



Submission to the Australian Charities and Not-for-profits Commission

Consultation Draft: Commissioner's Interpretation Statement – Charities' provision of housing

Submitted by: Faith Housing Australia

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1. Introduction

Faith Housing Australia (FHA) welcomes the opportunity to provide feedback on the consultation draft of the *Commissioner's Interpretation Statement: Charities' provision of housing* (Draft Statement).

FHA is the national peak body representing faith-based organisations engaged in the provision and enablement of social, affordable and community housing across Australia. Our members include registered community housing providers, faith-based landholders, service delivery organisations, and mission-driven entities working in partnership with governments, investors and communities to address housing need.

Faith-based organisations have a long and enduring role in housing provision in Australia, particularly for people experiencing poverty, distress, disadvantage and vulnerability. FHA therefore has a strong interest in ensuring that charity law guidance both:

- preserves the integrity of charitable purpose and public benefit, and
- enables contemporary, place-based and partnership-driven housing models to operate with clarity and confidence.

2. General Observations

FHA strongly supports the modernisation and expansion of the Interpretation Statement. In particular, we welcome:

- The move away from rigid income thresholds toward a holistic, multi-factor assessment of need
- Greater recognition of contemporary housing delivery models, including mixed-tenure developments and innovative financing
- Expanded acknowledgement of vulnerable cohorts and the complex drivers of housing need
- Clearer guidance on governance, private benefit and risk management in complex arrangements

The Draft Statement reflects a more realistic understanding of Australia's housing system and the operating environment for charitable housing providers.

However, FHA also notes that the Draft Statement introduces heightened expectations around documentation, governance and evidentiary thresholds. While appropriate in principle, these expectations may have unintended consequences for smaller or emerging providers, including faith-based landholders seeking to activate under-utilised land for housing.

In New South Wales, recent planning reforms—including the Housing SEPP, the Transport Oriented Development (TOD) Program, and amendments to Affordable Housing Contribution Schemes—have created significant opportunities for faith-based landholders and charitable housing providers to contribute land and deliver affordable and key worker housing at scale.

These planning pathways increasingly rely on planning uplift, land contributions and partnership-based delivery, and often require sophisticated governance arrangements, commercial partnerships, and risk-sharing models. Clear and practical ACNC guidance is therefore critical to ensure charities can confidently leverage NSW planning pathways without jeopardising charitable status.

Against this operating context, FHA's comments focus on three areas of particular significance to our members:

1. Affordable housing
2. Key worker housing
3. Vulnerable cohorts

FHA notes that a number of national peak bodies, including National Shelter, have expressed strong support for the ACNC's efforts to modernise and clarify the charity law framework for housing provision. There is broad sector alignment on the need for flexibility, responsiveness to local context, and recognition of contemporary housing models. FHA's submission is intended to complement these perspectives by providing a mission-driven, governance-focused lens grounded in the practical realities of faith-based housing delivery.

3. Affordable Housing

3.1 Clarification of Charitable Purpose

FHA acknowledges and supports the Draft Statement's position that affordable housing is not automatically charitable, and that a discount to market rent alone is insufficient to establish charitable purpose.

FHA emphasises that long-established charitable housing activities—including crisis accommodation, transitional housing, supported housing, social housing delivered at income-based rents, and housing embedded within broader community service delivery—remain clearly and unequivocally charitable. These models should not require complex evidentiary justification or heightened governance documentation beyond that ordinarily expected under charity law, provided they are delivered on a needs-based basis and in furtherance of charitable purposes.

However, FHA encourages the ACNC to further clarify that:

- Affordable housing delivered by mission-driven, not-for-profit providers, using needs-based eligibility and ongoing review, can legitimately constitute the relief of poverty, distress or disadvantage—even where rents are not income-based.
- In many contemporary housing markets, particularly in metropolitan and regional growth areas, a modest standard of living cannot be achieved through private rental housing even at discounted rates.

In New South Wales, "affordable housing" is defined under the Environmental Planning and Assessment Act 1979 and the Housing SEPP, and delivery frequently requires involvement by a registered CHP, with proposed provisions for a new category of Affordable Housing Manager (AHM). Many faith-based organisations operate as registered CHPs, and faith landowners often partner with CHPs to meet statutory and planning requirements.

FHA submits that clarifying that such partnership-based, SEPP-enabled affordable housing remains capable of being charitable—regardless of whether rents are income-based or discount-to-market—is essential to maintaining faith-based participation in NSW planning-led affordable housing mechanisms, including "affordable housing in perpetuity" contributions secured through planning instruments.

FHA further submits that deeply affordable, income-based housing models require sustained government subsidy and cannot, on their own, meet current or projected levels of housing need at scale. As a result, discount-to-market housing delivered by charities—where rents are set in line with recognised affordable housing guidelines—is an important non-market housing form capable of scale.

FHA encourages the ACNC to clarify that affordable housing delivered in this way, through not-for-profit governance, appropriate safeguards against private benefit, and reinvestment of surplus for public benefit,

is capable of constituting the advancement of social or public welfare even where rent-setting mechanisms differ from traditional income-based social housing models.

FHA further submits that, for larger charitable housing providers operating diversified portfolios, assessment of charitable purpose and public benefit should be capable of being undertaken at a portfolio or programmatic level, rather than solely on a project-by-project basis. Cross-subsidisation between social, affordable and specialist housing—where surpluses are reinvested to advance charitable purposes and appropriate safeguards against private benefit are in place—should be recognised as consistent with charitable operation and sound stewardship.

3.2 Depth of Affordability and Context

FHA supports the Draft Statement's recognition that:

- A flat discount (for example, 25% below market rent) may be insufficient in many locations to relieve housing need.
- Local context, household structure, and non-housing costs must be considered when assessing whether housing relieves poverty, distress or disadvantage.

NSW housing markets illustrate the importance of contextual assessment. Recent NSW Government data and independent modelling confirm that in many sub-markets—including Western Sydney, the Central Coast and the Illawarra—a 20–25% discount to market rent may still result in housing costs exceeding 30% of household income for low- to moderate-income households.

FHA therefore encourages the ACNC to ensure assessments of affordability and charitable purpose take account of local housing cost structures and market conditions, rather than relying on uniform national benchmarks. Charitable purpose should be assessed contextually and proportionately, rather than against an implied benchmark of social housing rent settings alone, with providers encouraged to demonstrate why their affordability settings relieve need in a particular market and for a particular cohort.

3.3 NSW Case Studies: Planning-Led Delivery of Charitable Housing

The following case studies illustrate how the issues outlined above arise in practice within NSW's planning-led housing delivery environment. While NSW is used as a detailed case study due to the maturity and pace of its planning reforms, FHA's comments are intended to inform the Interpretation Statement's application nationally, across diverse state and territory planning, housing and regulatory settings.

FHA recommends that the Interpretation Statement explicitly acknowledge how charity law operates alongside state planning systems, particularly in jurisdictions such as New South Wales, where planning reform is the primary driver of new affordable and non-market housing supply.

New South Wales currently has the most active and comprehensive housing and planning reform agenda in Australia. Charitable housing providers in NSW are increasingly required to deliver affordable and key worker housing through planning-enabled mechanisms rather than through recurrent subsidy. These mechanisms include affordable housing contribution schemes, transport-oriented development, housing diversity settings, and partnerships with government landholders.

In this context, discount-to-market housing delivered by charities in accordance with recognised affordable housing guidelines is often the only scalable form of non-market housing capable of delivery, particularly in high-cost metropolitan and regional labour-constrained markets.

Case Study 1: Alignment with NSW Planning Reforms

Faith-based housing providers in NSW are actively responding to a rapidly evolving planning environment, including the NSW Housing SEPP (as amended), Affordable Housing Contribution Schemes, the Transport Oriented Development (TOD) Program, and planning controls supporting housing diversity, build-to-rent and co-living.

These reforms are designed to unlock housing supply through zoning uplift, density incentives and land activation, rather than through direct operating subsidy. In practice, they most commonly generate affordable housing outcomes at a discount to market rent, secured through planning controls, covenants or agreements, rather than income-based social housing rents.

Faith-based landholders and charitable housing providers seeking to participate in these planning pathways must structure projects that meet both planning objectives and charity law requirements. Clear guidance from the ACNC recognising such planning-enabled affordable housing as capable of advancing social or public welfare is critical to avoid deterring participation and constraining supply.

Case Study 2: NSW-Specific Housing Need and Workforce Pressure

NSW provides a clear illustration of why flexible, scalable charitable housing models are required. Sydney has the largest rental affordability gap in Australia, and recent modelling indicates that approximately 72% of essential workers in Greater Sydney are experiencing housing stress.

In regional NSW, vacancy rates below 1% are increasingly common, contributing to acute workforce shortages across health, aged care, disability, education and community services. In many of these locations, income-based social housing is unavailable or insufficient, and private rental markets are inaccessible even for workers in stable employment.

Charitable affordable and key worker housing delivered at sub-market rents—where aligned to recognised affordability frameworks and supported by appropriate governance—plays a critical role in sustaining essential services and advancing social or public welfare in these contexts.

Case Study 3: Charity Law and Planning Intersections

NSW's planning framework places increasing responsibility on non-government actors, including charities, to deliver affordable housing outcomes through rezoning, land use change and development uplift. This creates a direct intersection between charity law and planning law.

Charitable housing providers must navigate multiple regulatory regimes, including charity law, planning controls, housing policy settings and funding program requirements. Where charity law guidance does not clearly recognise planning-enabled affordable housing as a legitimate charitable activity, there is a risk that faith-based and not-for-profit landholders will be unable to participate confidently in these pathways.

FHA encourages the ACNC to recognise NSW as a leading case study of how contemporary planning systems rely on charities to deliver affordable and key worker housing, and to ensure the Interpretation Statement supports, rather than unintentionally constrains, this role.

4. Key Worker Housing

4.1 Importance of Clear Guidance

FHA welcomes the inclusion of detailed guidance on key worker housing, as this reflects a growing area of activity for faith-based organisations, particularly those connected to health, aged care, disability, education and community services.

We support the Draft Statement's clarification that:

- Occupation alone does not establish charitable purpose.
- General housing affordability pressures are not, of themselves, sufficient.

4.2 Recognition of Faith-Based Service Ecosystems

FHA encourages the ACNC to further recognise that:

- Many faith-based organisations operate **integrated service ecosystems**, where housing is a critical enabler of charitable service delivery.

- In such contexts, the *primary public benefit* may arise from continuity, quality and sustainability of care, rather than from the housing assistance itself.

We suggest the Draft Statement clarify that:

- Where key worker housing is directly linked to the delivery of charitable services (e.g. aged care, disability support, community welfare), and where housing materially supports workforce availability or retention, this may constitute advancement of social or public welfare even where workers are not themselves in poverty.

Evidence from New South Wales demonstrates that housing affordability is a critical factor in workforce availability and retention. Regional and metropolitan areas across NSW are experiencing recruitment challenges in health, aged care, disability, education and emergency services due to housing shortages and rental market constraints.

FHA recommends the ACNC recognise that where faith-based organisations deliver housing in direct support of NSW Government service delivery—particularly in healthcare, aged care and community services—such housing provides a public benefit integral to workforce continuity and the advancement of social or public welfare.

FHA acknowledges the broader public benefit rationale articulated by sector advocates, including the role of key worker housing in supporting service continuity, workforce stability and community wellbeing. FHA submits that these benefits can be appropriately recognised within the Draft Statement, provided evidentiary and governance expectations are applied proportionately and in recognition of place-based and service-embedded delivery models.

4.3 Evidentiary Expectations

While FHA accepts the need for evidence of workforce shortage and housing-related barriers, we recommend:

- Allowing **proportionate and qualitative evidence**, particularly in regional, remote or specialised service contexts.
- Avoiding an overly technical or data-intensive threshold that may disadvantage smaller providers.

Such evidence may appropriately include service delivery experience, workforce recruitment outcomes, tenancy stability data, or other qualitative indicators where quantitative market data is unavailable or disproportionate.

5. Vulnerable Cohorts

5.1 Expanded Recognition of Vulnerability

FHA strongly welcomes the Draft Statement's expanded recognition of vulnerable cohorts, including:

- People leaving care
- Veterans
- Older women in housing distress
- First Nations peoples
- Formerly incarcerated people
- People experiencing family and domestic violence

This reflects contemporary evidence and aligns closely with the lived experience of FHA members.

5.2 Special Disadvantage and Holistic Assessment

FHA supports the Draft Statement's distinction between:

- General housing affordability challenges, and
- Special disadvantage involving structural, social, cultural or systemic barriers.

We particularly welcome:

- Recognition of discrimination and tenancy sustainability as relevant factors
- Acceptance of place-based need and community connection
- Acknowledgement that vulnerability may be transitional or episodic, rather than permanent

FHA also notes that specialist and supported housing models—including disability housing, housing for older people, culturally-specific housing, and housing delivered in conjunction with ongoing support—often involve rent-setting, eligibility and allocation approaches that differ from mainstream social housing. Where such models are designed to address identifiable disadvantage or enable sustained independence, safety or wellbeing, they should be clearly recognised as capable of advancing charitable purposes.

5.3 First Nations Housing

FHA strongly supports the Draft Statement's clarification that:

- Organisations addressing disadvantage experienced by Aboriginal and Torres Strait Islander peoples may be accepted as relieving poverty, distress or disadvantage without adopting deficit-based language.

This is an important and culturally appropriate clarification.

5.4 Tenant Participation and Lived Experience

FHA supports the growing recognition of tenant participation, lived experience and dignity-based practice in charitable housing provision. Many faith-based housing providers are embedded in communities and adopt relational, trauma-informed approaches that value the voice and agency of tenants.

FHA encourages the ACNC to recognise that tenant participation and empowerment—where proportionate to the scale and nature of the organisation—can strengthen charitable purpose by improving housing stability, service responsiveness and long-term wellbeing outcomes for vulnerable cohorts. Such practices are consistent with advancing social or public welfare and should be seen as complementary to, rather than in tension with, robust governance and accountability.

6. Governance, Scale and Proportionality

FHA recognises and supports the Draft Statement's emphasis on governance, particularly in relation to:

- Mixed-tenure developments
- Commercial partnerships
- Special Purpose Vehicles (SPVs)

However, FHA encourages the ACNC to:

- Explicitly acknowledge proportionality by calibrating governance, documentation and evidentiary expectations to the size, risk profile, stage and complexity of the activity, including reduced expectations for smaller charities, early-stage projects, and faith-based landholders partnering with experienced providers.
- Emphasise that good faith, reasonable steps, and appropriate advice should be assessed in context.

NSW's planning pathways—including clause 52 of the Housing SEPP, rezoning processes, Transport Oriented Development precincts, and mandatory affordable housing requirements—are increasingly reliant on complex commercial partnerships, Special Purpose Vehicles and joint ventures. Smaller faith-based landholders engaging in land activation often face disproportionate governance and compliance burdens relative to scale.

FHA notes that regulatory uncertainty can have a chilling effect on otherwise well-governed charitable participation in housing delivery, particularly where land activation or partnership models are involved. Clear, proportionate guidance is therefore essential to avoid unintended constraints on housing supply.

FHA strongly encourages the ACNC to embed proportionality in the application of the Interpretation Statement, so that faith-based organisations contributing land or partnering in NSW planning-enabled housing delivery are not deterred from participation due to regulatory uncertainty or excessive compliance risk.

6.1 Proportionality and Ongoing Review

FHA supports the Draft Statement's emphasis on governance, documentation and risk management, particularly in complex or capital-intensive housing models. FHA encourages the ACNC to explicitly acknowledge proportionality in its application, having regard to an organisation's size, scale, complexity and risk profile.

FHA also recommends the establishment of 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.

7. Conclusion

FHA commends the ACNC for producing a Draft Statement that is clearer, more contemporary, and better aligned with Australia's housing challenges.

FHA encourages continued coherence between charity law guidance and Commonwealth and state housing, planning and funding frameworks, recognising that misalignment across regulatory systems can materially affect housing delivery outcomes.

With modest clarification—particularly in relation to affordable housing, key worker housing, vulnerable cohorts, and proportional governance expectations—the Statement can provide strong, enabling guidance that both protects charitable integrity and supports the expansion of mission-driven housing.

FHA further encourages the ACNC to consider the interaction between this Interpretation Statement and broader Commonwealth, state and local housing policy and funding frameworks. Faith-based housing providers frequently operate across multiple regulatory regimes, and clarity and coherence across systems will reduce risk, improve delivery and support the growth of mission-driven housing supply.

FHA would welcome the opportunity to continue engaging with the ACNC on this guidance and to support its members to implement it effectively.

FHA stands ready to continue working with the ACNC to ensure the Interpretation Statement supports both regulatory integrity and the effective delivery of mission-driven housing across Australia.

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