

13 August 2021

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Dear Suhanya,

### **Review of ACNC Housing CIS consultation**

Thank you for sending us the final draft of the Housing CIS, for review and comment. Both the Community Housing Industry Association (CHIA) and Power Housing Australia have collaborated on this response to the draft.

We acknowledge that the document has incorporated many of the points made in our earlier submission and believe it provides clear and contemporary guidance to both ACNC analysts and housing charities.

There are just a few areas where further clarification and guidance are required. Most are very minor although there are also some more substantive suggestions so that the relationship between the Housing CIS and PBI CIS is properly explained.

### **Income Thresholds**

The CIS provides clear guidance on how to interpret whether an activity is directed at relieving poverty, stress or disadvantage. As it is often moderate income earners where there are issues to resolve it would, for the avoidance of doubt, be useful to make a short addition to para 2.3.6 footnote 21, to make clear what it found in relation to this cohort. We suggest including a statement at the end of the footnote as follows: "On the evidence in the case, the Court was satisfied that the persons and households identified as 'moderate income' did not have sufficient household income to obtain adequate access to safe and secure housing and therefore were in need."

### **Charitable purposes**

In section 2, the Draft Housing CIS refers to specific criteria or examples which would be consistent with charitable purposes, again, for the avoidance of doubt could it be stated that the examples are a non-exclusive list.

### **Commercial activities**

Paragraph 6.4 states that a rental arrangement structured to subsidise the costs of providing lower cost accommodation "gives rise to a presumption that the higher cost accommodation is not in fact intended to generate income and could instead amount to an unjustified private benefit". It is difficult to reconcile this statement with the one about NRAS housing at discounted rent in paragraph 7.3. In addition, this has

no basis in law and the statements in paragraphs 6.7 and 6.8 explain the position accurately. Could this statement be removed?

### **Relationship between the Housing and PBI CIS**

We understand the PBI CIS is under review and the issues we raise here are important to that process too. The interaction between the Housing CIS and PBI CIS are currently very unclear, and the draft Housing CIS does not, by simply acknowledging the PBI CIS exists, improve on the position.

First, we would welcome an explanation of the difference between the charitable definition of relief from poverty i.e., ‘an inability to provide, from one’s own resources, a modest standard of living in the Australian Community’ and the PBI CIS i.e., ‘people in need’ or ‘poverty of such seriousness as will arouse community compassion and thus engender the provision of relief’. This could usefully be illustrated by explaining how the ACNC would apply the 30/40 rule in the context of a PBI.

Secondly, the explanation of how the provision of housing to moderate income earners under NRAS will be ‘treated’ in para 7.3, clearly identifies the circumstance in which it is considered consistent with an organisations charitable purpose. This is that it is a ‘necessary element of providing additional housing stock through the NRAS to fulfill the charitable purpose of relieving poverty, distress and disadvantage’. Paras 7.4 and 7.5 refer to ‘future government schemes’ but leaves how they may be treated somewhat open and thus vague. Could it not just state that the same principle would be applied where the scheme was not exclusively targeted at those in poverty, distress and / or disadvantage.

Thirdly, if provision of housing to ‘medium income tenants’ at a discount to market rent is a necessary element – due to a government scheme or otherwise in order to make the relevant development commercially viable – but the charity can demonstrate that the project or development is also directed towards ‘people in need’ – would this be consistent with continued endorsement as a PBI?

The housing example (9) in the PBI CIS needs to be improved upon and reflect a more typical scenario. First it is unusual for a housing development to be exclusively allocated to one type of household – essential workers – in this example. In practice, most housing developments by community housing organisations are multi tenure, having a mix of social, affordable and market housing. This is not solely for cross – subsidisation purposes but because mixed communities contribute to relief of poverty, distress and disadvantage. There is substantial international evidence that concentrating disadvantage has detrimental impacts on communities. Secondly, even in developments where tenants need to meet specific criteria such as ‘essential worker’ many also have such low incomes that they are social housing eligible. Occasionally, there is a presumption that essential workers are police, teachers and paramedics. However, most are in less well paid employment such as disability and aged care or cleaning, and, work shifts. Arguably both groups are people in need and arouse compassion.

The reality is that in the absence of much government grant or investment (Victoria currently being an honourable exception) the only way any social housing units for the lowest income households can be constructed is through a combination of many different funding and financing mechanisms including but not restricted to the following

- cross subsidisation using the proceeds from sales or market rent premiums,

- mixing social and below market affordable rental units to ensure that total cashflows cover all operating expenses including interest payments
- private finance
- planning concessions
- whatever government assistance is provided.

Any or all these elements are 'necessary' to provide the social housing element.

The Housing CIS should work through a scenario of a 'mixed development' and how the ACNC will apply its policy. The example could provide for housing to low to moderate income earners and provide guidance on those schemes that meet the stated charitable definition of 'poverty' and those 'in need' in the sense required for a PBI. The new PBI CIS should refer to this example. CHIA would be very pleased to assist you with this exercise.

In our original submission we suggested that the ACNC could call on specialist housing regulators to advise or indeed carry out assessments of these less straightforward examples. This may also help decision making on more difficult cases.

Thank you once again for the opportunity to make these final comments, and look forward to hearing from you.

Kind regards,



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