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Dear Joanna

## **Submission: Review of Commissioner's Interpretation Statement on Public Benevolent Institutions**

Thank you for the opportunity to provide written feedback in relation to the Australian Charities and Not-for-profits Commission's (**ACNC**) review of the Commissioner's Interpretation Statement (**CIS**) on Public Benevolent Institutions (**PBIs**).

## **1 Summary**

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### **1.1 Overview**

In summary, this submission aims to emphasise the following points:

- (a) The CIS should further clarify the meaning of "incidental" and "ancillary", as well as discussing when a religious activity can be incidental or ancillary.
- (b) The CIS should discuss whether a PBI can undertake commercial activities to generate funds.
- (c) The CIS should provide more thorough guidance for organisations that are operating overseas regarding the types of policies or procedures that these organisations must implement so as to be compliant.

## **2 Submission**

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### **2.1 Paragraph 5.5.2: Clarify the meaning of "incidental" and "ancillary"**

This paragraph confirms that an entity is ineligible to be a PBI where it has other purposes that are not benevolent, unless these purposes are "ancillary or incidental" to the main benevolent purpose. The paragraph also distinguishes between "ancillary or incidental" and "minor" purposes.

The terms "ancillary" and "incidental" are not defined or expanded upon in the CIS. It would be helpful to provide clarification or examples of activities that would be sufficiently incidental or ancillary.

**2.2 Paragraph 5.5.3: Clarify if a religious activity can be ancillary or incidental**

This paragraph gives an example of an entity that is motivated by religious faith and its main purpose is benevolent, and states that this entity may still be eligible to be a PBI. For additional clarity, we would suggest that the CIS should state the occasions in which a religious activity can be ancillary or incidental to the main benevolent purpose.

This will provide additional clarity for organisations that may be motivated by religious faith and seek to conduct religious activities that are incidental to their main purpose.

**2.3 Paragraphs 5.6.1 – 5.6.4: Specify if a PBI can undertake commercial activities to generate funds for donation**

These paragraphs confirm that there is not a requirement that the PBI itself directly give or provide the benevolent relief. Paragraph 5.6.2 states that an organisation is not precluded from being registered as a PBI if some of its services are provided by agents or contractors. In a similar vein, we suggest that further information should be included in this paragraph to specify if a PBI can undertake commercial activities to generate income that is then applied or donated towards its benevolent work.

While it is legally clear that charities are allowed to do this, the position is not so clear for PBIs.

As organisations increasingly diversify their operations and revenue streams, we would suggest that clarifying the ACNC's position on this matter is important.

**2.4 Paragraph 5.8.5: Provide further guidance for organisations operating overseas**

This paragraph outlines the reasons why an organisation operating overseas will find it more challenging to demonstrate its compliance with the governance standards than an organisation solely operating in Australia.

We recommend that including additional guidance for organisations, clearly outlining how they can demonstrate such compliance, would be beneficial. This could include matters such as which policies or procedures an organisation should implement. Further, information could be given regarding the types of background checks that should be conducted on volunteers and/or workers in foreign countries.

If you have any questions or require further information, please do not hesitate to contact me.

Yours sincerely



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PARTNER**

**(CO-AUTHORED WITH LACHLAN CLARK, GRADUATE AND JOHN VAUGHAN-WILLIAMS,  
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