

EXPOSURE DRAFT CIS 2014/03

Exposure draft

The version is issued for public discussion prior to its release as a final document. Comments submitted before 26 October 2014 will be taken into account in finalising this Statement. Comments can be submitted to CIS@acnc.gov.au

Commissioner's Interpretation Statement: Provision of housing by charities

Commissioner's Interpretation Statements provide guidance to ACNC staff, charities and the public on how the ACNC understands the law that applies to charities. These statements reflect our current understanding of the law on charity and are binding on ACNC staff.

While we do not have the power to produce binding rulings, consistent with our objects and [regulatory approach](#) we will ensure that organisations that rely on the Interpretation Statements are treated fairly. If the law or an Interpretation Statement changes, we will apply the new position from the date of the change, not retrospectively in a way that could disadvantage a charity that has relied on the Interpretation Statement. In most cases, we will also allow a period of time for charities to respond to any change.

The purpose of this Commissioner's Interpretation Statement is to provide guidance on the application of charity law to housing providers. The main issues addressed are:

1. What charitable purposes may be fulfilled through the provision of housing?
2. To whom can charitable housing be provided?
3. What kinds of housing can be provided as charitable?
4. How does commercial activity fit with the provision of charitable housing?
5. What kind of interaction can occur between Government and charitable housing providers?

This Interpretation Statement should be read together with **Appendix A**, which sets out the background and reasoning behind the statement. This Interpretation Statement and paper were approved by the Commissioner on [to be completed on finalisation of this draft] 2014.

Provision of Housing by Charities

Background

1. Prior to the commencement of the *Charities Act 2013 (Cth)* (the *Charities Act*) on 1 January 2014, the common law recognised charitable purposes as falling within four ‘heads’ of charity¹. The provision of charitable housing could have been recognised as charitable under either “the first head” for the relief of poverty, the needs of the aged and impotent or “the fourth head” as an “other purpose” beneficial to the community.
2. The *Charities Act 2013* generally restates the common law, with some clarifications. An organisation that was considered charitable in the provision of housing prior to the commencement of *the Charities Act 2013*, remains charitable under the statutory definition.

The Charities Act 2013

3. Since the commencement of the *Charities Act*, the provision of charitable housing may come within one or more of the charitable purposes set out in section 12 of the *Charities Act*, including:
 - 3.1 the purpose of advancing health (s.12(1)(a))
 - 3.2 the purpose of advancing social or public welfare (s.12(1)(c));
 - 3.3 any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j) (s.12(1)(k)).
4. The provision of housing in pursuit of² these purposes may therefore be charitable. In this Interpretation Statement we describe this as ‘charitable housing’.
5. The purpose of advancing health is defined in section 14 of the *Charities Act* to include the purpose of preventing and relieving sickness, disease or human suffering.
6. The purpose of advancing public or social welfare is defined in section 15 of the *Charities Act* to include, but not be limited to, the purposes of:
 - 6.1 relieving the poverty, distress or disadvantage of individuals or families (s.15(1));
 - 6.2 caring for and supporting the aged or individuals with disabilities (s.15(2));

¹ *Special Commissioner of Income Tax v Pemsel* [1891]AC 531.

² The phrase “in pursuit of” can be seen as synonymous with the phrases “as a means of achieving” or “in furtherance and in aid of”.

6.3 caring for, supporting and protecting children and young individuals (s.15(3)).

7. The Commissioner will read the “purpose of relieving poverty, distress or disadvantage...” disjunctively, so that the purposes of relieving poverty, or relieving distress, or relieving disadvantage may each come within the charitable purpose of advancing public or social welfare.
8. Poverty does not mean destitution³, but an inability to provide, from within one’s own resources, a modest standard of living in the Australian community⁴. In the context of housing, relieving poverty therefore is the provision of housing assistance to those who cannot afford, from their own resources, such accommodation as would give them a modest standard of living in the Australian community.
9. Several factors may be relevant to whether a person is in poverty, distress or disadvantage such that they need relief through the provision of housing. These include, but are not limited to:
 - 9.1 their income and assets;
 - 9.2 any specific disadvantage or distress suffered by beneficiaries (for example, a person escaping domestic violence needing refuge or crisis accommodation);
 - 9.3 their eligibility for government assistance relevant to the relief of poverty or disadvantage (for example, social security payments, rent assistance, or access to public housing);
 - 9.4 the number of their dependants and the needs of those dependants;
 - 9.5 the cost of providing the other necessities of life;
 - 9.6 their geographical location, and their need to obtain accommodation in that location;
 - 9.7 the cost of accommodation in that area;
 - 9.8 the availability of accommodation in that area;
 - 9.9 the income required to acquire and maintain accommodation in that area.
10. The Commissioner will take these factors into account in assessing whether the intended beneficiaries of a housing provider require the provision of housing to relieve their poverty, distress or disadvantage.

Housing types

11. The provision of ‘housing’ includes accommodation provided through hostels, crisis accommodation, shared accommodation, units or houses, and may be temporary or permanent.
12. It is possible that rent to buy or shared equity housing purchase schemes may be charitable. However, such housing schemes would be assessed on a case-by-case basis to ensure a solely charitable purpose.

³ *Trustees of the Mary Clark Home v Anderson* [1904] 2 KB 645.

⁴ See *Ballarat Trustees Executors and Agency Co v Federal Commission of Taxation* (1950) 80 CLR 350, 385.

Commercial activities

13. Charitable housing providers may fund the provision of charitable housing by a variety of means. This includes undertaking commercial operations where these are carried out in furtherance of the charitable purpose, and the income generated is in fact directed to that charitable purpose:

“The activities of Word in raising funds by commercial means are not intrinsically charitable, but they are charitable in character because they were carried out in furtherance of a charitable purpose...”⁵

14. In Australia there has been recognition that charitable housing providers who pursue a growth strategy through commercial activities may assist with providing long-term, sustainable charitable housing.⁶

15. An example of the commercial activities that may be undertaken are those of a charitable housing provider who participates in the National Rental Affordability Scheme (NRAS)⁷ in order to provide charitable housing to those needing relief from poverty, distress or disadvantage. A condition of participating in the scheme is that a proportion of the housing must be made available to medium income tenants, usually at 80% of market rent, being tenants who would not otherwise be eligible for charitable housing. However, if this is the necessary mechanism for providing the additional housing stock to fulfil its charitable purpose of relieving poverty, distress and disadvantage, the housing provider may retain its charitable status. It is of course a requirement that any income derived is put towards achieving the charitable purpose of providing charitable housing.

16. Another example is that of a charitable housing provider who builds new housing intending to sell a proportion of it to fund the acquisition of housing which is then made available to those in need of charitable housing.

17. Other types of commercial activities may include fee-for-service arrangements in the area of property modifications, property upgrades and maintenance, and property management; as well as entering into partnerships or joint ventures with private companies, such as credit unions or property developers, to acquire or develop affordable housing stock.

Relationships with government

18. Charities are required to be not-for-profit under section 25-5(3) of the *ACNC Act*. Accordingly, there can be no distribution of income or assets to individuals for private benefit either during its operation or upon winding up. Ordinarily, upon winding up, any income or assets remaining after the satisfaction of debts and liabilities must be distributed to another charity with a similar charitable purpose. A failure to ensure such a charitable distribution may mean that the organisation is not considered to be charitable.

⁵ *Commissioner of Taxation v Word Investments* (2008) 236 CLR 204, 221 (Gummow, Hayne, Heydon and Crennan JJ).

⁶ See general discussion in *The Regulation and Growth of the Not-For-Profit Housing Sector Discussion Paper*, April 2010, Department of Social Services.

⁷ <http://www.dss.gov.au/our-responsibilities/housing-support/programs-services/national-rental-affordability-scheme> (accessed 28/08/2014)

19. Certain charitable housing providers may obtain and manage housing assets through State or Territory government schemes. In some cases, there may be a requirement to return these assets to the State or Territory government upon winding up. As government is not charitable, the return of these assets could be seen to fall foul of the obligation to distribute assets to a charity with a similar charitable purpose on winding up.
20. In the event of such a requirement, the Commissioner will treat the charitable housing provider as charitable on condition that the winding up clause in the governing documents makes explicit that (a) assets required to be returned to the government on winding up by State or Territory law or contract, will be returned; (b) other remaining assets will be distributed to a charity with similar charitable purposes.

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Appendix A – Reasoning behind the Commissioner’s Interpretation Statement: Provision of Housing by Charities

The Issues

1. There are legal issues unique to housing providers that seek to be registered as charities. In this Appendix, the ACNC provides information and guidance on its interpretation of the application of charity law to housing providers.
2. The legal issues are:
 - 2.1 What charitable purposes may be fulfilled through the provision of housing?
 - 2.2 To whom can charitable housing be provided?
 - 2.3 What kinds of housing can be provided as charitable?
 - 2.4 How does commercial activity fit with the provision of charitable housing?
 - 2.5 What kind of interaction can occur between Government and charitable housing providers?
3. Consistent with the ACNC’s function to provide education and guidance under section 110-10 of the *Australian Charities and Not-for-Profits Commission Act 2012* (C’t’h) (the *ACNC Act*), the purpose of this Appendix is to give the legal analysis and reasoning for the Commissioner’s Interpretation Statement. While this does not have the statutory basis of an ATO Tax Ruling, it is a public statement binding on ACNC officers, on how the ACNC interprets the law on the topic.

Charitable purposes – to whom can charitable housing be provided?

Interaction of the *Charities Act 2013* and the common law

4. From the time of the *Pemsel* case⁸ in 1891 until the commencement of the *Charities Act 2013* (C’t’h) (the *Charities Act*), there were considered to be four heads of charity at common law. Based on Lord Macnaghten’s criterion:

“Charity” in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads.⁹
5. Of the four heads of charity outlined in Lord Macnaghten’s judgment “the relief of poverty, the needs of the aged and impotent” and “other purposes

⁸ *Special Commissioners of Income Tax v Pemsel* [1891] AC 531.

⁹ *Special Commissioners of Income Tax v Pemsel* [1891] AC 531, 583 (Macnaghten LJ).

beneficial to the community” have been considered as most relevant to the provision of charitable housing.

6. The *Charities Act* generally restates the common law, with some clarifications.
7. An organisation that was considered charitable in the provision of housing prior to the commencement of the *Charities Act* remains charitable under the statutory definition.

The *Charities Act 2013*: a statutory definition of charity

8. This Interpretation Statement is issued in the context of the *Charities Act*, which provides a statutory definition of charity that came into effect on 1 January 2014. Since its commencement the provision of charitable housing may come within one or more of the twelve charitable purposes set out in section 12 of the *Charities Act*, including:
 - 8.1 ‘advancing health’;¹⁰
 - 8.2 ‘advancing social or public welfare’;¹¹ and
 - 8.3 ‘any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j)’ of section 12(1).¹²
9. Whilst the Interpretation Statement principally concerns those three purposes, in certain circumstances, other charitable purposes may be applicable.

Advancing health

10. The purpose of advancing health is defined in s.14 of the *Charities Act* to include, but not be limited to the purpose of preventing and relieving sickness, disease or human suffering.
11. Where housing is provided in order to prevent and relieve sickness, disease or human suffering, the provision of that housing can be charitable, for the purpose of advancing health.
12. One example of such charitable housing is the provision of housing for patients and their families needing medical treatment, where that treatment is only available some distance from their home.
13. There is a presumption of public benefit where the purpose is to prevent and relieve sickness, disease or human suffering.¹³ This means that, in the absence of evidence to the contrary, a housing provider with this purpose meets the public benefit elements of the definition of a charity.¹⁴

Advancing social or public welfare

¹⁰ *Charities Act 2013* (Cth) s12 (1)(a).

¹¹ *Charities Act 2013* (Cth) s12 (1)(c).

¹² *Charities Act 2013* (Cth) s12 (1)(k).

¹³ *Charities Act 2013* (Cth) s.7(a).

¹⁴ *Charities Act 2013* (Cth) ss. 5(b)(i), 6, 7(a).

14. The purpose of advancing public or social welfare is defined in section 15 of the *Charities Act* to include, but not be limited to, the purposes of:
- 14.1 relieving the poverty, distress or disadvantage of individuals or families (s.15(1));
 - 14.2 caring for and supporting the aged or individuals with disabilities (s.15(2));
 - 14.3 caring for, supporting and protecting children and young individuals (s.15(3)).
15. There is a presumption of public benefit where the purposes are relieving the poverty, distress or disadvantage of individuals or families, and caring for and supporting the aged or individuals with disabilities.¹⁵ This means that, in the absence of evidence to the contrary, a housing provider with these purposes meets the public benefit elements of the definition of a charity.¹⁶

Relief of poverty

16. In *Ballarat Trustees*¹⁷ Kitto J noted that “a person is in necessitous circumstances if his financial resources are insufficient to enable him to obtain all that is necessary, not only for a bare existence, but for a modest standard of living in the Australian community.”
17. In *Re Coulthurst*,¹⁸ Evershed MR described poverty as meaning having to “go short” in the ordinary acceptance of that term.¹⁹ In the 1904 case of *Trustees of the Mary Clark Home*,²⁰ Channell J found that poverty ‘does not mean the very poorest, the absolute destitute; the word “poor” is more or less relative’ and that he could not lay down a fixed rule.²¹ In order to qualify, the beneficiaries of the charitable objectives need not be ‘in grinding need or utter destitution’ but ‘relief connotes needs of some sort, either need for a home or for the means to provide for some necessity or quasi-necessity, and not merely an amusement, however healthy’.²²
18. The purpose of providing housing to persons who are in need of relief from poverty is charitable at common law.²³ Justice Chanell also held that a home established for ladies of ‘reduced circumstances...fifty years old or upwards’ and having an income below a certain minimum yearly level, but which would enable them to provide their own ‘furniture, food, clothing

¹⁵ *Charities Act 2013* (Cth) s.7 (c)-(d).

¹⁶ *Charities Act 2013* (Cth) ss. 5(b)(i), 6, 7(c)-(d).

¹⁷ *Ballarat Trustees Executors and Agency Co v Federal Commission of Taxation* (1950) 80 CLR 350, 355. Kitto J dealt with the relationship of “necessitous circumstances” to “poverty” at pp.353-355 of the judgement.

¹⁸ [1951] Ch 661.

¹⁹ *Re Coulthurst* [1951] Ch 661, 666 (Evershed MR).

²⁰ [1904] 2 KB 645.

²¹ *Trustees of the Mary Clark Home v Anderson* [1904] 2 KB 645, 655-656 (Channell J).

²² *Inland Revenue Commissioners v Baddeley* [1955] AC 572, 585 [52] (Simmonds VC).

²³ *Common Equity Housing Ltd v Commissioner of State Revenue (Vic)* (1996) 96 ATC 4598. See also *Rolls v Miller* (1884) 27 Ch. D. 71, in which a home for girls between 15 and 25 years of age who were without work and temporarily unable to support themselves and who were not required to pay for accommodation or meals was charitable.

and washing, and medical attendance' was a charity.²⁴ Similarly, in *Re Gardom, Le Page v A-G*,²⁵ 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 themselves with a temporary home without outside assistance. I think it is a good charitable trust.²⁶

19. In 1955, Denning LJ, with whom Birkett LJ and Romer LJ agreed, considered that a trust established in 1890 to provide accommodation to the 'working classes', by 1955 a term 'quite inappropriate in modern conditions', was to be construed as a trust for persons in 'the lower income range', and therefore charitable:

The only way to do it, I think, is to ask whether the house is provided for people in the lower income range, or, in other words, for people whose circumstances are such that they are deserving of support from a charitable institution in their housing needs. Applying this test, I am quite satisfied that the Guinness Trust does provide houses for such people. The majority of them do fall within the lower income group and they are deserving of support by this charitable institution. The people in the buildings provided by the trust include dockers from Bermondsey, railway workers at Vauxhall, office cleaners and dustmen in Chelsea, and furniture hands in Shoreditch. There can be no doubt to my mind that this trust in fact provides houses for people who, in the old days, would have been called members of the working class, and who, today, are properly described as falling within the lower income group.²⁷

20. The Commissioner takes the view therefore that poverty does not mean destitution²⁸, but an inability to provide, from within one's own resources, a modest standard of living in the Australian community²⁹. In the context of housing, relieving poverty therefore is the provision of housing assistance

²⁴ *Trustees of the Mary Clark Home v Anderson* [1904] 2 KB 645, 655 (Channell J).

²⁵ [1914] 1 Ch 662.

²⁶ *Re Gardom, Le Page v A-G* [1914] 1 Ch 662, 668 (Eve J).

²⁷ *Guinness Trust (London Fund) Founded 1890, Registered 1902 v Green* [1955] 1 WLR 872, 875 (Denning LJ). Contrast the decision of the Chancery Division in *Re Sanders' Will Trust* [1954] Ch 265 in which Harman J held that a trust to provide 'dwellings for the working classes and their families resident in the area of Pembroke Dock' with a preference for dock workers, was not charitable, as the phrase 'working classes' was not a phrase which connoted poverty. It was noted by Megarry VC in *Re Niyazi's Will Trusts* [1978] 1 WLR 910 that, as *Re Sanders* was delivered a year prior to Denning's judgement, Harman J had not had the benefit of the unanimous decision in *Guinness*. Megarry VC held that a gift for the 'construction of a working mens [sic] hostel' was charitable as 'whatever may be the future meaning of "working men" or "working class," I think that by 1967 such phrases had not lost their general connotation of "lower income"' and that the phrase 'hostel' also emphasised 'the connotation of lower income' In *Re Niyazi's Will Trusts* [1978] 1 WLR 910, 915 (Megarry VC). The judgements of Denning and Megarry were affirmed by Etherton J in *Dano Ltd v Earl Cadogan* [2003] H.L.R. 51. See also *Westminster City Council v Duke of Westminster* [1991] 4 All ER 136. See also *In re Glyn* (1950) 66 T.L.R. (Part 2) in which Dankwerts J held that a trust for building free cottages for old women of the working classes aged 60 or more, provided a sufficient context to demonstrate an intention to benefit indigent persons.

²⁸ *Trustees of the Mary Clark Home v Anderson* [1904] 2 KB 645.

²⁹ See *Ballarat Trustees Executors and Agency Co v Federal Commission of Taxation* (1950) 80 CLR 350, 355.

to those who cannot afford, from their own resources, to provide such accommodation as would give them a modest standard of living in the Australian community.

Factors relevant to determining poverty, distress or disadvantage

21. Several factors may be relevant to whether a person is in poverty, distress or disadvantage such that they need relief through the provision of housing. These include, but are not limited to:
 - 21.1 their income and assets;
 - 21.2 any specific disadvantage or distress suffered by beneficiaries (for example, a person escaping domestic violence needing refuge or crisis accommodation);
 - 21.3 their eligibility for government assistance relevant to the relief of poverty (for example, social security payments, rent assistance, or access to public housing);
 - 21.4 the number of their dependents and the needs of those dependents;
 - 21.5 the cost of providing the other necessities of life;
 - 21.6 their geographical location, and their need to obtain accommodation in that location;
 - 21.7 the cost of accommodation in that area;
 - 21.8 the availability of accommodation in that area;
 - 21.9 the income required to acquire and maintain accommodation in that area.
22. In Australia significant differences can be observed between certain rural, regional and remote locations and the large coastal urban centres. For this reason, the local or regional context, rather than a national average relating to income, cost of housing and housing availability, may be taken into account when assessing the factors relevant to determining poverty.
23. The Commissioner will take these factors into account in assessing whether the intended beneficiaries of a housing provider require the provision of housing to relieve their poverty, distress or disadvantage.

Caring for and supporting the aged or individuals with disabilities

24. Section 15(2) of the *Charities Act* provides that the purpose of advancing social or public welfare, includes the purposes of caring for and supporting:
 - (a) the aged; or
 - (b) individuals with disabilities.

25. The courts have ordinarily presumed, in the absence of evidence to the contrary, that a disposition for the benefit of people who are of advanced age is for the purpose of relieving the needs arising from old age.³⁰
26. However, where the class of persons to benefit is those exceeding, a certain age, but it is not intended to provide relief for the needs attributable to that age group, the purpose is unlikely to be charitable. For example, an organisation set up for the purpose of providing bungy-jumping for the elderly would not have a charitable purpose of caring for or supporting the aged.
27. The provision of housing such as that provided by not-for-profit retirement and aged care facilities can be seen to provide relief for the needs arising from old age, and so can be considered charitable.
28. The provision of additional services by the housing provider such as meals, assistance with shopping and other essentials, may also be charitable. Other services which may be seen as 'luxuries', such as entertainment, can be seen as ancillary to the charitable purpose of caring for and supporting the aged, and so will not prevent recognition of charitable status.
29. In a similar way, and for similar reasons, the relief of the needs of individuals with disabilities may also be met through the provision of housing which is charitable.

Other purposes beneficial to the general public

30. Section 12(1)(k) of the *Charities Act* provides that the following are charitable purposes: 'any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j)' of section 12(1).
31. This section ensures that the classes or categories of charities are not closed, and other charitable purposes may be recognised over time, reflecting the changing Australian context.
32. An example of housing provision that may fall within this section is accommodation offered to ex-offenders or ex-prisoners, including prisoner half way houses. People with a criminal history and/or period of imprisonment often face particular difficulties in securing accommodation due to stigmatisation, even if they have an income and can afford to rent in the marketplace. Providing ex-offenders and ex-prisoners with adequate housing can also be seen as a form of prisoner rehabilitation, and working towards reintegrating them back into society, particularly if additional support services are also provided. This kind of purpose would be beneficial to the general public, and was recognised as such in the Preamble to the *Elizabethan Statute of Charitable Uses 1601*.³¹

³⁰ Dal Pont, G.E. *Law of Charity* (LexisNexis Butterworths, 2010), p.181, citing *Hilder v Church of England Deaconess Institution Sydney Ltd* [1973] 1 NSWLR 506 at 512 per Street CJ in Eq; *Trustees of Church Property of the Diocese of Newcastle v Lake Macquarie Shire Council* [1975] 1 NSWLR 521 at 524 per Moffitt P; *West Australian Baptist Hospital & Homes Trust Inc v City of South Perth* [1978] WAR 65 at 72 per Lavan SPJ.

³¹ The relief or redemption of prisoners or captives.

What kind of housing can be provided?

33. The purpose for which the housing is provided determines the charitable status of the housing provider. The type or form of housing is not critical to this determination.
34. The provision of 'housing' includes accommodation provided through hostels, crisis accommodation, shared accommodation, units or houses, and may be temporary or permanent.
35. It is possible that rent to buy or shared equity housing purchase schemes may be charitable. However, such housing schemes would be assessed on a case-by-case basis to ensure a solely charitable purpose.

Commercial activities

36. Charitable housing providers may fund the provision of such housing by a variety of means. This includes undertaking commercial operations where these are carried out in furtherance of the charitable purpose, and the income generated is in fact directed to that charitable purpose:

The activities of Word in raising funds by commercial means are not intrinsically charitable, but they are charitable in character because they were carried out in furtherance of a charitable purpose...³²

37. An example of the commercial activities that may be undertaken are those of a charitable housing provider who participates in the National Rental Affordability Scheme (NRAS) in order to provide charitable housing to those needing relief from poverty, distress or disadvantage. A condition of participating in the scheme is that a proportion of the housing must be made available to medium income tenants, usually at 80% of market rent, being tenants who would not otherwise be eligible for charitable housing. However, if this is the necessary mechanism for providing the additional housing stock to fulfil its charitable purpose of relieving poverty, distress and disadvantage, the housing provider may retain its charitable status. It is of course a requirement that any income derived is put towards achieving the charitable purpose of providing charitable housing.
38. Another example is that of a charitable housing provider who builds new housing intending to sell a proportion of it, to fund the acquisition of housing which is then made available to those in need of charitable housing.
39. It is possible, based on the authority of *Word Investments*³³, that the commercial activity undertaken by the housing provider is completely separate from the provision of housing – for example, running a café or a car wash – on condition that the purpose of those businesses is to provide

³² *Commissioner of Taxation v Word Investments* (2008) 236 CLR 204, 221 (Gummow, Hayne, Heydon and Crennan JJ).

³³ *Commissioner of Taxation v Word Investments* (2008) 236 CLR 204.

income for the provision of charitable housing, and the income generated is in fact used for that purpose.

Relationships with government

40. Charities are required to be not-for-profit under section 25-5(3) of the *ACNC Act*. Accordingly, there can be no distribution of income or assets to individuals for private benefit either during its operation or upon winding up. Ordinarily, upon winding up, any income or assets remaining after the satisfaction of debts and liabilities must be distributed to another charity with a similar charitable purpose. A failure to ensure that such a charitable distribution will be made may mean that the organisation is not considered to be charitable.
41. Certain charitable housing providers may obtain and manage housing assets through State or Territory government schemes. In some cases, there may be a requirement to return these assets to the State or Territory Government upon winding up. As government is not charitable, the return of these assets could be seen to fall foul of the obligation to distribute assets to a charity with a similar charitable purpose on winding up.
42. In the event of such a requirement, the Commissioner will treat the charitable housing provider as charitable on condition that the winding up clause in the governing documents makes explicit that (a) assets required to be returned to the government on winding up by State or Territory law or contract, will be returned; (b) other remaining assets will be distributed to a charity with similar charitable purposes.

Version	Date of effect	Brief summary of change
Version 1 – initial statement	XX/XX/2014	Initial Statement approved by ACNC Commissioner on XX/XX/2014