

2 September 2022

Ms Deborah Jenkins
Acting Commissioner
Australian Charities and Not-for-profits Commission
GPO Box 5108 MELBOURNE VIC 3001
(Submitted by email: cis@acnc.gov.au)

Public consultation on updated Commissioner's Interpretation Statements: Health Promotion Charities

Justice Connect welcomes the opportunity to comment on the redraft of the Commissioner's Interpretation Statement for Health Promotion Charities (**HPC CIS redraft**).

About Justice Connect

In the face of huge unmet legal need, Justice Connect designs and delivers high-impact interventions to increase access to legal support and achieve social justice. We help those who would otherwise miss out on assistance, focusing on people disproportionately impacted by the law and the organisations that make our communities thrive.

We have been serving the community for more than 25 years. We are a registered ACNC charity.

Our expertise – our Not-for-profit Law program

This submission draws on the experience of our specialist, national Not-for-profit Law program which provides free and low-cost legal assistance to not-for-profit organisations and social enterprises. We handle more than 1,700 enquiries annually from a diverse range of groups, primarily small-medium sized and mostly volunteer run.

Not-for-profit Law was at the forefront of the campaign for the Australian Charities and Not-for-profits Commission (**ACNC**), and supports the ACNC's mission of maintaining, protecting and enhancing public trust and confidence in the not-for-profit sector. We also support this public consultation as an opportunity for the ACNC to fulfil its mission to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector.



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Our submission

We are a member of the Charities and Not-for-profits Committee of the Law Council of Australia's Legal Practice Section (**LCA Committee**). We contributed to and endorse the LCA Committee's submission (**LCA Submission**) dated 30 August 2022.

Our overall recommendation: The ACNC should rework the HPC CIS redraft to address the LCA Committee's recommendations. An expert working group made up of key stakeholders should be appointed to work through the amendments.

We also take this opportunity to make the following comment about the redraft of the Introductory Statement for Commissioner's Interpretation Statements (the Introductory Statement).

The redrafted Introductory Statement allows the ACNC to retrospectively apply changes in the law. We do not support this.

The current HPC CIS and the current Introductory Statement both make it clear that if there is a change in the law, the ACNC will apply the changes from the date of the change, **not** retrospectively in a way that could disadvantage a charity.¹ This protection, along with the promise that the ACNC will deal with organisations fairly has been removed in the HPC CIS redraft and the redrafted Introductory Statement. We cannot understand why.

Retrospectively applying changes to the law has the potential to threaten the very viability of charities, many of which heavily rely on their endorsement as a deductible gift recipient because of their HPC status. It also unfairly disadvantages small to medium sized charities that do not have the resources to respond to, or challenge these types of decisions by the ACNC.

We recommend that the protection in the current HPC CIS and the current Introductory Statement be carried over into the HPC CIS redraft and the redrafted Introductory Statement.

We would be happy to discuss or expand on any of our comments. We agree to this submission being made public (with signatures redacted).

¹ Australian Charities and Not for Profits Commission, *Redraft Commissioner's Interpretation Statement: Public Benevolent Institutions for consultation* (June 2022), 1; Introductory Statement available at www.acnc.gov.au/tools/guidance/commissioners-interpretation-statements

Yours sincerely,

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