

Commissioner's Interpretation Statement: Public Benevolent Institutions

The purpose of this Commissioner's Interpretation Statement is to provide guidance on how the ACNC determines if an organisation is a Public Benevolent Institution (PBI).

The original version of this Interpretation Statement was published on 19 December 2016. The current version was published on 29 September 2025 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 provide guidance about how the ACNC determines if an organisation is a Public Benevolent Institution. The key legal and practical matters covered by this Commissioner's Interpretation Statement are:
 - [How we determine if an organisation is 'public'](#)

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 we determine if an organisation is 'benevolent'](#)
- [How organisations may work with others to deliver benevolent relief](#)
- [The requirement for a sufficient connection between an organisation's activities and benevolent purposes](#)
- [Advocacy and benevolent relief](#)
- [Ensuring relief is directed to people in need, not the community generally](#)
- [Development assistance](#)
- [Charging fees to provide relief](#)
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- [How we determine if an organisation is an 'institution'](#)
- [How we assess whether a charity is a PBI](#)
- [Registration as a PBI and other subtypes of charity](#)
- [Examples of how we will apply this Commissioner's Interpretation Statement](#)

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. comply with the ACNC Governance Standards and, if applicable, the ACNC External Conduct Standards
 - d. have an Australian Business Number (ABN)
 - e. meet the definition of 'charity', and

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.

- 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 based on them engaging in, or supporting, terrorist or other criminal activities.⁴

7. The ACNC 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'.
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. We apply past decisions in a way that acknowledges that the meaning of the expression 'PBI' has evolved over time and will continue to evolve.⁷
10. In the following sections, each element of the description of a PBI is 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

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>.

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); [Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission \[2024\] FCAFC 115](#), [60], [89].

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).

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 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 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 that 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 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 people, 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. It will not prevent the organisation from meeting the 'public' requirement if there will only ever be a small number of potential beneficiaries due to the nature of the need an organisation relieves. For example, if an organisation aims to provide relief to all sufferers of a disease, but the disease is very

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).

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.

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 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'.
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 over time 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

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 *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.

- 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
- 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. LGBTIQ+ individuals
- m. 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

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.

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

- 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'. This does not mean organisations need to adopt this language in governing documents (see paragraph 113).
24. It is the nature of the condition or need to be relieved that is important to determining if 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

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).

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 LGRA 120, 125 (Bignold J).

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

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.
30. The Commissioner acknowledges that contemporary approaches to relieving poverty can go beyond the provision of necessities and often involve organisations adopting a more holistic approach. See paragraphs 95-99.

Other conditions

31. 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.
32. 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
33. For example, in *Commissioner of Pay-roll Tax (Vic) v Cairnmillar Institute*, 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
34. 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)*,³⁹ 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

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

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

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

³⁹ (1990) 21 ATR 1272 (*Marriage Guidance Council of Victoria*).

to maintain a marriage and those who were contemplating leaving a marriage, or who had decided to leave a marriage.⁴⁰ 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.⁴¹

35. In determining whether a condition or need is part of the pain and suffering associated with everyday life, the Commissioner will not apply past authority mechanically. For example, while McGarvie J in *Marriage Guidance Council of Victoria* described the emotional stress and pain associated with bereavement as part of the pain and suffering of everyday life, the Commissioner accepts that bereavement can give rise to distress and a need for benevolence.
36. In *Equality Australia Ltd v Commissioner of the ACNC*,⁴² the Administrative Appeals Tribunal (Tribunal) found that LGBTIQ+ individuals are a class of people in need of benevolent relief. The Tribunal considered evidence from experts and determined that LGBTIQ+ people are capable of being regarded as peoples experiencing distress due to minority stress caused by, amongst other things, structural discrimination in the form of discriminatory laws, policies and practices.⁴³
37. The Commissioner accepts that a beneficiary class can be in need of benevolent relief even if every individual within that class does not necessarily experience poverty, distress or another relevant condition. However, to meet the definition of PBI an organisation must be able to demonstrate that membership of that beneficiary class gives rise to benevolent need, and the organisation is organised, conducted or promoted to relieve that need for benevolence.

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

⁴⁰ *Marriage Guidance Council of Victoria*, 1273 (McGarvie J).

⁴¹ *Marriage Guidance Council of Victoria*, 1277 (McGarvie J).

⁴² *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161 (*Equality Australia Ltd v Commissioner of the ACNC*).

⁴³ *Equality Australia Ltd v Commissioner of the ACNC*, 20-35, 80.

38. To meet the definition of PBI, an organisation must demonstrate that it is 'organised, conducted or promoted' for benevolent relief.
39. 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.
40. 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.
41. 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.
42. 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.
43. The extent to which the organisation pursues benevolent relief must show that benevolent relief is the organisation's characteristic and predominant purpose and activity.⁴⁴

Activities and benevolent relief

44. PBIs can engage in a wide variety of activities targeted towards benevolent relief.
45. 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.⁴⁵ 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.

⁴⁴ *Commissioner of Pay-roll Tax (Vic) v Cairnmillar Institute* (1990) 21 ATR 665, 682 (McGarvie J).

⁴⁵ *Federal Commissioner of Taxation v Launceston Legacy* (1987) 15 FCR 527, 541–2 (Northrop J).

- In *Tangentyere Council Inc v Commissioner of Taxes*, the Supreme Court of the Northern Territory found that supporting Aboriginal peoples to preserve their traditional culture, customs and traditions was benevolent relief.⁴⁶ The Supreme Court of the Northern Territory accepted evidence that health is related to culture and found that retention of traditions and culture provided for the welfare of Aboriginal peoples.

46. 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.⁴⁷ An organisation that provides benefits that are not targeted at relieving need is not organised, conducted or promoted for benevolent relief.

Direct relief

47. It is not necessary for a PBI to provide relief directly.

48. There are two different senses in which the term 'directness' or 'connection' may be used in relation to PBIs.

49. The Full Court of the Federal Court in *Equality Australia Ltd and Commissioner of the Australian Charities and Not-for-profits Commission*⁴⁸ affirmed that there is a difference between the concept of 'direct relief':

- a. in the sense of working with others to deliver benevolent relief considered in the *Hunger Project Australia v Commissioner of Taxation*,⁴⁹ and
- b. in the sense of a 'sufficiency of connection' between means and benevolent ends considered in *Equality Australia Ltd v Commissioner of the ACNC*.⁵⁰

50. The two different senses of 'connection' or 'directness' are considered below.

Direct relief: Working with others to deliver benevolent relief

51. 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

⁴⁶ *Tangentyere Council Inc v Commissioner of Taxes* (1990) 21 ATR 239, 248 (Angel J).

⁴⁷ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161 [88] (McCabe DP; Bygrave M).

⁴⁸ [Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission \[2024\] FCAFC 115](#), [99].

⁴⁹ *Commissioner of Taxation v Hunger Project Australia* (2014) 221 FCR 302.

⁵⁰ [Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission \[2024\] FCAFC 115](#), [99].

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

52. In *Global Citizen Ltd v Commissioner of the ACNC*,⁵² 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 Tribunal accepted that the organisation was organised or conducted for benevolent relief.⁵³ The Tribunal considered contemporary means of delivering relief and expert evidence and stated that while collaboration through a group of formally related entities may be one way to deliver relief, it is increasingly likely that relief will be provided by a variety of entities working with government and other NGOs to achieve positive results.⁵⁴
53. In *Australian Council for Overseas Aid*, the applicant was a coordinating or peak body. Its members were predominantly givers of aid to people in poverty overseas, and predominantly PBIs.⁵⁵ The activities of the Council included coordination of member organisations, liaison with government and development education. The Council was held to be a PBI, even though it performed only one of a number of steps in the benevolent process in collaboration with organisations that had common benevolent purposes.⁵⁶
54. The authorities are not prescriptive about the relationship between a PBI and other organisations through which or in collaboration with which a PBI may provide relief. In determining whether an organisation is organised, conducted or promoted for benevolent relief, the Commissioner will consider:
- a. contemporary means of working together to deliver relief,⁵⁷ and
 - b. the substance of an organisation's purposes and activities (rather than focussing entirely on the form an organisation takes).⁵⁸

Direct relief: Requirement for sufficient connection between activities and benevolent purposes

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

⁵² [2021] AATA 3313.

⁵³ *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [127] (McCabe DP; O'Connell SM).

⁵⁴ *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [118] (McCabe DP; O'Connell SM).

⁵⁵ *Australian Council for Overseas Aid v Federal Commissioner of Taxation* (1980) 49 FLR 278, 280.

⁵⁶ *Australian Council for Overseas Aid v Federal Commissioner of Taxation* (1980) 49 FLR 278, 282.

⁵⁷ *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [118] (McCabe DP; O'Connell SM).

⁵⁸ *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [113] (McCabe DP; O'Connell SM).

55. 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.⁵⁹ 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.⁶⁰

56. That spectrum was probed by the Tribunal in *Equality Australia Ltd v Commissioner of the ACNC*, where the majority spoke of a 'sufficiency of connection' between what an organisation does and the relief of its intended beneficiaries.⁶¹ Some activities, even those that are ultimately beneficial, will lack that sufficiency of connection because 'the relief provided will simply be too indirect.'⁶²
57. Based on a 'holistic analysis' of the applicant's purpose and activities, including descriptions of the applicant's activities and the skills and experience of its staff,⁶³ the majority determined that Equality Australia Ltd was organised to address distress experienced by LGBTIQ+ people and focused on advocacy (particularly in relation to law reform and social change) and policy development.⁶⁴ To the extent that Equality Australia Ltd provided direct support to individuals in the LGBTIQ+ community, the majority found that such support was incidental to its core focus on advocacy and policy development.⁶⁵
58. The majority concluded that the substantial advocacy for law reform and social change that the applicant was focused on, considering all the circumstances, was '(at least in this instance) too far

⁵⁹ *Australians for Indigenous Constitutional Recognition Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] FCA 435, [26] (Thawley J).

⁶⁰ *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [115] (McCabe DP; O'Connell SM).

⁶¹ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161 [84] (McCabe DP; Bygrave M).

⁶² *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161 [86] (McCabe DP; Bygrave M).

⁶³ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161 [37] – [79], [84] (McCabe DP; Bygrave M).

⁶⁴ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161 [69], [79] (McCabe DP; Bygrave M).

⁶⁵ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161 [67], [80] (McCabe DP; Bygrave M).

removed from the traditional concepts of benevolence, even allowing for the evolution that has occurred in our understanding of that term.’⁶⁶

59. On appeal, the Full Federal Court in *Equality Australia Ltd and Commissioner of the Australian Charities and Not-for-profits Commission* [2024] FCAFC 115 found that the Tribunal majority had not made an error of law.
60. *Global Citizen v Commissioner of the ACNC* is also a case where a charity engaged predominantly in educational and advocacy activities. However, the Tribunal in that case determined that Global Citizen Ltd engaged in education and advocacy activities to achieve its sole purpose of relieving poverty.⁶⁷ Even if Global Citizen Ltd’s education and advocacy were viewed as purposes, the Tribunal was satisfied that these activities supported relief of poverty.⁶⁸
61. On the spectrum of direct to indirect activities, the Tribunal in *Global Citizen v Commissioner of the ACNC* noted the need to consider ‘contemporary means of delivering relief’ and took into account expert evidence that advocacy, awareness raising and education activities are common methods employed by entities tackling the issues of global poverty.⁶⁹ While Global Citizen Ltd did undertake some advocacy for legal and policy change, its advocacy predominantly involved securing commitments, primarily financial, from governments and philanthropists to commit funds to specific projects that organisations were undertaking to relieve poverty.⁷⁰ The Tribunal was satisfied by this ‘nexus’ and held that Global Citizen Ltd was organised, conducted or promoted for benevolent relief.⁷¹
62. Whether there is a sufficiency of connection between an organisation’s activities and the benevolent relief it seeks to achieve is a question of fact and degree, to be determined in all the circumstances. A mere logical connection will not necessarily be enough.⁷²

⁶⁶ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161 [88] (McCabe DP; Bygrave M).

⁶⁷ *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [98] (McCabe DP; O’Connell SM).

⁶⁸ *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [99] (McCabe DP; O’Connell SM).

⁶⁹ *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [118], [119]-[123] (McCabe DP; O’Connell SM).

⁷⁰ *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [55], [125] (McCabe DP; O’Connell SM).

⁷¹ *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [115], [125] (McCabe DP; O’Connell SM).

⁷² [Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission \[2024\] FCAFC 115](#), [101].

63. The Full Court and Tribunal in the *Equality Australia* cases did not provide any further guidance regarding when there will be a sufficient connection, or why a logical connection will not necessarily be enough.
64. Below is guidance on the type of facts and evidence that may support the connection and that the ACNC will consider when forming a decision on any particular case:
- a. evidence from those who are experiencing the issues at hand or have ‘lived experience’ about what works in their communities,
 - b. peer reviewed scientific research, publications by esteemed bodies, opinions of experts and authorities, and
 - c. evidence about contemporary means of delivering relief and common methods employed by entities addressing the issues that give rise to a need for benevolent relief.

Advocacy and benevolent relief

65. The term ‘advocacy’ can be used to describe a wide range of activities.
66. Advocacy can be a useful tool for a PBI to achieve its benevolent purposes. The fact that an organisation engages in advocacy does not automatically prevent it being a PBI. As set out by the Full Court in *Equality Australia Ltd and Commissioner of the ACNC*, in determining whether an organisation meets the definition of PBI, there are no rigid rules, no activities that can be treated as qualifying or disqualifying and no individual activity is necessarily determinative.⁷³
67. Some forms of advocacy are clearly accepted modes of delivering benevolent relief. For example:
- a. advocacy in the form of direct representation of people in need in legal matters (*Legal Aid Commission of Victoria v Commissioner of Payroll Tax (Vic)* (1992) 23 ATR 1148), and
 - b. equipping people with benevolent needs, or their caregivers, with the skills to navigate and access services to relieve their benevolent needs.
68. Some PBIs, particularly peak bodies, use advocacy for policy or law reform as a way to improve the effectiveness of benevolent relief programs provided by other organisations, including members.⁷⁴ Similarly, a PBI may deliver capacity building support to other organisations to enhance their ability to deliver benevolent relief. The Commissioner recognises that capacity building approaches can be an effective and contemporary way to strengthen an organisation’s ability to deliver benevolent relief and achieve its mission.

⁷³ *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161 [83] (McCabe DP; Bygrave M); [Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission](#) [2024] FCAFC 115, [161].

⁷⁴ *Australian Council for Overseas Aid v Federal Commissioner of Taxation* (1980) 49 FLR 278.

69. It is also possible for a PBI to engage in advocacy that is ancillary to the delivery of benevolent relief. For example, an organisation that delivers benevolent relief, either directly or in collaboration with others, may also:
- a. partner with government in service design to advocate for programs settings that contribute to benevolent relief,
 - b. advocate for law reform and social change in furtherance of benevolent relief.
70. Organisations seeking to be registered with, or maintain registration as a PBI, do not need to guarantee that their advocacy will be successful.
71. The Commissioner accepts that in some circumstances, charities that are organised to address benevolent needs predominantly through a program of advocacy, education and campaigning can be PBIs (see Example 12 below). As set out above, there are two recent authorities on this issue:
- a. *Global Citizen Ltd v Commissioner of the ACNC*, and
 - b. *Equality Australia Ltd v Commissioner of the ACNC*.
72. Where an organisation is predominantly organised to address benevolent need through a program of advocacy, education and campaigning to achieve law reform and social change, it will need to be able to demonstrate a sufficient connection between its activities and the benevolent ends it pursues.
73. The ACNC will undertake a holistic assessment of the individual facts of each application in line with the principles about sufficiency of connection outlined at paragraphs 55-64 above. This is a question of fact and degree. As the phrase PBI takes its ordinary meaning and as society changes, the ACNC appreciates that its assessment of different fact scenarios and determination of PBI status will change over time. In addition to the matters listed at paragraph 64, the ACNC will also consider the following facts and evidence when considering applications from organisations whose predominant activities are advocacy for law reform and social change:
- a. any evidence that the law or policies are the predominant cause of the benevolent needs the organisation seeks to relieve
 - b. any evidence that securing the law or policy change would contribute to the relief of the benevolent needs the organisation seeks to address, and
 - c. any evidence from the organisation about why it has chosen to address benevolent needs predominantly through advocacy, education and campaigning for law reform and social change.

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

74. 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.

75. For example, in *Australian Council of Social Service Inc v Commissioner of Pay-roll Tax*, the New South Wales Supreme Court affirmed a decision that an organisation that provided general advice, information, research and advocacy services relating to broad social welfare topics was not a PBI because its activities were not sufficiently targeted towards people in need of benevolent relief.⁷⁵
76. 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.
77. 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.
78. 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 service. 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 the information on the website is available to the public. The fact that the organisation includes information on its website that may help job-seekers generally will not, of itself, mean 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 (a minor consequence or unsought by-product) 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 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

⁷⁵ *Australian Council of Social Service Inc v Commissioner of Pay-roll Tax* (1985) 1 NSWLR 567, 575 (Priestley JA; Mahoney JA agreeing).

object of relieving poverty. Therefore, the provision of the information is ancillary to benevolent relief.

79. Advocacy for law or policy reform is also an activity that can affect the general community. The Commissioner accepts that laws of general application can disproportionately impact those in need, and this is different to advocacy for law reform targeted at the community generally. What matters is that the impact of the law or policy change is targeted at people in need of relief.

Development assistance

80. 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.
81. 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).⁷⁶ 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.
82. 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. First Nations organisations and those working alongside First Nations communities to deliver development activities to these communities are likely to be accepted to be delivering benevolent relief. Development assistance can include providing services that are ordinarily provided by local government bodies or other government authorities such as waste collection, construction and maintenance of roads and public spaces, and installation and maintenance of utilities.⁷⁷

⁷⁶ *Re SIM Australia As Trustee for SIMAID Trust and Federal Commissioner of Taxation* [2007] AATA 1443.

⁷⁷ See, for example, *Tangentyere Council Inc v Commissioner of Taxes (NT)* (1990) 21 ATR 239, 245 (Angel J).

Relief may be provided outside Australia

83. The beneficiaries of benevolent relief do not need to be in Australia.⁷⁸ 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](#).⁷⁹

Relief must be provided to human beings

84. 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.⁸⁰

Charging fees to provide relief

85. 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.
86. 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.⁸¹
87. 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.⁸² The court held that Cairnmillar Institute was organised for benevolent relief because its beneficiaries were in need due to their illness.⁸³ This decision was upheld upon appeal.⁸⁴

Conducting commercial activities to raise funds for relief

⁷⁸ See, for example, *Australian Council for Overseas Aid v Federal Commissioner of Taxation* (1980) 49 FLR 278; *Commissioner of Taxation v Hunger Project Australia* (2014) 221 FCR 302.

⁷⁹ 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>.

⁸⁰ *Federal Commissioner of Taxation v Royal Society for the Prevention of Cruelty to Animals, Queensland Inc* [1993] 1 Qd R 571.

⁸¹ See, for example, *Maclean Shire Council v Nungera Co-operative Society Ltd* (1995) 86 LGERA 430, 431 (Handley JA; Priestley JA agreeing).

⁸² *Commissioner of Pay-roll Tax (Vic) v Cairnmillar Institute* (1990) 21 ATR 665, 683 (McGarvie J).

⁸³ *Commissioner of Pay-roll Tax (Vic) v Cairnmillar Institute* (1990) 21 ATR 665, 685 (McGarvie J).

⁸⁴ *Commissioner of Pay-roll Tax (Vic) v Cairnmillar Institute* [1992] 2 VR 706.

88. A PBI may conduct commercial activities if they are merely a means by which it raises funds to be directed towards benevolent relief.⁸⁵ 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

89. 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.

A PBI may work with communities 'at-risk' of experiencing benevolent need

90. A PBI seeking to relieve a benevolent need may also undertake activities intended to address other benevolent needs the target beneficiaries are at risk of experiencing.⁸⁶ 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.
91. 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.
92. In contrast, an organisation engaged in primary prevention activities aimed at the wider community is unlikely to be PBI as its benevolence is not targeted at people in need.

A PBI may engage in capacity building activities intended to address entrenched need

93. As part of its relief, a PBI can, in some circumstances, engage in capacity-building activities intended to address entrenched need.⁸⁷
94. 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 needs stemming from poverty and distress.

⁸⁵ 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.

⁸⁶ *Maughan v Federal Commissioner of Taxation* (1942) 66 CLR 388, 397 (Williams J).

⁸⁷ *Re SIM Australia As Trustee for SIMAID Trust and Federal Commissioner of Taxation* [2007] AATA 1443.

Development assistance of this nature might be viewed as preventative because it stops these needs from recurring, but it also relieves current needs.⁸⁸

95. The Commissioner acknowledges that contemporary approaches to relieving poverty can include supporting beneficiaries to become economically self-sufficient and equipping people with the skills, resources and knowledge they need to lift themselves out of poverty and overcome difficult circumstances linked with poverty. Such approaches recognise that a contemporary conception of poverty is not limited to financial hardship and is ‘a complex state of affairs linked to various social issues including drug and alcohol misuse and family violence’.⁸⁹

A PBI may address systemic causes of benevolent need

96. The Commissioner acknowledges that what is regarded as poverty, distress or benevolent need, and the ways in which it might be effectively relieved, has changed over time. Many charities are tackling the systemic, structural or underlying causes of benevolent need, not just the consequences. Significant government funding and support now exists for prevention and early intervention activities.
97. Efforts to address the underlying causes of benevolent need might take a wide range of forms, such as addressing laws and policies, economic activity, unfair trade practices, social attitudes, climate change, agricultural practices, educational attainment, under employment, healthcare, gender equality and social inclusion.
98. As set out by the Tribunal in *Equality Australia Ltd and Commissioner of the ACNC*, previous authorities confirm that some activities of a preventative nature can still be regarded as benevolent relief.⁹⁰ The Commissioner considers preventative activities directed at the underlying causes of benevolent need, to be part of the spectrum of indirect activities that may be pursued to address benevolent ends. The impact of preventative or indirect activities on this spectrum must be directed to people who are in need of relief or at a high risk of developing a relevant need.
99. Many PBIs will engage in a mix of direct and indirect activities, including preventative activities that further or aid more direct forms of relief to people in need. However, where an organisation’s predominant activities are indirect, preventative activities that aim to address the underlying causes of benevolent need, it will need to be able to demonstrate a sufficient connection between its activities and the benevolent ends it pursues. In these circumstances, the ACNC will undertake a holistic assessment of the individual facts of each application in line with the principles about

⁸⁸ For additional guidance on development assistance, see paragraph 81.

⁸⁹ *YWCA Australia v Chief Commissioner of State Revenue* [2020] NSWSC 1798, [52].

⁹⁰ *Equality Australia Ltd v Commissioner of the ACNC*, (83). See also *Maclean Shire Council v Nungera Co-operative Society Ltd* (1994) 84 LGERA 139, 143; *Maughan v Federal Commissioner of Taxation* (1942) 66 CLR 388, 397 (Williams J, Rich J agreeing); *Global Citizen Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3313, [119], [122].

sufficiency of connection outlined at paragraphs 55-73 above. This is a question of fact and degree and the meaning of PBI will change over time. See Example 13.

Institution

100. An institution is a body created to conduct activities in furtherance of a particular purpose or aim.⁹¹ In the PBI context, the body will undertake activities directed towards the benevolent relief of an appreciable class in the community.
101. 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,⁹² co-operative or incorporated association
 - c. an unincorporated body, such as an unincorporated association.
102. Although an institution can take any structure, it cannot be a 'mere fund' or 'mere trust'.⁹³ A mere fund or mere trust is an organisation that only exists to manage a trust fund and make distributions.⁹⁴
103. 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.⁹⁵
104. 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

⁹¹ *Mayor of Manchester v McAdam* [1896] AC 500, 511 (Lord Macnaghten).

⁹² Registered with the Office of the Registrar of Indigenous Corporations (ORIC) under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

⁹³ *The Hunger Project Australia v Federal Commissioner of Taxation* (2013) 94 ATR 855, [112] (Perram J).

⁹⁴ 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).

⁹⁵ See *Sargents Charitable Foundation v Chief Commissioner of State Revenue (NSW)* (2005) 60 ATR 129, 133 [23]-[25] (Gzell J).

- engaged in activities on a relatively small scale that were closely aligned with the business affairs of one of its founders

was found not to be a religious institution in *Pamas Foundation Inc v Federal Commissioner of Taxation*.⁹⁶ An organisation operating like this would not be an institution.

105. An organisation is likely to be an institution if it undertakes several 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

106. An organisation that is already operating will need to demonstrate that it is an institution by clearly explaining the activities it has conducted over at least its past year of operation. Doing so shows that it does more than merely manage trust funds and make distributions.

107. 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.

108. 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

109. 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

⁹⁶ *Pamas Foundation Inc v Federal Commissioner of Taxation* (1992) 35 FCR 117.

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 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'.

110. 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 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.⁹⁷

⁹⁷ *Pamas Foundation Inc v Federal Commissioner of Taxation* (1992) 35 FCR 117. See paragraph 104 for further information.

How we assess whether a charity is a PBI

111. 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:

- 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 experience⁹⁸
- 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.

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

- We recognise that how PBIs provide relief will change as the understanding of the best ways of providing relief and technology for providing relief also changes. While we must follow past judicial statements that establish clear legal principles, it is not appropriate to apply them mechanically.⁹⁹
- The primary focus when determining whether an organisation is a PBI is on its substance rather than its structure.¹⁰⁰

113. It is not necessary for a charity to use the language of being organised, conducted or promoted for the relief of poverty, sickness, destitution, helplessness, suffering, misfortune, disability, or distress in its governing document – see paragraph 23. When organisations do adopt this language, it can help the ACNC determine the organisation's purpose. However, the Commissioner acknowledges

⁹⁸ See for example *Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission* [2023] AATA 2161.

⁹⁹ *Commissioner of Taxation v Hunger Project Australia* (2014) 221 FCR 302, [38] (the Court).

¹⁰⁰ *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).

that many organisations prefer to use inclusive, empowering and strengths-based language and we will assess purposes holistically.

Registration as a PBI and other subtypes of charity

114. 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.
115. 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 registered as the PBI subtype and as the subtype 'entity with a purpose of advancing social or public welfare'.¹⁰¹
116. 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. The ACNC provides [further information about charitable purposes](#).¹⁰²
117. 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.¹⁰³
118. 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.
119. 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.

¹⁰¹ *Australian Charities and Not-for-profits Commission Act 2012* (Cth) s 25-5(4).

¹⁰² Australian Charities and Not-for-profits Commission, 'Charitable Purpose', <https://www.acnc.gov.au/for-charities/start-charity/you-start-charity/charitable-purpose>.

¹⁰³ *Charities Act 2013* (Cth) s 5, note 1 to the definition of 'charity'.

- 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, and could lead to distress. The PBI relieves the prisoners' distress and advances religion simultaneously through its chaplaincy services. The PBI 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.
120. 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. The ACNC's [charity registration self-assessment tool](#) can help your charity conduct its review.

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. These examples are not exhaustive.

Example 1

Charity A is a public company limited by guarantee, and is a peak body for member organisations that provide employment services to disadvantaged young people in Australia who are either unemployed or at high risk of ongoing unemployment.

The company's object is to relieve disadvantage and distress young Australians experience when unemployed or at high risk of ongoing unemployment, including by:

- conducting research into different pathways available to all Australian youth after leaving school, and into evidenced-based early interventions to address youth unemployment
- drawing on the expertise of its member organisations to engage in advocacy and lobbying of government and others to influence policies on vocational training, further education and employment options aimed at addressing youth unemployment
- raising community awareness about youth unemployment and its effects,
- convening forums with youth employment organisations, experts and the public to discuss young people's social inclusion and community engagement, and
- investing in and building the capacity of its member organisations so they can better address youth unemployment.

Charity A is likely to be a PBI. Its activities are targeted at young people experiencing disadvantage and distress, as well as related 'at-risk' communities. Although Charity A is organised to address disadvantage and distress through a program of indirect activities, there is no concern that its research, advocacy and education work is concerned with wellbeing in the community generally.

Charity A is organised to deliver relief by working with its member organisations, which are predominantly youth unemployment organisations that provide benevolent relief. Charity A strengthens its members' capacity to deliver benevolent relief and achieve their missions.

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 as 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 85-8785 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 people experiencing homelessness 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 focussed 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 120 in this Commissioner's Interpretation Statement for further detail.

Example 4

Charity D operates a social enterprise. It sells second-hand 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 51 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 102 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 88 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 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 31-35 in this Commissioner's Interpretation Statement for further detail.

Example 8

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 11-22 in this Commissioner's Interpretation Statement for further detail. See also Re Income Tax Acts No. 1 [1930] VLR 211.

Example 9

Charity J has an object of relieving the distress of those who have experienced workplace discrimination. It achieves its object by lobbying governments to change workplace relations laws so they provide better protection against workplace discrimination.

Charity J has an object of relieving the distress of those experiencing suffering that goes beyond that expected of everyday life. And because the impact of Charity J's law reform is targeted at people in need, there is also no concern that the charity's activities are targeted at the broader general community.

However, Charity J is unlikely to be a PBI. While it is organised to relieve distress predominantly through advocacy for law reform, it needs to demonstrate there is a sufficient connection between its activities and benevolent purposes.

Charity J did not demonstrate in its registration application that the lack of legal protection was a key cause of the distress, nor that inaction on law reform was allowing perpetrators to continue discriminating. While there may be some logical connection between Charity J's activity and relief of distress, on the facts of this application it is open to the decision maker to determine there is an insufficient connection.

Refer to paragraphs 55-73 in this Commissioner's Interpretation Statement for more detail.

Example 10A

Charity K runs a program to relieve homelessness in an inner-city area. It also employs policy professionals and spends a substantial amount of its resources and time advocating for policy change, using the lessons from its frontline program work to advocate for additional supports for 'at-risk' cohorts with the aim of reducing the likelihood of locals becoming homeless.

Based on a holistic assessment, Charity K is likely to be a PBI.

The charity pursues a mix of activities. The charity's advocacy work is ancillary to benevolent relief because it is in aid of its benevolent relief program. As the charity is not predominantly organised to address benevolent need through a program of advocacy for law reform and social change, it is not necessary to consider whether the advocacy activities constitute benevolent relief or are sufficiently connected to the benevolent ends the charity seeks to achieve (see paragraphs 69 to 72).

Example 10B

The following year, a Royal Commission into homelessness is announced. Charity K referred to in Example 10A decides to allocate significantly more resources and time to advocating for policy change in the context of the Royal Commission.

For a short period, Charity K's predominant activity becomes advocacy for policy change and law reform.

Based on these facts, it is likely that Charity K will remain a PBI. It is unlikely that a focus on advocacy for a short period will change the charity's character as being organised, conducted or promoted for benevolent relief.

If, in the longer-term, Charity K decided to shift its activities predominantly to advocacy, then it would need to demonstrate that those advocacy activities constituted benevolent relief or were sufficiently connected to the benevolent ends the charity sought to achieve in order to remain eligible for registration as a PBI.

Example 11

Charity L's object is to relieve poverty as well as to improve access to rental accommodation and home ownership for people experiencing poverty.

The charity is predominantly an advocacy and campaigning organisation, and its sole current campaign is for tax changes to reduce incentives for property investment.

As part of its application, Charity L provided evidence about a wide range of barriers to securing affordable rental accommodation and home ownership for people experiencing poverty, with tax incentives for property developers being one contributing factor.

Charity L is organised to relieve poverty predominantly through advocacy and campaigning. This means the charity needs to demonstrate a sufficiency of connection between its activities and benevolent relief. The impact of Charity L's reform is targeted at people in need, so there is no concern that the charity's activities are targeted at the broader general community.

However, based on a holistic assessment, Charity L is unlikely to be a PBI. The charity did not provide any evidence that the tax settings for property investment were a key cause of the lack of affordable housing for people experiencing poverty.

The charity also did not provide evidence that this law reform could effectively contribute to the relief poverty, or that advocating for property investment tax reform is a uniquely suited activity to address poverty and housing accessibility.

While there may be some logical connection between Charity L's activity and relief of poverty, on the facts of this application it is open to the decision maker to determine there is an insufficient connection.

Example 12

Charity M works to relieve the suffering and distress felt by members of the Stolen Generations. When members of the Stolen Generations were removed from their homes as children, many of those Aboriginal and Torres Strait Islander children were given criminal records because the law treated this so-called 'child protection' matter of being removed from their homes as a criminal matter*.

As members of the Stolen Generations reach adulthood, these criminal records can impact their ability to obtain employment. This results in adverse social and financial implications for these people and their families. In addition, the criminal records can also have an adverse impact on the mental health of these people.

Charity M's predominant activity is to advocate for law amendments throughout each relevant Australian jurisdiction to remove the criminal records of members of the Stolen Generations. The charity also allocated a small amount of time and resources to awareness raising and education.

Alongside its application for registration as a PBI, Charity M provides submissions that demonstrate a causal connection between the distress of these individuals and the criminal convictions, and submissions that while support services may address some symptoms, securing law reform would effectively relieve the distress.

The charity also provides its business plan and board minutes with its registration application, referencing this evidence base, including lived experience, and its strategic goals to seek law reform.

Charity M's predominant activity is advocacy. However, its activities demonstrate a sufficiency of connection with benevolent relief. The charity's activities are targeted at a group experiencing distress and its application supports a factual finding that the suffering and distress can be effectively alleviated via law reform.

Therefore, Charity M is likely to be a PBI.

* Please note that Example 12 is hypothetical. While many Indigenous and non-Indigenous children were historically given criminal records in the circumstances described in this example, Australia does also have a range of spent conviction schemes.

Example 13

Charity N's objects are to prevent and relieve poverty by providing agricultural equipment and training to farmers in need and who work in developing countries.

The charity also engages in some awareness-raising activities about sustainable farming techniques to encourage government, public and private investment, and donations to support these techniques.

Charity N provides evidence that climate change and land degradation is contributing to poverty, food insecurity and malnutrition in the communities it seeks to partner with.

Sustainable farming methods restore land and can relieve poverty by better addressing crop failure and improving food production in some of the world's toughest climates.

Charity N is likely to be a PBI. It provides direct relief in the form of farming equipment and training to people experiencing poverty.

In doing so, the charity has demonstrated that it provides people with the tools and resources to relieve immediate need and prevent future need. Charity N is also addressing land degradation and climate change as underlying causes of poverty in the communities it works with.

These activities further the Charity's benevolent purposes. While addressing land degradation and climate change may benefit the whole community, Charity N has demonstrated that the impact of its activities is focused on people in need of benevolent relief.

Version Control

Version	Date of effect	Summary of changes
Version 1 – Initial statement	19/12/2016	Initial statement endorsed by Commissioner on 19/12/2016.
Version 2 - Amendment	31/8/2023	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)
Version 3 – Amendment	29/9/2025	Changes to improve readability and accessibility, and to reflect the decision in <i>Equality Australia Ltd v Commissioner of the Australian Charities and Not-for-profits Commission</i> [2024] FCAFC 115. In line with this Full Federal Court decision, the updated PBI CIS makes clear that the ordinary meaning of PBI will evolve over time and the Commissioner takes a contemporary approach and will consider contemporary means of organisations working together and seeking to relieve benevolent needs.