Compendium of Feedback

Commissioner's Interpretation Statement: Community housing (CIS)

14 August 2026

The ACNC has completed its external consultation on the Housing CIS (**Consultation Draft**).

The ACNC appreciated the feedback on the Consultation Draft. Feedback helps the ACNC to prepare and refine its policies and guidance. In working to prepare the updated CIS, the ACNC has considered all of the feedback on the Consultation Draft.

This **Compendium of Feedback** sets out the key issues raised, and our responses. This Compendium of Feedback is a resource only – you cannot rely on this Compendium of Feedback for any purpose.

Please contact cis@acnc.gov.au if you have any questions in relation to:

(a) this Compendium of Feedback, or
(b) the updated CIS.

Summary of key issues raised, and the ACNC's response

Issue number	Issue description	Summary of issue raised	The ACNC's response
1.	**Definitions of key terms**	Some key definitions of terminology used in the Housing CIS ('social housing', 'affordable housing'), which are in later paragraphs in the Consultation Draft, should be moved to the front of the document.	We agree. This has been reflected in the updated Housing CIS, where key terms are set out in Part A.
2.	**Definition of key worker**	Given the variability in accepted definitions of the term 'key worker', the Housing CIS should be sufficiently flexible to allow community housing providers to take into account different geographic, economic, and social contexts, accounting for local priorities and local service delivery challenges.	We agree. This has been reflected in the definition of the term **key worker** in the updated Housing CIS. In the updated Housing CIS, we have added these sentences: "*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.*"
3.	**Public Benevolent Institution status**	In the Housing CIS, there should be more extensive treatment of whether a community housing provider can be a Public Benevolent Institution. The ACNC should reconsider the separate **Can a Public Benevolent Institution provide housing?** Section of the current Housing CIS, as many if not most housing providers are PBIs and the majority of the CIS references the relief of poverty, distress or disadvantage.	We have amended certain parts of the updated Housing CIS to acknowledge that many community housing providers will be Public Benevolent Institutions. We have deleted the separate **Can a Public Benevolent Institution provide housing?** section and have set out a more fulsome treatment of the issues, throughout the document.
4.	**Scope of Housing CIS**	Please can you provide us with further guidance on whether providing housing for charitable purposes other than the charitable purpose of 'advancing social or public welfare' is charitable? (for example: key worker housing for other, fourth-head purposes)?	We have left the scope of the Housing CIS unchanged. The reason we have focused on the purpose of advancing social or public welfare is, in the ACNC's experience, almost all community housing providers registered as charities with the ACNC have this charitable purpose.

5.	**Flexibility in 'relief of poverty' test**	In the Housing CIS, retaining some flexibility in the 'relief of poverty' test is important as policy work continues to examine the definitions of 'affordable housing' adopted around the country. A number of factors, including household structures and the relative burden of non-housing costs, may drive affordability. Flexibility in the 'relief of poverty' test is also important given different approaches to affordable housing regulation adopted across jurisdictions. Several factors including household structures and the relative burden of non-housing costs also impact affordability. The role of commercially viable affordable rental housing has evolved with changing housing market and economic conditions to provide access to secure housing for a broader range of tenants unable to access market rental housing. As noted above, Housing Australia's funding programs utilise median equivalised household income which extends beyond the "30/40 rule" for housing stress.	The updated Housing CIS does not inflexibly apply the 'relief of poverty' test and acknowledges that a range of circumstances can cause an individual or a household to be in poverty. The CIS states that while the "30/40 rule" is commonly used as an indicator of housing stress, it is not determinative.
6.	**Grace periods and flexibility for housing tenants**	Please can the Housing CIS provide for a "*grace period*" of up to two years for a charity to work with households that experience income growth to find suitable alternative accommodation without risking their charitable status. There is a risk of perverse outcomes where a household may be required to exit stable housing due to rising household income in order for a provider to maintain charitable status, and that household is subsequently placed in distress by virtue of their lease ending, possibly rendering them eligible but awaiting a vacancy.	The ACNC will not apply the updated Housing CIS inflexibly without regard to the practical realities of providing housing, and will determine the purposes of an organisation that provides housing with reference to all relevant circumstances – not just income thresholds.

7.	**Proportionate regulation**	The Housing CIS should acknowledge that the ACNC will regulate community housing providers proportionately, having regard to an organisation's size, scale, complexity and risk profile.	We agree. For example, we have inserted a new **ACNC Governance Standards** section into the updated Housing CIS, to acknowledge these issues.
8.	**Governance and compliance guidance for SPVs**	The Housing CIS should provide more guidance on governance and compliance considerations for Special Purpose Vehicles.	We have, throughout the updated Housing CIS, expanded our guidance on governance and compliance considerations for Special Purpose Vehicles.
9.	**SPVs other than multi-party SPVs**	The Housing CIS should provide more guidance on how the ACNC will treat SPVs other than multi-party SPVs. It is recommended that the section on SPVs be expanded to cover a broader range of SPVs, including wholly owned subsidiaries and different forms of multi-party SPVs.	We have focused in the updated Housing CIS on multi-party SPVs, as multi-party SPVs are the most common form of housing investment structure that the ACNC is encountering. Whilst the updated Housing CIS does not consider other forms of investment vehicles, other structures will be considered by the ACNC on a case-by-case basis and evaluated against the legal principles set out in the updated Housing CIS. We will continue to review the need for additional guidance in future.
10.	**Government**	The Consultation Draft suggests that government funding is neutral or may point away from an organisation having a charitable purpose. In fact, the opposite is true. Australian courts have recognised the significance of government funding in determining that a particular charity has charitable purposes for the public benefit.	We have considered the cases cited and have included commentary to acknowledge them in this context. We consider that the position regarding government funding is nuanced, and the existing content refers to the High Court case of *Central Bayside General Practice Association Ltd v Commissioner of State Revenue* [2006] HCA 43 as well. We have added to the **Connection with government** section of the updated Housing CIS, to take this feedback into account.
11.	**Aboriginal housing**	The Housing CIS should explicitly recognise that the provision of housing to Aboriginal people, to relieve Aboriginal disadvantage, is charitable.	We agree. There is now a separate **Addressing disadvantage experienced by Aboriginal and Torres Strait Islander peoples by the provision of housing** section in the updated Housing CIS.
12.	**Other dwelling types**	The Housing CIS should refer to other dwelling types so that the list of housing referred to in the updated Housing CIS is not exhaustive.	We agree and have made this change.
13.	**Community Land Trusts**	The Housing CIS should explicitly recognise community land trusts as a type of housing that is charitable.	We have not recognised specific types of housing as charitable, beyond the types of housing referred to in the

			updated Housing CIS. The ACNC will consider whether other types of housing are charitable, in line with the principles in the updated Housing CIS.
14.	***YWCA Australia v Chief Commissioner of State Revenue* [2020] NSWSC 1798**	In discussing whether housing is provided for the relief of poverty, the Housing CIS should refer more extensively to the seminal decision of the Supreme Court of New South Wales in *YWCA Australia v Chief Commissioner of State Revenue* [2020] NSWSC 1798, which provided a comprehensive treatment of the term "*relief of poverty*", but in a contemporary context.	We agree, in part. Where relevant, we have referred in the updated Housing CIS to *YWCA Australia*. We have also drawn readers' attention to our extensive comments on the term "*relief of poverty*" in the Commissioner's Interpretation Statement: Public Benevolent Institutions. Those comments should equally apply to the updated Housing CIS.
15.	**Not-for-profit – and private benefit**	The Consultation Draft's definition of "*not-for-profit*" conflates the not-for-profit requirement with the prohibition on private benefit.	We agree. We have amended the updated Housing CIS, so that the updated Housing CIS contains a detailed definition of the term "*not-for-profit*", for the purposes of Australian charity law.
16.	**Not-for-profit – distributions to members**	Insert the following words into the Housing CIS: *Where a housing provider's members are charities with substantially the same purposes, it will be consistent with carrying out the housing provider's purposes and the NFP requirement for the housing provider to support its members in their capacity as charities with similar purposes.*	We agree. We have inserted similar words into our detailed definition of the term "*not-for-profit*".
17.	**Private benefit and public benefit**	The Housing CIS should consolidate all of the Consultation Draft's discussion about private benefit and public benefit into one section.	We agree. This has been done.
18.	**Private benefit and home ownership**	Please can you update the Consultation Draft's home ownership guidance to make clear where the ACNC will accept that any private benefit is merely incidental. If possible, it would be helpful to have quantitative guidance for assessing private benefits - e.g. monetary or percentage thresholds for private benefits which are merely incidental.	The updated Housing CIS contains comments on when private benefit is incidental or ancillary to a charitable purpose. We recognise that quantitative guidance would provide greater clarity, but our view is that to do so would be inconsistent with Australian charity law. We take the view that the term "*incidental or ancillary*" does not mean minor in quantitative terms: per *Navy Health Ltd v Deputy*

			Commissioner of Taxation (2007) 163 FCR 1; [2007] FCA 931, [65].
19.	**Reasonableness**	The Consultation Draft continually suggests that there are areas or locations where a household can "*reasonably choose to live*" or that there are areas or locations that can be "*reasonably available alternatives*" to expensive accommodation. How does the ACNC determine whether something is "*reasonable*"? What is reasonable? The examples in paragraph 26 of the Consultation Draft seem to require a greater connection than is suggested by 'reasonably chooses' such as support or health services. Please provide more examples.	The ACNC considers that a charity's Responsible People are generally best placed to assess a household's need to live in a particular location, or whether if it would be reasonable for an individual or a household to relocate for suitable housing. However, Responsible People need to exercise reasonable judgement and decision-making.
20.	**Home ownership and *Re Queenstown Lakes Community Housing Trust* [2011] 3 NZLR 502**	The *Queenstown Lakes* decision has been disapproved in *South Australian Employers' Chamber of Commerce and Industry Incorporated v Commissioner of State Taxation* [2017] SASC 127 and *South Australian Employers' Chamber of Commerce and Industry Incorporated v Commissioner of State Taxation* [2019] SASFC 126. Consider whether this case should be relied on as a footnote as it may have been decided differently in Australia. NZ takes a narrower view of private benefit.	The ACNC believes that *Queenstown Lakes* remains good authority for the proposition that it makes in the updated Housing CIS. Whilst *Queenstown Lakes* was distinguished in *South Australian Employers' Chamber of Commerce*, it was not distinguished on the proposition that the ACNC makes in the updated Housing CIS.
21.	**Housing that is "*genuinely affordable*"**	The content stating or implying that housing providers must ensure that housing is "*genuinely affordable*" is confusing and unnecessary.	The section of the Consultation Draft that refers to "*genuinely affordable*" has been reworded. It now says that "*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*."
22.	**Tenant eligibility criteria**	It would be helpful to have a uniform set of social housing tenant eligibility criteria. Failing that, it would be helpful to list the criteria in each State and Territory as key information on housing registers (e.g. the	We are committed to collaborating with key stakeholders in the sector. It's also important that the CIS not refer to criteria that might be updated from time to time, so that the CIS remains current. We'll continue to collaborate with other

		Victorian Housing Register) to be able to connect with potential social housing tenancies and their respective agencies. Ongoing alignment with state and territory eligibility frameworks and NRSCH standards will reduce administrative burden and ensure consistent outcomes.	regulators to reduce administrative burden for charities where possible and we trust that this revision is a step in that direction.
23.	**Ongoing eligibility criteria**	The Consultation Draft says that: *Organisations that apply for charity registration should provide evidence of the selection criteria and ongoing eligibility criteria they use to ensure they provide housing for a charitable purpose. Charities that provide housing should retain evidence of their selection criteria and process for ongoing reviews and provide these to the ACNC if required.* It is recommended that references to ongoing eligibility be clarified or removed.	We believe that references to "*ongoing eligibility criteria*" reflect the law because charities must continue to remain entitled to registration as a charity. Housing providers that are registered as charities must continue to be eligible for charity registration and must continue to consider whether households that they provide housing to are in charitable need or are receiving market rent to generate income for charitable purposes. These ongoing eligibility criteria will be essential for the process of assessment and should be applied flexibly.
24.	**For-profit control of not-for-profit housing provider**	The Consultation Draft appears to suggest that the following factor: *an organisation's history of formation may be relevant where an existing for-profit property developer seeks to establish a not-for-profit housing organisation and to retain a strong level of control over the governance and operations of the not-for profit* could be determinative rather than one aspect of a holistic review. Many charitable SPVs are set up by for-profits with controls over governance and operations.	We agree. We have amended the updated Housing CIS to make clear that this factor is one of many factors that could affect whether a housing provider's commercial arrangements are less likely to be regarded as furthering its charitable purposes.
25.	**Commercial activities**	The statement in paragraph 110 of the Consultation Draft that "*Charitable status cannot be attributed to an*	We have clarified this statement. The updated Housing CIS makes clear that charities – including housing providers –

		organisation merely on the basis that it generates some funds for a charity." should be clarified so that it aligns well with *Commissioner of Taxation v Word Investments* (2008) 236 CLR 204.	may undertake commercial activities where those activities further their charitable purposes and any income generated is applied to their purposes, and also sets out generally how the ACNC will holistically determine an entity's purposes.
26.	**Commercial activities**	We recommend that the ACNC expand the guiding principles to assist housing providers to make sound judgements regarding the appropriate nature and scale of potential commercial activities.	We have set out the legal principles we will apply in assessing commercial activities. We recommend that housing providers consider this guidance and consider obtaining professional advice regarding particular ventures.
27.	**Winding up arrangements in SPVs**	The Housing CIS should clarify how the ACNC will treat distributions and winding-up arrangements in SPVs. Any distributions of sale proceeds of housing assets when the SPV winds up and assets are sold before winding up needs to be explained in the context of the NFP requirement - as distributions to members in their capacity as members may be acceptable if distributed to a member which is another charity in furtherance of the purposes.	We agree. We have amended the Housing CIS to reflect this.
28.	**Finance arrangements**	The Housing CIS should provide information about finance arrangements and whether particular complex finance arrangements are acceptable. There exist a variety of loan structures that range from traditional finance arrangements through to more complex financing instruments. Specific guidance about the types of financial instruments which may be incompatible with charity status would improve certainty for the community housing sector. The Housing CIS should also explain that charities should ensure the debt financing terms are fair and reasonable in the investment market.	We agree. We have provided further guidance on whether particular complex finance arrangements are acceptable for charity registration. We also agree that charities must enter into debt financing terms (if any) that are fair and reasonable in the investment market. We have also provided further guidance on if (and if so, how) equity finance is consistent with a charitable purpose and the requirement that a charity be a not-for-profit.

		The Housing CIS should clarify the extent to which charities can issue equity finance. In some situations, third parties provide entities with debt finance whilst taking some governance role in the charitable entity. Could we instead assess these projects on a case-by-case basis as part of a charity's operations, and to recognise the critical role that equity finance plays in the sector?	
29.	**Procurement templates**	It would be helpful to have annotated procurement templates for a charity's Responsible People to complete to record the procurement process which they undertook with (say) financiers.	While we recognise that this would be useful, it is not something that we can provide through a Commissioner's Interpretation Statement which is intended to set out the Commissioner's interpretation of the law. Other bodies may be better placed to provide these resources.
30.	**Ongoing review of the Housing CIS**	The Housing CIS should have ongoing review and feedback mechanisms to allow the Interpretation Statement to evolve in response to emerging housing models and unintended consequences. Such mechanisms would provide charities with confidence to innovate while maintaining regulatory integrity.	We agree. We have acknowledged this in the updated Housing CIS by saying that principles set out in the ACNC's Corporate Policy: ACNC Policy Framework guide any review of the updated Housing CIS.
31.	**Transitional arrangements**	Once the ACNC adopts the updated Housing CIS, there should be transitional arrangements that provide assurance that preexisting arrangements that are compliant under the previous Housing CIS will not be retrospectively jeopardised, to support market confidence and sentiment.	We agree. We have acknowledged this in the updated Housing CIS.