



nsw Federation of
Housing Associations inc

**Submission on the
consultation paper
'A definition of Charity'**

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1. The NSW Federation of Housing Associations

The NSW Federation of Housing Associations (the Federation) is the industry peak body for housing associations in NSW.

Housing associations are not-for-profit community housing providers whose principal business is managing and developing long-term housing for low and moderate income households. All such organisations are registered as Class 1, 2 or 3 community housing providers in NSW. They manage over 85% of the tenancies managed by registered community housing providers in NSW. There are also a large number of providers of shorter term or crisis housing, in particular specialist homelessness services.

There are 27 housing associations in NSW; all of which are members of the Federation. In addition we have 69 other, associate and affiliate, members providing housing related services or who are housing associations in other jurisdictions.

All of the long term community housing providers are registered charities with PBI status.

Housing associations manage over 29,000 tenancies, the majority of which have been funded through Housing NSW and more recently, the National Building Economic Stimulus. This is currently almost 20% of social and affordable housing in NSW, the remainder of which is publicly managed. However, with ongoing transfers of properties from the public sector to the community housing sector, and with the government objective of increased borrowing (including that supported by NRAS), the sector is growing rapidly.

While not-for-profit and charitable, community housing is a predominantly commercial activity, with the main income source being rents charged to tenants, rather than government grants. Community housing providers aim to increase the supply of housing provided at less than market prices by borrowing and by entering into partnerships with other organisations, including for-profit entities.

There is a critical shortage of rental housing in Australia that is affordable and available to low and moderate income households. This gives rise to social exclusion and disadvantage. The growth of a not-for-profit sector whose mission is to meet the needs of such households is central to the public policy response to this problem.

The Commonwealth Government has pursued a number of measures to achieve this objective, most notable the introduction of the National Rental Affordability Scheme (NRAS).

The Federation provides a range of services to support the development and performance of housing associations and the wider social housing system in six core areas:

- **Representation and sector co-ordination** – this is our fundamental role as the peak industry body for housing associations in NSW. We provide a voice for members, and enable them to work together as a mutually supportive sector and to articulate and pursue their common aspirations.
- **Research and sector development** – this supports the members’ directions and aspirations with effective research and policy development on key issues affecting the development of the sector
- **Relationships and alliances** – this ensures that associations are promoted and well-known to all other stakeholders who might help our development, and to allow associations to play their part in the wider community sector
- **Training** – this is our most prominent direct service to members and others in the social housing sector. We are a Registered Training Organisation. Through our Centre for Training in Social Housing, our accredited vocational training and other short courses support and build the capacity of organisations and the careers of workers in the sector. In addition we deliver the training for public sector staff employed by Housing NSW and in the ACT and Tasmania. We broker access to high level courses for senior managers and association directors in partnership with bodies such as the UTS Graduate School of Management and the Australian Institute of Company Directors.
- **Supporting organisations** – the Federation directly supports individual members, their boards and management, in their work as housing providers. This ranges from free advice provided through our Housing Hotline for front line staff, to advice on strategic planning, organisational reviews, tenant participation, through to intensive organisational change with organisations experiencing management difficulties.
- **Good practice resources** – through our Good Practice Unit, we also support our members and other providers by developing and continually updating resources on good practice social housing management. It includes the series of Housing Hints (produced in partnership with the Aboriginal Housing Office), Across the Board bulletins for directors of housing associations, comprehensive Good Practice Guides, and a good practice data base.

Particularly through our Centre for Training in Social Housing and Good Practice Unit, the Federation has become recognised as one of the leading experts in community housing management in country.

Contact:

Adam Farrar

Executive Director

(02) 9218 7144 ex 202

0409 669 936

2. Statutory definition of charity

The Federation strongly supports the government's decision to introduce a statutory definition of charity.

The ongoing ambiguity that has arisen from the reliance on case law and the Statute of Elizabeth has created significant difficulties for community housing providers because of the increasing divergence between ATO interpretations and a common sense understanding of the services and activities undertaken in pursuit of their charitable purpose, and the activities undertaken in pursuit of the public policy objectives of a succession of governments.

The most telling evidence for this is that the Government has twice been forced to introduce amendments to quarantine community housing providers undertaking activities subsidised by NRAS from potential loss of charitable tax treatment.

Charitable status provides essential support for the delivery of below-market essential services (in our case housing) to households who would not otherwise be able to afford them and as a result, would be excluded from effective social participation.

The introduction of a statutory definition will provide:

- Far greater clarity and certainty
- An opportunity to clearly align the definition of charity with both public policy objectives and inherent public benefit.

3. Dominant purpose or exclusive purpose?

The Federation believes that it would be far more effective to retain the approach of the Charities Bill 20033 to require that an entity have a dominant charitable purpose.

This would allow charitable organisation to define their purposes more clearly, rather than avoid the risk of a confusion of the charitable nature of these purposes by shoehorning them into an unambiguously charitable purpose.

This has been the case with most community housing providers today. Their purposes are all described in terms of the relief of poverty. However, has been taken as encompassing responding to the housing needs of low income and disadvantaged households by providing a supply of affordable housing and support for those households with special needs.

However, many aspects of that provision and the ongoing maintenance of housing security and affordability (development, secure tenure, support of low income working households who would be unable to rent near employment) have recently been interpreted as falling outside the provision of housing services to those experiencing a very narrow form of poverty.

While we believe the ‘dominant purpose’ approach is therefore more effective, the ultimate issue is whether charitable purposes are appropriately defined in the legislation – in which case, the above problem will be reduced.

4. Public benefit test

The Federation does not see a significant problem if the presumption of public benefit for the first three heads is overturned if the requirement to demonstrate a public benefit is not made onerous and if it makes provision to ensure that specific groups – including Indigenous groups connected through family ties, are not excluded. The general principle that should apply is that the inclusion of such groups is necessary for wider reasons of social equity and social inclusion. Unlike, say, the relief of poverty of an exclusive group of people, such an equity and inclusion principle is inherently in the public benefit.

5. Affordable housing as a charitable purpose

The Community Housing Federation of Australia (CHFA) has proposed that the provision of housing should be designated as a stand alone head of charity. It’s argument refers to the positions expressed by the Australian Human Rights Commission and the United Nations Charter on Human Rights. It argues that the activities of charities in enabling all citizens to access secure housing is a crucial way that Australia can meet its obligations under the Charter.

The Federation supports CHFA’s submission.

However, whether or not this position is accepted, we believe that the introduction of a statutory definition of charity is the opportunity to overcome the ongoing problems that have beset the decision about whether the provision of affordable housing is an activity that is consistent with an organisation’s charitable purposes.

It is the opportunity to align the definition of charity with the public policy objective (here and across the world) of overcoming the very wide range of forms of social and economic exclusion that flow from the inability of low and moderate income households to access housing that is affordable and in locations that do not present serious barriers to such participation.

The repeated requirement to amend legislation to enable the objectives of programs of affordable housing such as NRAS to be implemented demonstrates that there is a pressing need for reform.

It is perhaps fair to say that no other activity or purpose so clearly and broadly provides a fundamental public benefit that the provision of affordable housing. It is the basis for all other forms of social participation, it is essential for health and security, and its absence produces the greatest risk of destitution – homelessness. The social and public cost of housing unaffordability is very high.

The examples of legislation in England and Wales, Scotland and Northern Ireland cited in the discussion paper, all list housing as a specific purpose.

The NSW Federation strongly recommends that the fourth head of charity under Pemsel (purposes beneficial to the community not falling under any of the preceding heads) specify the provision of affordable housing. Equally, were the charitable purposes under part 3 of the Charities Bill 2003 to be followed, the advancement of affordable housing should be specifically included.