COMMISSIONER'S INTERPRETATION STATEMENT: COMMUNITY HOUSING

The original version of this Commissioner's Interpretation Statement (**Statement**) was published on 1 December 2014. It was then revised in 2021.

The current version was published on 14 August 2026 and is binding as of that date. The current version reflects the Commissioner's understanding of the law on that date, and also includes examples illustrating contemporary aspects of how charities provide community housing.

OVERVIEW, SCOPE AND STRUCTURE OF THIS STATEMENT

1. This Statement provides guidance on the Commissioner's interpretation of charity law as it applies to community housing provision by organisations with the charitable purpose 'advancing social or public welfare'. An organisation that has this purpose cannot be a 'basic religious charity' as defined by the ACNC Act because of the requirement that to be eligible to be a basic religious charity, the charity must have the sole purpose of advancing religion.[1] The Commissioner recognises that 'advancing social or public welfare' is not the only charitable purpose – or for that matter, charity subtype – under which a charity may provide housing. However, providing housing for other charitable purposes is beyond the scope of this Statement.

2. The *Charities Act 2013* (Cth) (**Charities Act**)[2] provides that advancing social or public welfare includes the purpose of 'relieving the poverty, distress or disadvantage of individuals or families'.[3] The Commissioner's interpretation of that phrase is set out in the Commissioner's Interpretation Statement on Public Benevolent Institutions (**PBI CIS**),which provides guidance on how the ACNC determines if an organisation is a Public Benevolent Institution (**PBI**). To avoid overlap, and to maintain consistency between Commissioner's Interpretation Statements, this Statement addresses the phrase only to the extent necessary to explain its application in the housing context.

3. This Statement is structured in six parts that discuss the following broad topics:

   Part A: Key concepts

   Part B: Requirements for registration as a charity

   Part C: Community housing and the purpose of advancing social or public welfare

   Part D: Types of housing provided

   Part E: Commercial arrangements used to provide community housing

   Part F: Information about how the ACNC will apply this Statement, including examples.

PART A: KEY CONCEPTS

[1] See the definition of 'basic religious charity' in s 205-35 of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) ('*ACNC Act*').

[2] *Charities Act 2013* (Cth) ('*Charities Act*').

[3] Ibid s 15.

What is meant by 'housing'

4. Providing 'housing' can include the provision of units, houses, shared accommodation, crisis accommodation, and accommodation through hostels. These examples are not exhaustive, and the Commissioner may consider other forms of accommodation to be housing for the purposes of this Statement.

5. Housing can be temporary or permanent.

How housing can be provided

6. Charities may provide housing by different means, including in the following ways:

   (a) **Social housing:** Social housing is low-cost or subsidised rental housing provided to eligible tenants by government or non-government organisations, including charities. Social housing rents are usually set as a proportion of a tenant's income.[4]

   (b) **Affordable rental housing**: 'Affordable rental housing' is housing for people on low to moderate incomes. It is managed like other rental properties but has rent set at a level lower than market rents – generally capped at a maximum of 80% of the market rent.[5] Affordable rental housing does not have a consistent meaning across Australian jurisdictions or programs.

   (c) **Key worker housing:** There is no consistent definition of a 'key worker'. For the purposes of this Statement, a key worker is someone employed to perform a key civic job or essential service to benefit the public, and who generally must be physically present at a work location to perform their job.

   Key workers include people employed in the public, charity and not-for-profit sectors, or by another employer engaged in providing equivalent services to benefit the public. In many instances, key workers will work in sectors or industries that have serious recruitment and retention problems.

   The Commissioner recognises that local, state, territory, and national government housing programs may use different definitions of 'key worker', often to reflect local needs and changes over time in social and economic conditions. Organisations will need to be conscious of jurisdictional differences and use their judgment to apply this guidance to different programs and situations, including changes that happen over time.

   (d) **Home ownership schemes**: This may take the form of deposit assistance schemes, shared ownership (also known as shared-equity), rent-to-buy schemes, or loans with low or no interest.

   (e) **Mixed-tenure or multi-tenure developments:** Mixed-tenure or multi-tenure developments exist where various types of housing – such as social housing, affordable housing and private market housing – are provided within a single project or precinct.

PART B: REQUIREMENTS FOR REGISTRATION AS A CHARITY

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[4] Australian Institute of Health and Welfare, *National social housing survey 2023*, 3 May 2024, page 3.

[5] The *National Housing Accord 2022* defines affordable housing as *'… rental housing that is provided at below market rent to qualifying tenants (usually between 70 and 80 per cent of market rent)'*: see Commonwealth Treasury, *National Housing Accord 2022* (October 2022), 2.

Generally

7. In general terms, to be eligible to gain and maintain registration with the ACNC, an organisation must:

   (a) meet the definition of 'entity'[6]

   (b) have an Australian Business Number

   (c) be not-for-profit

   (d) comply, if applicable, with the ACNC Governance Standards and the ACNC External Conduct Standards

   (e) 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',[7] and

   (f) meet the Charities Act's definition of 'charity'. To be a charity within the meaning of the Charities Act, an organisation must have only charitable purposes that are for the public benefit, except for purposes that are incidental or ancillary to, and in furtherance or aid of, those charitable purposes.[8]

8. The ACNC provides detailed guidance on charity registration requirements and how to apply for registration.

Charitable purposes

9. A charity may provide housing as an activity that furthers one or more of the charitable purposes set out in the Charities Act.[9] This Statement focuses on the provision of housing for the charitable purpose of 'advancing social or public welfare' because, in the ACNC's experience, almost all community housing providers registered as charities with the ACNC have a charitable purpose of 'advancing social or public welfare'. This does not mean the ACNC considers that the only charitable purpose that applies if a charity is providing housing is 'advancing social or public welfare'.

10. The Commissioner accepts that a purpose may be incidental or ancillary to a housing provider's charitable purpose if it is a means of achieving, or naturally tends to go with achieving, that charitable purpose.[10] A purpose that is 'ancillary' or 'incidental' does not mean a purpose that is minor in quantitative terms.[11]

11. If a housing provider has a non-charitable purpose that is not merely ancillary or incidental, that purpose will be an independent non-charitable purpose. A housing provider with an

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[6] The term 'entity' is defined in *ACNC* Act (n 1) 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.

[7] *ACNC Act* (n 1) ss 25-5(1), 25-5(3).

[8] *Charities Act* s 5.

[9] See the 12 charitable purposes in Commonwealth charity law, in *Charities Act* (n 2) s 12.

[10] See, e.g., *Navy Health Ltd v Deputy Commissioner of Taxation* (2007) 163 FCR 1; [2007] FCA 931 (*'Navy Health*'), [65], *Congregational Union of New South Wales v Thistlethwayte* (1952) 87 CLR 375, and *Royal Australasian College of Surgeons v Federal Commissioner of Taxation* (1943) 68 CLR 436.

[11] *Navy Health* (n 10), [65].

independent non-charitable purpose will not be eligible for registration as a charity with the ACNC – no matter how minor that purpose is.[12]

12. The Commissioner will holistically analyse a housing provider's objects, activities, and other relevant matters to determine its purposes,[13] including its:

(a) governing document

(b) operational or business plan

(c) website

(d) history of formation

(e) governance structure and control by third parties, including by charities and by for-profit organisations

(f) arrangements with partners and third parties – including related parties – and underlying agreements for any of these arrangements, and details of key management personnel remuneration

(g) tenant selection criteria

(h) information about real property, housing stock and development plans

(i) tenancy agreements

(j) internal controls and risk management procedures, including conflict of interest procedures

(k) financial statements (for an existing organisation) or budget (for a new organisation),

(l) funding or revenue sources, and

(m) annual report.

Charity subtypes

13. A housing provider may apply to be registered with one or more charity subtypes.[14] To be eligible, it must satisfy the requirements of each subtype for which it seeks registration.[15]

14. Many housing providers are eligible for registration with the 'advancing social or public welfare' charity subtype.[16]

15. Some housing providers may also be eligible for registration with the PBI subtype.[17]

16. 'Advancing social or public welfare' is the charitable purpose that most housing providers registered as PBIs have.[18]

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[12] Explanatory Memorandum, Charities Bill 2013 ('*Charities Bill EM*'), [1.25].

[13] See *Charities Act* (n 2) s 5 note 1; *Federal Commissioner of Taxation v Word Investments* (2008) 236 CLR 204 ('*Word Investments*'), 217 (Gummow, Hayne, Heydon and Crennan JJ); *Victorian Women Lawyers' Association Inc v Federal Commissioner of Taxation* (2008) 170 FCR 318 ('*Victorian Women Lawyers' Association*'), 352; *Cronulla-Sutherland Leagues Club v Federal Commissioner of Taxation* (1990) 23 FCR 82; *Cancer & Bowel Research Australia Ltd and Commissioner of the Australian Charities and Not-for-profits Commission* [2021] AATA 3875, [23]-[26].

[14] *ACNC Act* (n 1) s 25-5(2).

[15] Ibid s 25-5(2)(b).

[16] Ibid s 25-5(5) item 3.

[17] Ibid s 25-5(5) item 14.

[18] *ACNC Act* (n 1) s 25-5(4) says that '*To avoid doubt, an entity may be entitled to registration as more than one subtype of entity*'. The Note to that section says that '*An entity could be registered as an entity with a purpose of advancing social or public welfare, and also be registered as a public benevolent institution*'.

Public benefit and private benefit

17. The 'social or public welfare' charitable purposes of:

    (a) relieving the poverty, distress or disadvantage of individuals or families,[19] and

    (b) caring for and supporting people who are aged or have disabilities[20]

    are presumed to be for the public benefit.[21] A housing provider with one or both of these purposes will therefore satisfy the public benefit requirement unless there is evidence to the contrary.[22]

18. Where this presumption does not apply, a housing provider must demonstrate that its purposes are for the public benefit. A purpose is for the public benefit if:

    (a) achieving the purpose would benefit the public; and

    (b) that benefit is available to the public, or to a sufficient section of the public.[23]

19. A private benefit is generally a benefit received by a person other than as an intended beneficiary of a charitable purpose. However, a benefit provided to an intended beneficiary may also constitute an unacceptable private benefit if it significantly exceeds what is reasonably required to meet or relieve the relevant charitable need.[24]

20. A housing provider may still meet the Charities Act's definition of a charity if any private benefits (as distinct from direct distributions of profit) are merely incidental or ancillary to achieving its charitable purposes. A private benefit is incidental or ancillary where it is a necessary consequence or by-product of pursuing those purposes.[25]

21. Determining if a private benefit is incidental or ancillary[26] requires considering:

    (a) the nature and amount of the private benefit

    (b) the person, people or entities who receive the private benefit

    (c) the circumstances under which the private benefit has been provided, and

    (d) the relationship between the private benefit and the charitable purpose.

22. Specific types and forms of housing raise their own additional private benefit issues. This Statement considers the private benefit issues relevant to deciding if the following forms of housing can be provided in furtherance of a charitable purpose:

    (a) affordable rental housing[27]

    (b) key worker housing[28]

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[19] *Charities Act* (n 2) s 15(1).

[20] Ibid s 15(2).

[21] Ibid s 7 (c)-(d).

[22] Ibid ss 5(b)(i), 6, 7(c)-(d).

[23] *Re Compton* [1945] Ch 123; *Oppenheim v Tobacco Securities Trust Co Ltd* [1951] AC 297.

[24] Gino Dal Pont. *Law of Charity* (LexisNexis Butterworths, 2021) ('*Law of Charity*'), [8.4]; *City of Hawthorn v Victorian Welfare Association* [1970] VR 205, 209 (Smith J; Pape and Gillard JJ agreeing).

[25] *Charities Act* (n 2) s 6(3). See, eg, *Inland Revenue Commissioners v City of Glasgow Police Athletic Association* [1953] AC 380, 396; *Incorporated Council of Law Reporting* (*Qld) v Federal Commissioner of Taxation* (1971) 125 CLR 659 ('*ICLR*'), 670; *Victorian Women Lawyers' Association* (n 13).

[26] The amount of the private benefit is not necessarily determinative or relevant to the assessment. This is because the term '*incidental or ancillary*' does not mean minor in quantitative terms: per *Navy Health* (n 10), 29 [65].

[27] See paragraphs 78 and 80.

[28] See paragraphs 85 and 86.

(c) home ownership schemes[29]

(d) commercial arrangements for the provision of housing,[30] and

(e) housing delivered through multi-party special purpose vehicles (**SPVs**).[31]

Not-for-profit

23. Charities are required to be not-for-profit.[32] For ACNC purposes, the term 'not-for-profit' takes its ordinary meaning.[33] The Commissioner considers that a not-for-profit must:

(a) not be conducted for the profit or gain of its members in their capacity as members – that is, profits cannot be distributed to individuals – either while it operates, or on winding up;[34]

(b) apply its income and assets solely towards its charitable purposes;[35] and

(c) on winding up or dissolution, distribute any surplus assets to another fund, authority or institution with similar charitable purposes.[36]

A housing provider will usually[37] demonstrate its not-for-profit character through appropriate provisions in its governing document that apply during its operation and on winding up.[38]

24. Where a housing provider's members are charities that have substantially the same purposes as each other, and as the housing provider, the Commissioner will generally presume that the housing provider continues to be not-for-profit if it provides financial or other support to those members.[39] This is because the financial or other support is provided to the members in furtherance of their shared charitable purposes, rather than to the members in their capacity as members.

25. Ordinarily, when a charity is wound up or dissolved,[40] any assets remaining after its debts and liabilities have been discharged must be distributed for similar charitable purposes.

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[29] See paragraph 97(a).

[30] See paragraphs 104 to 112.

[31] See paragraphs 113 to 131.

[32] *Charities Act* (n 2) s 5 (definition of charity); *ACNC Act* (n 1) s 25-5(3)(b) (requirements for registration); *Australian Charities and Not-for-profits Commission Regulations 2022* (Cth) ('*ACNC Regulations*') r 45.5(2)(c) (ACNC Governance Standard 1 – an entity that wishes to be registered as a charity with the ACNC must demonstrate its '*purposes and its character as a not-for-profit entity*').

[33] *Charities Bill EM* (n 12), [1.22], [2.34].

[34] *Grain Growers Ltd v Chief Commissioner of State Revenue* [2015] NSWSC 925 ('*Grain Growers*'), [14] – [15]; Revised Explanatory Memorandum, Australian Charities and Not-for-profits Commission Bill 2012, [3.33]; *KinCare Community Services Limited v Chief Commissioner of State Revenue* [2019] NSWSC 182 ('*KinCare*'), [173]. See also, e.g., the proposed definition of 'not-for-profit entity' in the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 (Cth) sch 1 pt 3 cl 44.

[35] *Grain Growers* (n 34), [15]; *KinCare* (n 34), [168].

[36] *Theosophical Foundation Pty Ltd v Commissioner of Land Tax* (1966) 67 SR (NSW) 70, 85. See also, e.g., the proposed definition of 'not-for-profit entity' in the Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012 (Cth) sch 1 pt 3 cl 44.

[37] Exceptions to this usual requirement may be made for certain entities established by an Act, and where the Act (or another relevant Act) does not provide for the entity's not-for-profit character or for the winding up or termination of the entity. See, e.g., *Income Tax Assessment Act 1997* (Cth) ('*ITAA 97*') ss 30-125(1)(c), 30-125(2)(d) for an example of a similar exclusion.

[38] *Repromed Pty Ltd v Lucas* (2000) 76 SASR 575 ('*Repromed*'), 584. See also, e.g., *ICLR* (n 25), 670.

[39] Cf *Cremation Society of Australia Ltd v. Commissioner of Land Tax (NSW)* [1973] 2 NSWLR 704; *Repromed* (n 38).

[40] 'Winding up' or 'dissolution' may take place in different ways, depending on the charity's structure. An Australian not-for-profit public company limited by guarantee may be voluntarily deregistered under *Corporations Act 2001* (Cth) ('*Corporations Act*') pt 5A.1 or may be wound up (e.g., voluntary winding up under *Corporations Act* (n 40) pt 5.5). State or

Failure to provide for such a distribution will generally mean the organisation is not charitable. However, some housing providers may hold housing assets under state or territory government schemes which require that those assets be returned to the relevant government on winding up – for example, under the *Community Housing Providers National Law.*[41] Although a government entity is not charitable, the return of those assets in accordance with such requirements does not, of itself, prevent the housing provider from being not-for-profit.

26. In these circumstances, the Commissioner accepts that a housing provider is not-for-profit if:

    (a) on winding up, assets that must be returned to government under a state or territory law, or under a contractual arrangement with government are in fact returned; and

    (b) all other remaining assets are distributed for similar charitable purposes.

Connection with government

27. A housing provider that is a 'government entity' is not eligible for registration as a charity with the ACNC.[42] For guidance on the meaning of 'government entity', refer to the Commissioner's Interpretation Statement: Meaning of 'Government Entity'.

28. Australian governments have established, and may continue to establish, schemes that encourage the provision of housing. An organisation is not necessarily ineligible for registration as a charity because it provides housing in a manner consistent with government policy or receives government funding, incentives or subsidies. [43] In fact, government funding may, in the context of the organisation's history, activities and broader circumstances, support the conclusion that its purposes are charitable.[44]

ACNC Governance Standards

Territory incorporated associations may have their incorporation cancelled or revoked under the various State and Territory Associations acts. A charitable trust may be wound up and terminated under the terms of a trust deed (and if required, under the terms of a Trustee Act). This is not to limit the ways in which a charity may be wound up or dissolved.

[41] *Community Housing Providers National Law* section 15(2)(c) says that, as a condition of registration of each community housing provider that is registered under the National Regulatory System for Community Housing Providers) '*the provider must have provision in its constitution for all its remaining community housing assets in a participating jurisdiction on its winding up to be transferred to another registered community housing provider or to a Housing Agency in the jurisdiction in which the asset is located*,' The National Law's host jurisdiction is New South Wales. The Australian Capital Territory, the Northern Territory, Queensland, South Australia, and Tasmania have also adopted the National Law.

[42] *Charities Act* (n 2) s 5.

[43] *Central Bayside General Practice Association Ltd v Commissioner of State Revenue* (2006) 228 CLR 168.

[44] See, e.g.:

a. *South Australian Employers' Chamber of Commerce and Industry Incorporated v Commissioner of State Taxation* [2017] SASC 127 ('*SAECCI SASC*'), [158], where the Court acknowledged that government funding '*may be a factor weighing in favour of a conclusion that its purposes are charitable because the government recognises them as being for the public benefit*';

b. *SAECCI SASC* (n 44), [258], where in considering the public benefit of subsidised programs for promoting industry, trade, and commerce, the Court stated that '*The public benefit of the programs was recognised by the governments in funding them. They utilised many volunteers who gave their time in recognition of the benefits they provide.*'; and

c. *Tasmanian Electronic Commerce Centre Pty Ltd v Commissioner of Taxation* (2005) 142 FCR 371, 390 [63], where the Federal Court of Australia concluded, in determining that Tasmanian Electronic Commerce Centre was a charitable institution with a charitable purpose of promoting industry, trade or commerce, that '*Public funding may not be determinative of the question: charity or not? but it is certainly relevant, and is particularly so in the present case*'.

29. A housing provider must comply with the ACNC Governance Standards to gain and maintain registration with the ACNC.[45]

30. Relevant to the issues considered in this Statement, the ACNC Governance Standards:

    (a) require a housing provider to comply with its registered charitable purposes and maintain its character as a not-for-profit entity; [46]

    (b) require a housing provider with members to take reasonable steps to be accountable to its members and provide them with an adequate opportunity to raise concerns about its governance; [47] and

    (c) prescribe minimum governance duties that housing providers must comply with in carrying out their activities and pursuing their charitable purposes. [48]

31. The steps a housing provider takes to comply with the ACNC Governance Standards will depend on its particular circumstances.[49]

32. The Commissioner considers that a housing provider that is not actively applying its income and assets in furtherance of its social or public welfare purposes, but is instead accumulating most of its income and assets over time, must be able to demonstrate how that accumulation furthers its charitable purposes[50] and complies with ACNC Governance Standard 1. This applies equally where the housing provider operates through a complex corporate group structure or other commercial arrangement (see paragraphs 102 to 112).

PART C: COMMUNITY HOUSING AND THE PURPOSE OF ADVANCING SOCIAL AND PUBLIC WELFARE

What is the purpose of 'advancing social or public welfare'?

33. The purpose of advancing social or public welfare includes the purposes of:

    (a) relieving the poverty, distress or disadvantage of individuals or families[51]

    (b) caring for and supporting the aged or individuals with disabilities,[52]

    (c) caring for, supporting and protecting children and young individuals. [53]

Relieving 'poverty, distress or disadvantage'

34. The Commissioner considers that the phrase 'relieving the poverty, distress or disadvantage of individuals or families' describes three alternative charitable purposes. Accordingly, a

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[45] *ACNC Act* (n 1) s 45-5; *ACNC Regulations* (n 32) r 45.

[46] *ACNC Regulations* (n 32) r 45.5 (ACNC Governance Standard 1).

[47] Ibid r 45.10 (ACNC Governance Standard 2).

[48] Ibid r 45.25 (ACNC Governance Standard 5).

[49] Relevant circumstances may include the housing provider's size, the sources of its funding, the nature of its activities and the needs of the public: see *ACNC Regulations* (n 32) r 45.1.

[50] Similar principles apply in the context of the income tax exemption in *ITAA 97* (n 37) s 50-5 item 1.1, s 50-50(2)(b). See also Australian Taxation Office, *Income tax: special conditions for various entities whose ordinary and statutory income is exempt* (TR 2015/1, 25 February 2015), [32].

[51] *Charities Act* (n 2) s 15(1).

[52] Ibid s 15(2).

[53] Ibid s 15(3).

charity may advance social or public welfare by relieving poverty, or by relieving distress, or by relieving disadvantage. It is not necessary that all three be present.[54]

35. This Statement considers the circumstances in which housing is provided for the charitable purposes of:

    (a) relief of poverty (see paragraphs 37 to 44);

    (b) relief of distress or disadvantage (see paragraphs 48 to 50); and

    (c) addressing disadvantage faced by Aboriginal and Torres Strait Islander people (see paragraphs 51 to 54).

36. This Statement also considers factors relevant to determining if a person is experiencing poverty, distress or disadvantage (see paragraphs 55 to 60).

Relief of poverty by the provision of housing

37. The Commissioner considers that poverty is a person's inability to maintain a modest standard of living in the Australian community by using their own resources.[55]

38. Access to safe and suitable housing is a basic necessity. A charity may relieve poverty by helping people who cannot, from their own resources, afford appropriate housing. This may include help to obtain housing in an area where a person reasonably chooses to live and that provides a modest standard of living in the relevant community.

39. There is no single accepted measure of poverty, and the courts have consistently recognised that poverty is a relative concept. Poverty does not require destitution.[56] A household may be in poverty and unable to maintain a modest standard of living even where its members are in regular or ongoing employment, or can contribute towards their housing costs.

40. In *Re Coulthurst*, Evershed MR described poverty as having to 'go short' in the ordinary sense of that expression.[57] In *Trustees of the Mary Clark Home*, Channell J held that poverty does not mean absolute destitution and cannot be defined by a fixed rule.[58] A person may therefore be in poverty without being in extreme need. In this context, relief of poverty encompasses assistance to meet necessities and quasi-necessities, including housing.[59]

41. Similarly, in *Re Gardom, Le Page v Attorney-General*,[60] Eve J held:

> There are degrees of poverty less acute than abject poverty or destitution but poverty nonetheless … the objects to be benefited by the bequest are ladies too poor to provide

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[54] *Re Glyn's Will Trusts* [1950] 2 All ER 1150; *Re Bingham (deceased)* [1951] NZLR 491, 494-495 (Hay J); *Re Resch's Will Trusts* [1969] 1 AC 514, 542-543 (Lord Wilberforce); *City of Hawthorn v Victorian Welfare Association* [1970] VR 205, 208 (Smith J).

[55] *Ballarat Trustees Executors and Agency Co v Federal Commission of Taxation* (1950) 80 CLR 350, 355. See also PBI CIS, [26].

[56] *Trustees of the Mary Clark Home v Anderson* [1904] 2 KB 645 ('*Mary Clark Home*'). See also *YWCA Australia v Chief Commissioner of State Revenue* [2020] NSWSC 1798 ('*YWCA Australia*'), [39] – [51] (dealing with the New South Wales charitable exemption from transfer duty in *Duties Act 2007* (NSW) s 275(3)(a) that applied to certain organisations whose resources are used wholly or predominantly for the '*relief of poverty in Australia*'); *Trustees of the Indigenous Barristers Trust v Federal Commissioner of Taxation* [2002] FCA 1474; (2002) 127 FCR 63, 14; *Lemm v Federal Commissioner of Taxation* (1942) 66 CLR 399, 410-411 (Williams J).

[57] *Re Coulthurst* [1951] Ch 661, 666.

[58] *Mary Clark Home* (n 56), 655-656.

[59] *Inland Revenue Commissioners v Baddeley* [1955] AC 572, 585 [52] (Simmonds VC).

[60] *Re Gardom, Le Page v Attorney-General* [1914] 1 Ch 662.

themselves with a temporary home without outside assistance. I think it is a good charitable trust.[61]

42. In *Community Housing Ltd v Clarence Valley Council*,[62] the Court considered if the provision of housing to 'low-income persons' constituted relief of poverty. Clarence Valley Council had argued that 'low-income' was a relative concept. The Court held that, when read as a whole, the objects clause demonstrated a purpose of relieving poverty and clearly demonstrated that Community Housing Ltd pursued a purpose of relieving poverty. It held that 'low income' connotes the idea of people who must 'go short'.[63]

43. The Court also considered evidence in that case that Community Housing Ltd leased some properties to households with 'moderate incomes'. On the facts of the case, those households lacked sufficient income to obtain safe and secure housing and were therefore in need of relief from poverty. [64]

44. Further guidance on if an organisation is organised, conducted or promoted for the relief of poverty is contained in paragraphs 25 to 30 of the PBI CIS.

Relief of poverty and the '30/40 rule'

45. The Commissioner recognises that the '30/40 rule' is commonly used in Australia as an indicator of housing stress. Under this rule, a household is experiencing housing stress if it spends more than 30% of its income on housing costs and has an income in the lowest 40% of the national income distribution.[65] Such households have less income available for other necessities and may be less able to maintain a modest standard of living.[66] Some housing providers reduce rents or other housing charges to ensure housing costs do not exceed 30% of household income. The Commissioner accepts that this approach is generally consistent with a charitable purpose of relieving poverty. [67]

46. However, households with incomes above the lowest 40% of the national income distribution may also be experiencing poverty and may therefore require housing assistance.[68] Although the 30/40 rule can be a useful indicator, it does not take into account:

    (a) differences in household compositions

    (b) geographic variations in housing and living costs, or

    (c) the impact of significant non-housing expenses, such as medical costs or work-related travel expenses.

47. The Commissioner therefore does not regard the 30/40 rule as determinative of if a household is experiencing poverty. Instead, it is one of a range of factors that may be considered when assessing if a housing provider has a purpose of relieving poverty.

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[61] Ibid 668 (Eve J).

[62] *Community Housing Ltd v Clarence Valley Council* (2015) 90 NSWLR 292 ('*Community Housing Ltd*').

[63] Ibid 302 [52] (Leeming JA; Gleeson and Basten JJA agreeing).

[64] Ibid 305 [67] (Leeming JA; Gleeson and Basten JJA agreeing).

[65] Judith Yates, 'Housing affordability and financial stress' (Research Paper No. 6, National Research Venture 3: Housing affordability for lower income Australians, Australian Housing Urban Research Institute, Sydney Research Centre, October 2007). See also Australian Bureau of Statistics, 'Housing, Survey of Income and Housing, User Guide, Australia', *Housing* (Web Page, 28 April 2022).

[66] Australian Housing and Urban Research Institute, 'Understanding the 30:40 indicator of housing affordability stress' (Web Page, 23 May 2019).

[67] This is assuming that the households are unable to provide a modest standard of living in the applicable Australian community.

[68] *Community Housing Ltd* (n 62), 306; Australian Housing and Urban Research Institute, 'What is the difference between social housing and affordable housing – and why do they matter?' (Web Page, 28 February 2023).

Relief of distress or disadvantage by the provision of housing

48. The Commissioner recognises that the provision of housing may be a means of relieving distress.

49. The Commissioner also recognises that housing disadvantage is not limited to the poorest households. Housing provided for charitable purposes may address the physical, social or psychological needs of individuals or families, or other forms of special disadvantage.[69] However, 'disadvantage' in this context means a disadvantage that is more than the challenges ordinarily experienced by the public.[70] For example, general housing affordability pressures do not, of themselves, constitute disadvantage.[71]

50. Examples of where housing provision may relieve distress or disadvantage include:

    (a) crisis accommodation to people escaping family violence[72]

    (b) temporary housing to people whose homes have been destroyed following a natural disaster[73]

    (c) short-term accommodation for people seeking asylum or newly arrived refugees

    (d) housing support for people leaving out of home care, including foster care, relative or kinship care and residential care[74]

    (e) housing support to veterans for veterans facing barriers to accessing safe and suitable housing

    (f) housing support for older women experiencing housing need,[75] and

    (g) accommodation for people leaving prison, including transitional housing and residential support (sometimes referred to as halfway houses).[76] People with a history of imprisonment may face barriers to securing housing because of stigma, even where they have sufficient income to rent accommodation in the private market.

Addressing disadvantage experienced by Aboriginal and Torres Strait Islander peoples by the provision of housing

51. Where a housing provider has a purpose of addressing disadvantage experienced by Aboriginal and Torres Strait Islander peoples by providing housing, the Commissioner will generally accept that the provider has a charitable purpose of relieving disadvantage.[77]

52. In *Bodalla Aboriginal Housing Co Ltd v Eurobodalla Shire Council*,[78] Preston CJ observed that the provision of 'housing for persons of Aboriginal descent' 'has been held to be sufficiently

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[69] Addendum to the *Charities Bill EM*, [1.125A].

[70] Ibid.

[71] Ibid.

[72] The provision of housing in this context could equally be for the purpose of relief of poverty: *YWCA Australia* (n 56), [58].

[73] *Re Darwin Cyclone Tracy Relief Trust Fund* (1979) 39 FLR 260.

[74] The provision of housing in this context could equally be for the purpose of relief of poverty or for the purpose of caring for, supporting and protecting children and young people.

[75] The provision of housing in this context could equally be for the purpose of relief of poverty.

[76] The provision of housing in this context could equally be for the purpose of relief of poverty or caring for, supporting and protecting children and young people.

[77] See, e.g., paragraphs 52 and 53; *YWCA Australia* (n 56), [46]. Please also see *Australian Charities and Not-for-profits Commission, Commissioner's Interpretation Statement: Indigenous Charities* (Commissioner's Interpretation Statement, 19 May 2025) ('*Indigenous Charities CIS*').

[78] *Bodalla Aboriginal Housing Co Ltd v Eurobodalla Shire Council* (2011) 184 LGERA 315.

analogous to the first head of charity of relief of poverty … so as to be classified as charitable'.[79]

53. In *Aboriginal Hostels Ltd v Darwin City Council*,[80] Nader J held that the purposes of Aboriginal Hostels Ltd, a company established to maintain and manage Aboriginal hostels and related social, recreational, health and welfare facilities, were charitable.[81]

54. The provision of home ownership opportunities for the purpose of addressing disadvantage experienced by Aboriginal and Torres Strait Islander peoples may be charitable.

Factors relevant in determining the relief of poverty, distress or disadvantage by the provision of housing

55. A range of factors may be relevant in determining if a person is experiencing poverty, distress or disadvantage such that they require housing assistance. These factors include:

    (a) their income and assets[82]

    (b) any specific distress or disadvantage they have experienced (for example, the need for refuge or crisis accommodation when escaping family violence)

    (c) their eligibility for government assistance relevant to the relief of poverty, such as means-tested social security payments, rent assistance or social housing[83]

    (d) their dependents and their dependents' needs[84]

    (e) the cost of meeting other necessities of life[85]

    (f) the suitability of their existing accommodation, including its condition/state of repair and any overcrowding

    (g) their ability to sustain a tenancy or live independently without appropriate support

    (h) any demonstrated long-term barriers to accessing or maintaining housing, including discrimination

    (i) their need to obtain accommodation in a particular location or surrounding area – for example, to maintain employment or to access health services, and

    (j) the cost and availability of housing in that location, and the income required to obtain and maintain suitable accommodation there.

56. In assessing if a housing provider is relieving poverty, distress or disadvantage through the provision of housing, the Commissioner will consider the extent to which the provider takes the factors in paragraph 55 into account.

57. The Commissioner recognises that changing housing market conditions may make it difficult for some households to obtain suitable housing in the area where they need to live. While some households may be able to relocate to a more affordable area, relocation or extended

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[79] Ibid 325 [34].

[80] *Aboriginal Hostels Ltd v Darwin City Council* (1985) 33 NTR 1.

[81] Ibid 18.

[82] *Common Equity Housing Ltd v Commissioner of State Revenue* (1996) 33 ATR 77 ('*Common Equity Housing*'); *Mary Clark Home* (n 56).

[83] The Commissioner considers this to be a relevant factor because eligibility for means tested social security payments is generally indicative of 'poverty' in a legal sense, as is eligibility for rent assistance or social housing.

[84] The Commissioner considers that this factor is relevant to determining the level of resources required to deliver accommodation that would provide a modest standard of living in the Australian community for a given household.

[85] The Commissioner considers that this factor is relevant to determining whether overall, the cost of providing the necessities of life, including housing, is such that a modest standard of living is unable to be achieved.

commuting may not be reasonable in all circumstances. Accordingly, a household's need to live in a particular location may be relevant in determining if it is experiencing poverty, distress or disadvantage.

58. Significant differences exist between the various housing markets – rural, regional, remote and metropolitan areas each have their own unique, local conditions. Accordingly, the Commissioner accepts that local conditions – including income levels, housing costs and housing availability – may be more relevant than national averages when assessing if housing relieves poverty, distress or disadvantage.

59. The Commissioner considers that a charity's Responsible People are generally best placed to assess:

(a) a household's need to live in a particular location, or

(b) if it would be reasonable for an individual or a household to relocate for suitable housing.[86]

60. However, Responsible People should be aware that they cannot make the assessments featured in paragraph 59 in a reckless or careless way. Instead, Responsible People need to exercise appropriate judgement and decision-making. In this instance, a housing provider should take the factors in paragraph 55 into account. Ultimately, an assessment by a charity's Responsible People is more likely to be made with appropriate judgement and decision-making if an outside observer could be satisfied that such an assessment appears to be informed and rational.

Caring for and supporting the aged or individuals with disabilities by the provision of housing

61. The charitable purpose of advancing social or public welfare includes the purposes of caring for and supporting:

(a) people who are aged, and

(b) individuals with disabilities.[87]

62. In the absence of evidence to the contrary, courts have generally presumed that a gift or disposition for the benefit of people of advanced age is directed towards relieving needs arising from old age.[88] However, where a benefit is not intended to address needs associated with the beneficiaries' age, the purpose is unlikely to be charitable.[89]

63. The provision of housing by not-for-profit retirement living and aged care providers may relieve needs arising from old age and therefore further a charitable purpose.[90]

64. Providing additional services, such as meals or assistance with shopping and other daily necessities, may also further that charitable purpose. Some services that might be regarded

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[86] See, e.g., *Mary Clark Home* (n 56), 656-657, where Channell J – in considering whether a housing program was for the relief of poverty – noted that, in his view, '*… the trustees are the judges as to whether they are poor, subject only to their decision being reviewed if they go outside anything which can possibly be considered to be poverty*', and '*… it must be for the trustees or for those who admit these ladies, and who admit them solely on the ground that they are poor, to judge in the first instance whether they are poor in the proper sense of the term*'.

[87] *Charities Act* (n 2) s 15(2).

[88] *Law of Charity* (n 24), [8.31], citing *Hilder v Church of England Deaconess Institution Sydney Ltd* [1973] 1 NSWLR 506, 512 (Street CJ); *Trustees of Church Property of the Diocese of Newcastle v Lake Macquarie Shire Council* [1975] 1 NSWLR 521 ('*Diocese of Newcastle*'), 524 (Moffitt P); *West Australian Baptist Hospital & Homes Trust Inc v City of South Perth* [1978] WAR 65, 72 (Lavan SPJ).

[89] Cf *Diocese of Newcastle* (n 88), 533–4 (Hutley JA).

[90] Ibid.

as non-essential, such as recreational or entertainment activities, may be incidental or ancillary to the purpose of caring for and supporting the aged and will not necessarily prevent a housing provider from being charitable – it is considered in a holistic way and on a case-by-case basis.[91]

65. Similarly, in the absence of evidence to the contrary, providing housing to relieve the needs of people living with disabilities will be in furtherance of a charitable purpose.[92]

Selecting housing beneficiaries

66. A housing provider should clearly identify the charitable purpose it is furthering when determining, through its selection criteria, if an individual or household is eligible to receive housing or housing-related support.

67. A housing provider may:

    (a) develop its own selection criteria, taking into account the factors set out in paragraph 55, or

    (b) adopt criteria consistent with a State or Territory social housing assistance program – including public or community housing – in the jurisdiction where the housing is provided.

68. In the absence of evidence to the contrary, the Commissioner accepts that households eligible for social housing in the relevant jurisdiction are likely to be experiencing poverty, distress or disadvantage and may therefore be selected as beneficiaries in furtherance of a charitable purpose.

69. Selection criteria may allow for temporary changes in a household's circumstances. For example, a housing provider may continue to provide housing to a household whose income, assets or eligibility for government assistance has changed, where the household is nevertheless experiencing, or at risk of experiencing, poverty, distress or disadvantage.

70. The Commissioner recognises that many housing providers seek to provide secure and stable housing. Accordingly, it may be necessary to be flexible in applying selection and eligibility criteria.[93] Long-term housing arrangements and security of tenure may also be necessary to meet the needs of particular beneficiaries.[94]

71. An organisation applying for charity registration should provide evidence of the selection criteria and any ongoing eligibility criteria it uses to ensure they provide housing in furtherance of a charitable purpose.

72. Housing providers applying for, or maintaining, charity registration must comply with the record-keeping requirements in the ACNC Act.[95] These requirements include keeping and maintaining financial and operational records for at least seven years,[96] to help the ACNC or the Australian Taxation Office to conduct 'recognised assessment activities'[97]. Housing

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[91] Ibid.

[92] *Cram Foundation v Corbett-Jones* [2006] NSWSC 495; *Taylor v Taylor* (1910) 10 CLR 218. Additionally, *Charities Bill EM* (n 12) [1.124] states that the purpose of advancing social or public welfare includes 'providing housing and accommodation support for people with special needs or who are otherwise in a special disadvantage in terms of their access to housing.

[93] See *Common Equity Housing* (n 82), 93.

[94] *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General* [1983] 1 All ER 288 ('*Rowntree*'), 299.

[95] *ACNC Act* (n 1) div 55.

[96] Ibid s 55-5.

[97] *ACNC Act* (n 1) s 55-10 says that a recognised assessment activity in relation to an organisation that is registered as a charity with the ACNC is:

providers that are registered as charities should therefore retain records of their selection criteria, ongoing eligibility criteria and decisions made under those criteria, and provide those records to the ACNC if requested.

PART D: TYPES OF HOUSING PROVIDED

Generally

73. Whether a housing provider is charitable depends on the purpose for which it provides housing, rather than the type or form of housing provided.

74. Part D considers the following types and forms of housing:

    (a) social housing

    (b) affordable rental housing

    (c) key worker housing

    (d) home ownership schemes, and

    (e) mixed-tenure, or multi-tenure, developments.

Social housing

75. The Commissioner recognises that, due to limited availability, social housing is increasingly directed towards people experiencing acute or significant need.

76. In almost every case, an organisation that provides social housing will be furthering the charitable purpose of advancing social or public welfare.

Affordable rental housing

77. Many households that may previously have been able to meet their housing needs through social housing no longer qualify because of competing demands on the sector, including limited supply and lengthy waiting lists. Similarly, some households that could previously access the private rental market may no longer be able to afford suitable housing in the areas where they need or wish to live.

78. Affordable rental housing can help address this gap as well as respond to broader housing affordability challenges. However, its provision will not necessarily further a charitable purpose. For example, where discounted housing is provided to tenants who do not have a recognised charitable need, or who are not selected through a transparent needs-based assessment process, the housing is unlikely to further the charitable purposes of relieving poverty, distress or disadvantage (or another charitable purpose). In these circumstances, the housing provider may instead be pursuing a non-charitable purpose of conferring private benefits.

- an activity carried out by the Commissioner of the ACNC involving assessment of the organisation's entitlement to registration as a type or subtype of entity; or
- an activity carried out by the Commissioner of the ACNC involving assessment of the organisation's compliance with the ACNC legislation; or
- an activity carried out by the Commissioner of Taxation involving assessment of the organisation's compliance with any taxation law.

79. Regardless, affordable rental housing may further the charitable purpose of advancing social or public welfare where it is provided to individuals or households experiencing the types of need described in this Statement.

80. The Commissioner recognises that some households eligible for affordable rental housing programs may be experiencing poverty. If affordable rental housing is provided for the purpose of relieving poverty, the rent must be set at a level sufficiently below market rent to relieve that poverty. Whether a particular discount is sufficient will depend on the circumstances. For example, a 25% discount to market rent may, in some locations, still leave a household unable to maintain a modest standard of living. In such cases, a greater discount may be required.

Key worker housing

81. Some housing programs target key workers. The provision of key worker housing may further a charitable purpose of advancing social or public welfare where:[98]

(a) eligible key workers are experiencing poverty, distress or disadvantage of the kind described in this Statement, or

(b) providing housing to key workers directly furthers a charitable purpose. For example, housing may be provided to aged care workers to support the charitable purpose of caring for and supporting the aged, or to disability support workers to support the charitable purpose of caring for and supporting individuals with disabilities, or

(c) the housing is provided as part of a commercial activity undertaken to generate funds for the organisation's charitable purposes (see paragraphs 102 to 112).

82. Difficulties accessing affordable housing are not unique to key workers. In assessing if a key worker is experiencing poverty, distress or disadvantage for the purposes of paragraph 81(a), the Commissioner will consider the factors set out in paragraph 55. Accordingly, housing providers should adopt appropriate eligibility criteria to assess if key workers are experiencing poverty, distress or disadvantage.

83. For the purposes of paragraph 81(b), the Commissioner considers that key worker housing may further a charitable purpose where:

(a) there is a shortage of workers – or difficulty recruiting or retaining suitably qualified workers – to provide the relevant services

(b) providing housing assists in addressing that shortage by enabling key workers to access suitable accommodation that provides a modest standard of living in an area where they may reasonably be expected to live, and

(c) appropriate controls are in place to ensure the housing is provided only while the occupants remain engaged as key workers.

84. In these circumstances, the Commissioner considers that key worker housing may advance social or public welfare by:

(a) supporting the delivery and continuity of important community services,

(b) ensuring workers are available when needed, including on an on-call basis or at short notice,

[98] A housing provider may also provide key worker housing for other charitable purposes or in a manner that is incidental or ancillary to and in furtherance of the community housing provider's purpose of advancing social or public welfare. The provision of housing for other charitable purposes is beyond the scope of this Statement.

(c) improving the recruitment and retention of experienced workers,

(d) reducing stress and fatigue associated with long commutes, and

(e) enhancing community wellbeing, workplace safety and the quality of essential services.[99]

85. Where key worker housing is provided in the circumstances described in paragraph 81(b), the key workers are not necessarily the intended beneficiaries of the charitable purpose. In these cases, the Commissioner will generally regard any benefit received by the key workers as incidental or ancillary to, and in furtherance of, the relevant charitable purpose.

86. Conversely, where key workers are selected solely because of their occupation, without regard to the considerations in paragraphs 81 to 83, this may indicate that the housing is not provided in furtherance of a charitable purpose. It may also indicate that the housing provider is conferring private benefits on key workers that are more than incidental or ancillary, or pursuing a separate non-charitable purpose of providing private benefits to individuals.[100]

87. The Commissioner acknowledges that key worker housing may be built and delivered in order to further one or more charitable purposes that are themselves not 'social or public welfare' charitable purposes. [101]

Home ownership schemes

88. A charity may establish and operate a home ownership scheme in furtherance of the charitable purpose of advancing social or public welfare.[102]

89. A key consideration is if the intended beneficiaries have a recognised charitable need that the scheme seeks to relieve. In this context, a charitable need is something more than challenges commonly experienced by the public, such as difficulty purchasing a home in a desirable location.[103]

90. In *Joseph Rowntree Memorial Trust Housing Association Ltd v Attorney-General*,[104] it was held that schemes enabling elderly people to purchase interests in specially designed dwellings were charitable. The schemes involved the construction of small self-contained dwellings for sale to elderly people on long leases in consideration of a capital payment.

91. The court there observed that:

> [t]he word 'relief' [in the charitable purpose of 'the relief of aged, impotent or poor persons'] implies that the persons in question have a need attributable to their condition as aged, impotent or poor persons which requires alleviating, which those persons could not alleviate, or would find difficulty in alleviating themselves from their own resources. The word 'relief' is not synonymous with 'benefit'.[105]

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[99] See, e.g., Australian Housing and Urban Research Institute, '[Final Report No. 355: Housing key workers: scoping challenges, aspirations, and policy aspirations for Australian cities](https://www.ahuri.edu.au/research/final-reports/355)' (Research Paper, May 2021) <https://www.ahuri.edu.au/research/final-reports/355>.

[100] Cases about professional and member-based associations and purposes that involve industry and commerce do illustrate how incidental private benefit can be identified. See, e.g., *Victorian Women Lawyers' Association* (n 13), *Re Chamber of Commerce and Industry of Western Australia (Inc) and Commissioner of State Revenue* [2012] WASAT 146.

[101] For example, key worker housing may be built and delivered in order to further the charitable purposes of advancing health and advancing education – such as housing for health workers or teachers.

[102] *Law of Charity* (n 24), [8.13].

[103] Addendum to the *Charities Bill EM*, [1.125A].

[104] *Rowntree* (n 94).

[105] Ibid 295.

92. The schemes in *Rowntree* were designed to address the housing needs of older people who were not eligible for specialist housing provided by local authorities. The schemes were crafted to help elderly people purchase an interest in property that would provide them with protection from inflation. The Court was satisfied that the provision of age-appropriate housing, coupled with a structure that enabled beneficiaries to acquire an interest in the property, relieved needs arising from old age and was therefore charitable.

93. Where a home ownership scheme is pursued for the relief of poverty, the focus is on the needs of those eligible to participate and their ability to meet those needs. A person who can afford suitable rental accommodation that provides a modest standard of living in an area where they may reasonably be expected to live will not necessarily be experiencing poverty.[106] These people may still need financial assistance, but it does not mean that they are in poverty.[107] In this context, the relevant need is access to suitable housing, not home ownership itself.

94. Consistent with the factors set out at paragraph 55, relevant considerations include:

(a) whether a person needs to live in a particular location, and if relocation or commuting would be unreasonable,

(b) the availability and affordability of suitable rental accommodation in that location and surrounding areas, and

(c) whether home ownership is a more appropriate or necessary means of addressing a particular need, including in cases of entrenched or intergenerational poverty.

95. The Commissioner accepts that, in some circumstances, a person or household may be experiencing poverty, distress or disadvantage despite having the capacity to meet mortgage repayments or contribute a deposit, particularly under a shared-equity arrangement. For example, it may be appropriate to consider if a beneficiary could otherwise obtain housing only through financing arrangements that would exacerbate or entrench their poverty, distress or disadvantage.

96. The Commissioner also recognises that, in some circumstances, facilitating home ownership may be an efficient and cost-effective means of addressing housing need, particularly when compared with providing long-term rental assistance. [108]

97. However, providing housing through a home ownership scheme may indicate a non-charitable purpose if it confers private benefits that are more than incidental or ancillary to a charitable purpose.[109] Housing providers may reduce this risk by adopting safeguards such as:

(a) restrictions on disposal of the property during the repayment period, or on the death of the beneficiary, including provisions governing the distribution of sale proceeds,

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[106] *Queenstown Lakes Community Housing Trust* [2011] 3 NZLR 502 (‘*Queenstown Lakes*’) [41] (MacKenzie J). Note: *Queenstown Lakes* was distinguished – but not on this point – by the Supreme Court of South Australia in *SAECCI SASC* (n 44), [152] and *South Australian Employers’ Chamber of Commerce and Industry Incorporated v Commissioner of State Taxation* [2019] SASFC 126, [226].

[107] *Re Gillespie (deceased)* [1965] VR 402, 408: *‘… it may be said with truth that all persons who are poor are in need of financial assistance but the converse is not true that all persons in need of financial assistance are poor or poor in the relevant sense. A person may for instance by reason of some emergency be in need of financial assistance but at the same time it could not be said of them that his state was one of poverty*.’

[108] *Rowntree* (n 94).

[109] *Queenstown Lakes* (n 106) [41], [71].

(b) limits on the deposit required from beneficiaries, recognising that a substantial deposit requirement may indicate that participants are not experiencing poverty,

(c) shared-equity arrangements under which both the charity and the beneficiary contribute equity and receive a proportionate share of sale proceeds, enabling the charity to recycle funds into future housing projects,[110]

(d) requirements that the property be used as the beneficiary's principal residence,[111] and

(e) for schemes directed to the relief of poverty, review mechanisms that apply if a beneficiary's financial circumstances improve to the point that they can access commercial finance.[112]

98. An example of the safeguard described in paragraph 97(a) is the United Kingdom decision in *Habitat for Humanity*.[113] In that case:

(a) a beneficiary who disposed of the property within 20 years was required to repay the loan together with a proportion of the property's market value determined by reference to the duration of the loan; and

(b) similar obligations applied on the death of the beneficiary or other disposition of the property.

Mixed-tenure (or multi-tenure) developments

99. A housing provider may develop a mixed-tenure development that offers housing at different rent levels. It is often readily apparent that lower-rent housing will further the charitable purpose of relieving poverty. If higher-rent housing is also intended to further the charitable purpose of relieving poverty:

(a) these tenants must also be experiencing poverty (albeit to a lesser degree), in which case the rent must be discounted in accordance with the principles set out in this Statement, or

(b) the housing must be provided as part of a commercial arrangement designed to generate funds for the housing provider's charitable purpose of relieving poverty. In these circumstances, the housing provider should be able to demonstrate a clear intention to generate funds for that purpose. Charging market rent may help to demonstrate that intention.

100. The Commissioner recognises that mixed-tenure developments may serve purposes beyond cross-subsidising social or affordable housing and expanding funding sources. For example, a housing provider may use a mixed-tenure development to avoid concentrating households experiencing poverty, distress or disadvantage in a single location, and to promote inclusion, amenity, liveability and community participation. This may involve charging different rents within the same development according to each household's level of charitable need, including higher, market rent for households not in charitable need and below-market rent for households that are.

101. The Commissioner cannot prescribe fixed rules regarding the scale of commercial activities, the structure of commercial arrangements, or the appropriate mix of housing tenures within

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[110] A similar arrangement was endorsed by the Court in *Rowntree* (n 94).

[111] Reasonable exceptions (for example, to seek medical treatment) may be contemplated.

[112] *Garfield Poverty Trust* [1995] 3 Decision of the Charity Commissioners 7; *Habitat for Humanity* [1995] 4 Decisions of the Charity Commissioners 13 (‘*Habitat for Humanity*’).

[113] *Habitat for Humanity* (n 112).

a development.[114] Instead, the relevant question is if, viewed holistically, the housing provider has exclusively charitable purposes. A housing provider may carry out a range of commercial activities and arrangements, or implement a range of tenure mixes, as long as these arrangements and mixes further, or are incidental or ancillary to, its charitable purposes (see paragraphs 7 to 12).

PART E: COMMERCIAL ARRANGEMENTS USED TO PROVIDE COMMUNITY HOUSING

Generally

102. The Commissioner recognises that providing housing, and associated tenant support services, for the charitable purpose of advancing social or public welfare often requires additional funding sources to remain financially sustainable. Rental income alone may be insufficient. Housing providers may therefore rely on a range of funding sources, including government funding, subsidies, land grants, tax and planning concessions, private finance and commercial activities.

103. Charities – including housing providers – may undertake commercial activities where those activities further their charitable purposes and any income generated is applied to their purposes.[115]

Examples of commercial arrangements

104. A housing provider may develop social, affordable or market-rate housing to generate income for its charitable purposes.

105. A housing provider may sell some dwellings at market rates to subsidise housing for people experiencing charitable need.

106. A housing provider may provide fee-for-service activities, such as property modification, maintenance, management or upgrade services.

107. A housing provider's commercial activities do not have to involve delivering housing. For example, a housing provider may operate a café, a car wash or real estate agency, where those activities are conducted to generate income that is applied to its charitable purposes.

108. A housing provider that undertakes commercial activities should be able to demonstrate that the profits generated are applied to its charitable purposes and do not indicate an independent non-charitable purpose.[116] Relevant evidence may include the matters referred to in paragraph 12 and financial records showing that profits from commercial activities are used to further the housing provider's charitable purposes.

109. Where a housing provider enters into commercial arrangements with public or private sector entities, it must ensure that those arrangements further its charitable purposes and that any private benefit is merely incidental or ancillary. Factors that may support this conclusion include:

    (a) the arrangements being entered into on arm's-length terms, or on terms more favourable to the housing provider

    (b) any financial returns to investors or funding partners reflecting a commercial return and their proportionate contribution to the project

    (c) the absence of substantially more economical or equally effective alternative financing or structuring options, and

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[114] See, e.g., *ACNC Regulations* (n 32) r 45.25 (ACNC Governance Standard 5).

[115] *Word Investments* (n 13), 221 (Gummow, Hayne, Heydon and Crennan JJ).

[116] That is, a purpose that is an end itself and not incidental or ancillary to and in furtherance of a charitable purpose.

(d) the housing provider taking reasonable steps to support its Responsible People to comply with their duties, and to act in furtherance of its charitable purposes. Reasonable steps may include:

   (i) implementing conflict of interest policies and procedures

   (ii) implementing policies and procedures for related-party transactions

   (iii) maintaining appropriate records, including records of decisions to enter into commercial arrangements

   (iv) obtaining independent professional advice

   (v) undertaking market benchmarking, and

   (vi) adequately documenting transaction terms.

110. Conversely, a housing provider that enters into commercial arrangements with public or private sector entities is less likely to be regarded as furthering its charitable purposes if:

(a) arrangements with third parties are not conducted on arm's-length terms or disproportionately favour investors or other parties

(b) related-party transactions are not managed in accordance with appropriate policies and procedures

(c) viable and acceptable alternative financing or transaction structures have not been adequately considered, suggesting that commercial objectives are driving the arrangement rather than charitable outcomes

(d) the organisation has not taken reasonable steps to ensure compliance with Governance Standard 5, or

(e) a for-profit entity or private individuals exercise substantial control over the organisation's governance or operations, or the Responsible People are accustomed to acting in accordance with their wishes.

111. To satisfy the public benefit requirement, a charity must not provide payments or benefits to third parties, including officers,[117] suppliers and associates, that exceed what is reasonable in the circumstances.[118] Even where a commercial activity generates funds for charitable purposes, excessive or non-commercial payments, fees or investment returns may constitute a distribution of profits before those funds are applied to charitable purposes.[119] In such circumstances, the organisation may not satisfy the public benefit requirement and may not be eligible for registration as a charity.

112. Housing providers may need to obtain professional advice regarding the scale, structure or operation of commercial activities and arrangements to assist their Responsible People to make decisions in good faith and furtherance of the organisation's charitable purposes.[120] This may be particularly relevant where housing is developed, delivered and provided through a multi-party SPV.

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[117] This may include remuneration of key management personnel. Further to *ACNC Regulations* (n 32) r 60.30 (and subject to limited exemptions), medium registered entities that are required to prepare general purpose financial statements and large registered entities must report key management personnel remuneration. See [Key management personnel remuneration | ACNC]() for further ACNC guidance.

[118] *Charities Bill EM* (n 12), [1.69].

[119] *Charities Act* (n 2) s 6(3); *Law of Charity* (n 24), [2.17], [3.25] – [3.29].

[120] See, e.g., *ACNC Regulations* (n 32) r 45.25 (ACNC Governance Standard 5). See also Protection 1 in *ACNC Regulations* (n 32) r 45.105. This protection for relying on information or advice provided by experts is also found in *Corporations Act* (n 40) s 189.

Multi-party Special Purpose Vehicles (SPVs)

The operating environment

113. The Commissioner recognises that changes in the operating environment and available funding models may lead new and existing housing providers to establish SPVs with multiple participants, including investors. An SPV is a separate legal entity established for a specific purpose or project. This section provides guidance on multi-party SPVs, which are also sometimes referred to as consortia or project groups.

114. Multi-party SPVs raise distinct issues and risks that differ from those associated with other investment structures, including other types of SPVs. This Statement focuses on multi-party SPVs because they are currently the investment structure the ACNC most commonly sees.

115. While other investment structures are not specifically considered in this Statement, the Commissioner will assess them on a case-by-case basis using the legal principles set out in this Statement.

Governance and contractual considerations for establishing or participating in multi-party SPVs

116. The complexity of multi-party SPVs, and the projects and legal structures through which they operate, can create additional risks for charities that establish or participate in them.

117. However, taking on risk does not, of itself, prevent an organisation from being charitable. As one court observed in relation to a charity involved in aged care SPV arrangements, Responsible People are 'not under a duty to avoid incurring risks, which are an inevitable aspect of buying and selling land, constructing buildings, and providing facilities and services to the aged and infirm'.[121]

118. While multi-party SPVs may facilitate growth in the delivery of social and affordable housing, for the ACNC, they also come with risk of benefits accruing primarily to non-charitable participants, including investors. To address this risk, Responsible People must act in good faith and in the best interests of the charity housing provider, and consider if participation in a multi-party SPV furthers the provider's charitable purposes or instead primarily benefits private parties. [122]

119. In assessing whether to establish or participate in a multi-party SPV, relevant considerations may include:

    (a) selecting appropriate partners

    (b) negotiating appropriate contractual terms, including the allocation of risk and arrangements applying at the conclusion of the project, funding arrangement or collaboration

    (c) managing financial, operational and reputational risks, including the organisation's ability to meet any repayment obligations while continuing to pursue its charitable purposes and deliver appropriate outcomes for beneficiaries, and

    (d) establishing appropriate governance arrangements, including arrangements to manage conflicts of interest[123] and ensuring the board has the necessary composition, skills and capacity with regard to the project's size and complexity.

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[121] *Catalyst Townsville SPV No 1 Pty Ltd v The Presbyterian Church of Queensland (receivers and managers) appointed* [2025] QSC 255 ('*Catalyst Townsville*'), [125].

[122] See also paragraph 1121 of this Statement.

[123] See *ACNC Regulations* (n 32) r 45.25(2)(e), which sets out a core governance duty: '*to disclose perceived or actual material conflicts of interest of the responsible entity*'.

120. The ACNC's guidance on governance practices for complex structures may help charities considering whether to establish or participate in a multi-party SPV.

Registration of multi-party SPVs as charities

121. Some multi-party SPVs may apply for registration as charities, but a multi-party SPV is not charitable merely because it is controlled by, or associated with, a charity.[124] A multi-party SPV's eligibility for registration depends on its own purposes, not the purposes of its members or associates.

122. Similarly, a multi-party SPV is not charitable merely because it makes distributions to charitable members. However, a multi-party SPV may have a charitable purpose if, when viewed holistically, its purpose is to provide financial or other support in furtherance of charitable purposes through commercial housing activities and the application of profits to those purposes.

123. Conversely, a multi-party SPV may have an independent non-charitable purpose where a holistic assessment indicates that it was established primarily to confer private benefits on third parties, including investors, members or founders. In these circumstances, the private benefit will not be incidental or ancillary to a charitable purpose.

Governance and contractual considerations for charitable multi-party SPVs

124. Governance and contractual arrangements for multi-party SPVs can be complex. The following considerations may assist charities in deciding whether to establish or participate in a multi-party SPV and may be relevant to the ACNC's assessment of a multi-party SPV's eligibility for registration as a charity.

125. Investors in a charitable multi-party SPV should consider the nature of their contribution and the terms on which any debt finance is provided. Debt financing arrangements should generally be fair, reasonable and consistent with commercial market practice.

126. A multi-party SPV seeking registration as a charity must consider the extent to which it can issue equity interests to investors. Consistent with the not-for-profit requirement, a charitable multi-party SPV cannot issue ordinary equity that enables investors to receive private profits in their capacity as members. [125] However, alternative financing arrangements that do not confer such rights may be compatible with charitable status.[126] The Commissioner will assess financing arrangements on a case-by-case basis, having regard to the principles set out in this Statement.

127. Where a charitable multi-party SPV enters into a financing arrangement with features of both debt and equity, the arrangement should be:

    (a) properly characterised as a loan that includes a contractual obligation to repay the principal; and

    (b) entered into on arm's-length terms, or on terms more favourable to the charitable multi-party SPV.

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[124] *Charities Bill EM* (n 12), [1.43].

[125] See paragraphs 23 to 26 for further guidance on the not-for-profit requirement.

[126] Cf *Catalyst Townsville* (n 121), [432], *where* The Presbyterian Church of Queensland implemented alternative financing options because they *'… had explored traditional bank finance options as a means of funding ambitious plans to expand its aged care offering. They knew of the option to defer those plans (or revise them) until traditional funding sources became available.'*

Financing arrangements that do not have these characteristics may be inconsistent with ongoing eligibility for charity registration.

128. Responsible People of a charitable multi-party SPV must act in good faith in the SPV's best interests and to further its charitable purposes. This duty is particularly important in ensuring that the SPV is not operated for the purpose of conferring private benefits on investors or other non-charitable participants.

129. A charitable multi-party SPV should consider if housing assets intended for social or affordable housing may be converted to another use, such as market-rate housing, during the life of a project or funding arrangement. Where a change of use is contemplated, the SPV should be able to demonstrate how that change furthers its charitable purposes.

130. A charitable multi-party SPV should also consider what will happen to its assets when a funding arrangement ends or the SPV is wound up. In some cases, assets may be transferred to another charitable housing provider so that they continue to be used for charitable purposes.

131. Where assets are sold or otherwise divested before winding up, and sale proceeds are distributed to members or returned to investors, the SPV must be able to demonstrate that the arrangement furthers its charitable purposes and is consistent with its not-for-profit character. Any distribution must not be made to members in their capacity as members, unless those members are charities and the distribution is made in furtherance of charitable purposes.

PART F: INFORMATION ON HOW THE ACNC WILL APPLY THIS STATEMENT, INCLUDING EXAMPLES

Applying, reviewing and updating this Statement

132. Consistent with the ACNC Regulatory Approach Statement, the Commissioner will ensure that charities relying on this Statement are treated fairly. Where the law or this Statement changes, the revised position will generally be applied prospectively, rather than retrospectively, and charities will ordinarily be given a reasonable opportunity to respond to the change.

133. Any review of this Statement will be guided by the principles set out in the Corporate Policy: ACNC Policy Framework.

Examples

134. The following examples illustrate how the Commissioner will apply the principles in this Statement. They are not exhaustive.

Example 1 – factors relevant to determining poverty, distress or disadvantage

Organisation A's objects are to relieve poverty, distress and disadvantage through the provision of discounted rental accommodation to people in need.

In one of the large regional centres where the organisation operates, there is limited private rental accommodation available and the market rent is well above the state average.

Organisation A prioritises tenants that meet eligibility rules for its dwellings in this regional centre. These rules include income limits and asset thresholds that are higher than the state social housing thresholds, and which also consider a tenant's need to live in that location – for example, a need to live close to health and other essential support services, or to a place of work.

The organisation submits that tenants who meet its eligibility criteria are unable to draw upon their own resources to fund safe and suitable accommodation that would give them a modest standard of living in this regional centre.

Organisation A is likely to be a charity with an 'advancing social or public welfare' purpose.

It is also likely to be eligible for registration as a charity with the 'advancing social or public welfare' subtype, as well as being likely to be eligible for registration as a charity with the 'Public Benevolent Institution' charity subtypes, assuming it met all the other requirements to be a PBI.

Organisation A provided adequate information to demonstrate its tenant selection criteria focused on people experiencing poverty, distress or disadvantage, in line with the factors set out in paragraph 55 – including local context and a household's need to obtain accommodation in that location.

Example 2 – home ownership

Organisation B's objects are to relieve poverty, distress or disadvantage by providing support to people in need so they can purchase their own home. The organisation's efforts focus particularly on families with single incomes and dependents.

Organisation B operates in an area where affordable rental accommodation and social housing are in very short supply. It has detailed selection criteria that focuses on households earning low incomes who are eligible for government assistance, and for whom relocating is not a reasonable alternative.

The organisation also provides savings programs and financial education programs. To participate in Organisation B's home ownership loan program, participants must:

- complete the financial educational programs
- meet modest deposit and income requirements to show they can service the mortgage
- meet ongoing review criteria, and
- comply with restriction on-sale limitations for a 20-year period.

Organisation B is likely to be a charity with an 'advancing social or public welfare' purpose.

It has provided evidence that participants in its program are experiencing poverty, and that rental accommodation or relocation are not reasonable alternatives.

The ACNC determined that any private benefit that participants may obtain is incidental and in aid of its charitable purpose. The home ownership scheme includes safeguards against excessive private benefits, including ongoing review criteria and restrictions on selling the property during the loan period.

Example 3 – home ownership

Organisation C's objects are to improve the economic circumstances of First Nations people and address inter-generational wealth disparity by providing them with housing grants.

The organisation offers financial literacy programs and undertakes advocacy to improve access to market home loans for First Nations people. It also provides modest grants to other First Nations people as part of a deposit assistance scheme.

Participants in the deposit assistance scheme must, among other things:

- currently be in receipt of government housing assistance
- not exceed specified asset thresholds and income limits
- meet at least one of the acute areas of housing need that Organisation C focuses on
- remain in the purchased property for a continuous period of 15 years,
- be able to obtain pre-approval for a mortgage (capped at a certain limit), and
- meet ongoing review criteria.

Organisation C is likely to be a charity with an 'advancing social or public welfare' purpose – and is also likely to be eligible for registration as a charity with the 'Public Benevolent Institution' charity subtypes, assuming it met all the other requirements to be a PBI.

Although the organisation does not use the language of poverty, distress or disadvantage in its governing document, doing so is not necessary when the organisation's charitable purpose is otherwise clear.[127]

Organisation C has appropriate criteria in place to ensure it targets people who are experiencing recognised charitable need. The ACNC determined that any private benefit that participants may obtain is incidental and in aid of the organisation's charitable purpose.

The home ownership scheme includes safeguards against excessive private benefits, such as ongoing review criteria and limitations on the use of the grant and sale of the property.

While participants can sell the property after 15 years, Organisation C has provided information about why facilitating home ownership for First Nations people is an effective way to address inter-generational poverty.

Example 4 – affordable housing

Organisation D's objects are to provide affordable housing to people in Australia. Its main activity is to deliver build-to-rent developments.

The organisation develops and owns residential apartment buildings, renting them out to tenants on a long-term basis. Organisation D's developments are described as premium or luxury developments that offer significant amenity to tenants.

The organisation offers tenants a 25% reduction on applicable market rents, describing this as an affordable housing arrangement.

Organisation D is unlikely to be a charity with an 'advancing social or public welfare' purpose.

While Organisation D may help people who are experiencing general issues with housing affordability, it has not provided any needs-based tenant selection criteria, nor has it demonstrated

[127] See *Indigenous Charities CIS* (n 77) for further guidance.

that its housing activities contribute to the relief of recognised 'social or public welfare' charitable need.

Example 5 – affordable housing and commercial activities

Organisation E is a registered charity and community housing provider with the relevant Community Housing Registrar. It has 'advancing social or public welfare' purposes.

Organisation E is participating in a multi-party SPV, known as Organisation F, with the same objects.

Organisation F is an Australian not-for-profit company limited by guarantee. With support from philanthropy, government and a private lender, Organisation F funds construction of a build-to-rent, mixed tenure development that includes social, affordable and market housing.

Organisation F expects to hold these social and affordable housing assets for at least 30 years, and it (or another registered charity that is part of the group) will deliver tenancy management services.

Organisation F's project includes tenant eligibility criteria for the social and affordable housing assets that align with factors for determining if a person is experiencing poverty, distress or disadvantage, as set out in paragraph 55.

The government finance is provided on concessional or below market terms. Organisation F undertakes appropriate due diligence, with support from professional advisers, to negotiate finance from private lenders that is at market rates or at rates more favourable to Organisation F.

The organisation appropriately records the terms of all financial arrangements and its board's determination that the terms and target returns are suitable and reasonable given the private lenders' contribution to the project.

Organisation F's board is composed of directors with appropriate skills and experience, and Organisation F has in place appropriate governance procedures to support its board to make decisions in line with their core governance duties, including in relation to:

- the apportionment of risk
- a suitable mix of social, affordable and market housing to ensure Organisation F can meet repayment obligations, deliver strong tenant outcomes and meaningfully grow its social and affordable housing offering in furtherance of its charitable purpose
- how assets will be managed if the project is concluded, and
- how Organisation F will ensure that any profits will be used to further its charitable purpose.

Arrangements of this kind are complex and require a detailed assessment of the unique facts and circumstances.

Based on the high-level information above, there is nothing that would jeopardise Organisation E's existing charity registration with the ACNC or prevent Organisation F from registering as a charity.

Organisation F appears to have an 'advancing social or public welfare' purpose. To support the efficient assessment of applications of this kind, we recommend that applicants provide detailed submissions (for example, copies of underlying agreements between Organisation E and Organisation F, and details of whether these agreements are periodically reviewed, and the frequency with which the eligibility criteria of housing beneficiaries will be reviewed), including in relation to governance, tenant selection, tenancy management and financing.

See the ACNC's guidance on complex corporate structures, as well as our guidance on ACNC Governance Standard 5, for further information on issues relevant to this example.

Example 6 – key worker housing

Organisation G's objects include addressing housing disadvantage by providing housing to key workers in need of affordable housing because they:

- are in 'social or public welfare' charitable need; or
- are key workers that provide essential aged care and disability services.

Organisation G also provides housing to other beneficiaries that are not key workers, for the purpose of caring for and supporting the aged or individuals with disabilities.

The organisation builds housing projects in locations where there is a need for key workers, and where affordable housing shortages have undermined recruitment and retention of key workers.

A typical example of such a project is a housing development constructed on grounds next to a not-for-profit aged care facility. The housing provides a modest standard of living in the relevant location.

Organisation G is likely to be a charity with an 'advancing social or public welfare' purpose.

The tenants eligible for the key worker scheme are either themselves in charitable need or otherwise eligible recipients of affordable housing because of their aged care and disability services roles (see, for example, paragraph 81).

The aged care and disability services key worker scheme will also further the purpose of caring for and supporting the aged or individuals with disabilities.

It is important to note though that if Organisation G's key worker scheme is also open to key workers generally – that is, not just those who are in a 'social or public welfare' charitable need or in occupations that further a charitable purpose of advancing social or public welfare – then it will need to consider if this activity is in furtherance of a different charitable purpose, or is incidental or ancillary to its 'advancing social or public welfare' purposes.

Example 7 – key worker housing

Organisation H's objects are to advance social or public welfare through the provision of affordable key worker housing.

It builds a variety of key worker developments in areas across Australia where there are shortages of key workers in fields relevant to the purpose of advancing social or public welfare.

In some of those locations, housing affordability is an issue that contributes to the key worker shortages. However, in other locations, Organisation H has not identified that housing affordability is an issue contributing to the key worker shortages, and is unable to provide further information on this when requested by the ACNC during the charity registration process.

Also, a significant proportion of Organisation H's discounted key worker housing is provided to tenants that can afford to draw on their own resources to access suitable housing in each of the communities where Organisation H operates.

Organisation H is unlikely to be a charity with an 'advancing social or public welfare' purpose.

It is providing discounted housing to key workers who are not in recognised charitable need and, based on the information available, it appears that the private benefits to these key workers are not incidental or ancillary.

Organisation H is also providing discounted housing to key workers in circumstances where there is no evidence to support a finding that relevant worker shortages may be overcome or addressed through the provision of housing.

Therefore, the activity is unlikely to be for an 'advancing social or public welfare' purpose that benefits the public.

Version	*Date of effect*	*Brief summary of change*
Version 1 – Initial Statement	1 December 2014	Initial statement endorsed by the Commissioner on 1 December 2014
Version 2	5 November 2021	Main changes: Inclusion of new sections regarding home ownership and public benevolent institutions. Removal of content on charitable purposes other than advancing social and public welfare (advancing health, other beneficial purposes). Expansion of sections on relief of poverty, commercial activities, government housing schemes, not-for-profit and relationships with government Reorganisation of some of the content. Restructuring to merge the Statement and Appendix A into one consolidated Statement Extensive referencing and formatting changes.

Version 3	14 August 2026	Main changes: Renamed CIS from ‘Provision of housing by charities’ to ‘Community housing’ Inclusion of new sections regarding social housing, affordable housing, key worker housing, mixed-tenure developments, and multi-party SPVs. Inclusion of general content on charitable purpose, charity subtypes, public and private benefit, not-for-profit, ACNC Governance Standards. Expansion of content regarding social or public welfare purposes, commercial activities. Updates to reflect current case law. Reorganisation of some of the content. Reframing some of the content. Inclusion of examples. Extensive referencing and formatting changes.