or fund is not an institution. An entity which merely manages trust property and applies that property for charitable purposes will not be an institution (*Stratton v Simpson* (1970) 125 CLR 13).

*** Type out your analysis of whether the facts of the application show that the Applicant is an institution.

[REDACTED]

[REDACTED]

- [REDACTED] [REDACTED]

[REDACTED]

- [REDACTED] [REDACTED]

[REDACTED]

- [REDACTED] [REDACTED]

[REDACTED]

- [REDACTED] [REDACTED]

[REDACTED]

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[redacted] [redacted]

6. Declaration

[redacted]

[redacted] [redacted]