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Ms Anna Longley
Assistant Commissioner
General Counsel
Australian Charities and Not-for-profits Commission

By email: cis@acnc.gov.au

Dear Ms Longley,

Request for comments: Commissioner's Interpretation Statements Health Promotion Charities and Public Benevolent Institutions

Who we are

Governance Institute of Australia is a national membership association, advocating for our network of 43,000 governance and risk management professionals from the listed, unlisted, public, not-for-profit and charity sectors. As the only Australian provider of chartered governance accreditation, we offer a range of short courses, certificates and postgraduate study and professional qualifications. Our mission is to drive better governance in all organisations, which will in turn create a stronger, better society.

Our members have primary responsibility for developing and implementing governance frameworks in listed, unlisted and private companies, as well as not-for-profit organisations including charities and the public sector. We regularly contribute to the formation of public policy through our interactions with Treasury, ASIC, APRA, ACCC, ASX, ACNC, the ATO and other government and industry stakeholders.

Many of our members serve as officers of charities, or work for, or are involved with charities and are therefore involved in compliance with the ACNC requirements. Governance Institute is itself a charity operating in the legal form of a company limited by guarantee, established to promote and advance the efficient governance, management and administration of commerce, industry and public affairs and the development of secretaryship of organisations through education and the dissemination of information.

Our response

Issue 2 – Which introductory statement do you consider more appropriately reflects the position of the Commissioner's Interpretation Statements as guidance documents?

Our members consider the revised version of the Introductory Statement is clearer. However, they note that the sentence 'If the law or an Interpretation Statement changes, we will apply the new position from the date of the change, not retrospectively in a way that could disadvantage a charity'. Our members consider it is important that the introduction state that changes will not be applied retrospectively. Our members would find it helpful also if there was clarity as to whether '...the date of the change...' refers to the date of the change in the law or the date of the change in the Interpretation Statement arising from the change in the law.

Issue 3 – To help explain and clarify the meaning of 'institution' should the principles expressed in *Pamas* be included in the revised Commissioner's Interpretation Statements?

Our members consider it would be helpful to include the principles from *Pamas* in the Interpretation Statements because they provide a good explanation of the need to establish the scale of an organisation's activities required for it to qualify as an 'institution'.

Issue 3 – What weight does the law give to factors other than extensiveness of the beneficiary class when determining whether an entity is 'public' in the sense of a Public Benevolent Institution? Should this be covered in the Commissioner's Interpretation Statement: Public Benevolent Institutions?

Our members consider the need for the class of beneficiary's to be 'extensive' is articulated reasonably well in the Interpretation Statement. The Statement would be improved by providing some additional detail such as an example from the relevant cases around the other factors which can go to establishing the 'public' nature of an institution namely receipt of public financial support, financial or other government support or evidence of control by members of the public.

Other issues – Health Promotion Charities (HPCs)

HPCs are charities which are institutions 'whose principal activity is to promote the prevention of the control of diseases in human beings'. Our members report that when registering new charities, they have encountered what appears to be inconsistent treatment of health specialist bodies. In some circumstances they have been able to register a health specialist body as an HPC and in what appear to be similar circumstances, they have been unable to register a body as an HPC. They consider it would be helpful to provide some additional guidance about how to differentiate health specialist bodies that are considered to be professional bodies of the health specialists from bodies of professional health specialists that are considered to be HPCs.

If you wish to discuss any of the issues raised in this letter, please contact me or Catherine Maxwell.

Yours sincerely,



Megan Motto
CEO