



THE UNIVERSITY OF  
**WESTERN  
AUSTRALIA**

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UWA Law School  
LAWS5813 Legal Issues for  
NFPs Class of 2019

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## RESEARCH REPORT FOR ACNC

*Interpreting s15-5(1)(b) 'to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector'*

&

*Facilitating home ownership*

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## Executive Summary

This report collates the ideas of the class of 2019 for LAWS5813 Legal Issues for NFPs in relation to:

1. The meaning of section 15-5(1)(b) of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) which sets out the object 'to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector'.
2. The circumstances in which helping people obtain home ownership will be charitable.

While the authors have exercised academic judgment in collating, considering and describing the ideas of the class of 2019, they have not conducted substantive further research.

The key findings on each of the two topics are set out below.

### **1. Interpretation of section 15-5(1)(b) ACNC Act**

- Rather than searching for workable measures that can be made of the NFP sector and working back to definitions of the terms used in s15-5(1)(b) (that is, 'robust', 'vibrant', 'independent' and 'innovative'), orthodox principles of statutory construction should be employed. That is, one should look to the text, context (immediate and broader statutory context) and purpose.
- Section 15-5(1)(b) refers also to 'support' and 'sustain' which suggest a facilitative role for the ACNC in taking care of a sector that is already of value, with the four adjectives describing that pre-existing sector.
- The statutory context includes the other objects in section 15-5, plus sections 15-10 and 15-5(2)(b)(iii) and section 110-10(1). All of which suggests both a compliance role and a support role for the ACNC.
- Looking to purpose, the nature of the entities regulated under the ACNC Act (NFPs that are charities) and the EM suggest that the ACNC should help charities achieve public benefit.
- In terms of the broader statutory context and purpose, section 15-5(1)(b) needs to be interpreted in light of the vehicle empowered to give effect to those objects (the ACNC) and the overall ACNC Act regulatory system. In particular supporting and sustaining the sector should take place in relation to the things that must happen under the regulatory scheme such as registration, governance standards etc; and the benefits of registration – such as availability of tax concessions.

### **2. Facilitating home ownership**

- The provision of temporary housing to relieve poverty has been regarded as charitable at common law (and so may come within a purpose of advancing social or public welfare). By analogy, the provision of longer term rights to housing or assistance in obtaining longer term rights, such as ownership rights, should also be charitable. The issue may then be how far the bounds of 'poverty' stretch and the

extent to which activities (in terms of who receives assistance) are relevant to the entity's purpose.

- In thinking about the relief of poverty in a housing context, 'relief' infers the fulfilment of a need, rather than a luxury. If the purpose is the relief of poverty, then the nature of the assistance may indicate whether it is relieving the need versus providing some luxury to the recipient who merely happens to be poor. Eg potentially, rental assistance versus home ownership.
- Other purposes may also be relevant, such as promoting or protecting human rights, advancing the security or safety of the Australian public, advancing health, relief of the aged and the promotion of urban and rural regeneration for the public benefit.
- In considering the impact of direct private benefits to individuals, a crucial factor is the weight to be accorded the indirect public benefit arising from the provision of the private benefits. And when those benefits will be too remote as in *Queenstown Lakes* and *Canterbury Development*. The question is whether the provision of economic benefits to individuals is itself a purpose, or instead a means to an overarching purpose of advancing social or public welfare etc.
- Indirect benefits can include greater social stability from increased home ownership and improved educational and health outcomes, along with productivity and enhanced economic activity.
- One way to make sense of this area is to return to *Word Investments* and its emphasis on the consequences of activities in setting the contours of the range of activities that are in furtherance of an overarching charitable purpose. If an entity has mechanisms in place to ensure that housing assistance benefits are targeted toward persons who are suffering from a lack of housing, then the natural and probable consequence of providing those benefits would be to relieve that disadvantage, up to the point that the individual assisted is no longer disadvantaged. It should not, however, generally matter that a lesser form of assistance could have been provided (eg rental versus home ownership), except where the resources lost would otherwise have meant a material difference in the advancement of the relevant purpose such that questions might arise about whether the desired consequence is individual enrichment as opposed to public benefit.

## Acknowledgments

This research was made possible by the kind support of the Australian Charities and Not-for-profits Commission in providing suggestions for research questions and in presenting to the LAWS5813 class of 2019. In particular, we are very grateful to Nicholas Kennedy for making himself available to present to the class and to take questions.

Members of the student body comprising the LAWS5813 class also generously agreed to share their research assignment insights with the Australian Charities and Not-for-profits Commission and hence it has been possible to attach those research assignments to this report.

The opinions and conclusions stated in this report do not necessarily reflect the views of the Australian Charities and Not-for-profits Commission or the University of Western Australia.

## Question One: Interpreting s15-5(1)(b) ACNC Act ‘to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector’

### Summary

- Rather than searching for workable measures that can be made of the NFP sector and working back to definitions of the terms used in s15-5(1)(b) (that is, ‘robust’, ‘vibrant’, ‘independent’ and ‘innovative’), orthodox principles of statutory construction should be employed. That is, one should look to the text, context (immediate and broader statutory context) and purpose of the provision.
- Section 15-5(1)(b) refers also to ‘support’ and ‘sustain’ which (in conjunction with the context of the regulatory framework – see below) suggest a facilitative role for the ACNC in taking care of a sector that is already of value, with the four adjectives describing that pre-existing sector.
- The statutory context includes the other objects in section 15-5, plus sections 15-10 and 15-5(2)(b)(iii) and section 110-10(1). All of which suggests both a compliance role and a support role for the ACNC.
- Looking to purpose, the nature of the entities regulated under the ACNC Act (NFPs that are charities) and the EM suggest that the ACNC should help charities achieve public benefit.
- In terms of the broader statutory context and purpose, section 15-5(1)(b) needs to be interpreted in light of the vehicle empowered to give effect to those objects (ACNC) and the overall ACNC Act regulatory system. In particular supporting and sustaining the sector should take place in relation to the things that must happen under the regulatory scheme such as registration, governance standards etc; and the benefits of registration – such as availability of tax concessions.

### Question Posed

The second of the three objects of the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) (**ACNC Act**) is described in s 15-5(1)(b) as being ‘to support and sustain a robust, vibrant, independent and innovative Australian not-for-profit sector’. However, it is not entirely clear what this object means, nor how a regulator might best promote this object. Critically analyse the range of potential interpretations of the object that are available employing standard principles of statutory construction, with reference to:

- (a) How each of the four adjectives should be defined in this context (consider the literature review commissioned by the ACNC <https://www.acnc.gov.au/tools/reports/asures-support-not-profit-sector-indicators-object-1b>; and

(b) How the second object should be interpreted as a whole in light of the overarching framework of the ACNC Act and the regulatory role that it provides for the ACNC.

### Key Ideas and Sources

Student assignment raised a number of key ideas in response to this question. Those key ideas are set out below, along with a cross reference to the relevant assignment source.

Key Ideas	Sources
The four adjectives were first used when describing the national compact between the NFP sector and government	20949692 p 7
<p>Rather than searching for workable measures that can be made of the NFP sector and working back to definitions of the terms used in s15-5(1)(b) (that is, 'robust', 'vibrant', 'independent' and 'innovative'), orthodox principles of statutory construction should be employed. That is, one should look to the text, context (immediate and broader statutory context) and purpose of the provision. The Macquarie dictionary should generally be used to identify the natural and ordinary meaning of the text.</p> <p>A corollary is that the Tulipwood report interpretations are insufficient. They fail to use appropriate methods of statutory construction</p>	See, eg, 21325152 pp2-5; 10037407 pp 3-4; 21298709 pp2-3. See also: 21123927 pp2-3, 7-8.
Text: 15-5(1)(b) refers also to 'support' and 'sustain' which ought to be defined and (in conjunction with the regulatory framework discussed below) suggest a facilitative role for the ACNC. Support and sustain are verbs used in close conjunction with the four adjectives and colour the meaning of those adjectives. They suggest a role for the ACNC in taking care of a sector that is already of value, with the four adjectives describing that pre-existing sector.	10037407 pp 6-7;
Text: 'Robust' is defined in the Macquarie Dictionary as 'strong and healthy, hardy or vigorous'. This suggests the fostering of a healthy sector and sustainability.	21298709 p 4
Text: 'Vibrant' is defined in the Macquarie Dictionary as 'full of vigour; energetic; powerful; forceful'. This suggests a focus not just on financial health, but also how effective the sector is in delivering societal benefits. [Indeed, it could include the effectiveness of sector advocacy]	21123927 p5

<p>Text: 'Innovation' is used in the UK Charities Act s16(5), with the Commissioner to have a role in facilitating innovation. Innovation may also reference adapting to new and emerging public issues.</p> <p>Some papers also looked to context to suggest that supporting innovation could be achieved by reducing regulatory duplication, so freeing up resources for innovation.</p>	<p>20949692 p 5</p> <p>21298709 p9</p>
<p>Looking to the text alone does not explain what meaning these terms should have. Interpretation of 15-5(1)(b) is informed by its <u>statutory context</u>, which includes the other objects in 15-5, plus 15-10 and 15-5(2)(b)(iii) and 110-10(1). Section 15-5 suggests both a compliance role and a support role. 15-10(g) suggests that 15-5(1)(b) may be enhanced by the ACNC focusing on the 'support' part of 15-5(1)(b) – providing guidance to the sector. And this is also supported by 15-5(2)(b)(iii) So too does 15-10(d)'s focus on maintaining the sustainability of the NFP sector</p>	<p>21316236 at Pp5-6; 10037407 p8, 10</p> <p>See also 21325152 pp6-7; 21704279 4-5.</p>
<p>Context: section 15-10 includes a number of terms that implicitly or explicitly highlight the social, historical and political dimensions of the NFP sector. In particular, 15-10(h) highlights the unique nature and diversity of the NFP sector and its distinctive role in Australia.</p>	<p>21316236 at P5</p>
<p>Context: section 15-10(d) suggests that the sector's effectiveness and ability to achieve public benefit are important and should inform the meaning of 15-5(1)(b) – that is supporting the sector in order to achieve public benefit</p>	<p>21316236 at p5</p>
<p>Context: Several papers linked registration and reporting functions and maintenance of trust and confidence as helping shape what 'robust' means. And some linked those functions more broadly to the four words. However papers also noted that metrics such as the number of registrations or longevity are not what the robustness of the sector is dependent on.</p> <p>The ACNC Act provision (s45-10) for the application of governance standards may inform the meaning of the terms in 15-5(1)(b). For instance, a 'robust' NFP sector may be one that has good compliance with the governance standards.</p>	<p>21704279 pp 4-5; 21298709 p4</p> <p>21123927 p 4</p> <p>21316236 at pp6-7</p>
<p>Context: some papers noted that it is difficult to give 'independent' its dictionary definition when the ACNC Act also contemplates regulation of the sector. And that this may justify a focus on a narrower definition, perhaps linked to funding sources and extent of regulation. It might also help the ACNC to pursue the reduction of unnecessary regulatory duplication (Object (1)(c)).</p>	<p>21704279 pp 7-8</p> <p>20949692 p 4</p>



<p>However, independent should also be interpreted in light of the focus on the unique attributes of the NFP sector (from government and the for-profit sector) in s15-2(a).</p>	<p>20949692 p4</p>
<p>Looking to <u>purpose</u>, the nature of the entities regulated under the ACNC Act (NFPs that are charities) and the EM suggest that the ACNC should help charities achieve public benefit.</p>	<p>21325152 pp7-8. See also 21704279 p 12</p>
<p>Purpose: the second reading speech and object (1)(a) also suggest that the ACNC is intended to facilitate the sector in meeting community expectations of transparency and accountability – so as to ensure the sustainability of the sector.</p>	<p>21325152 p8</p>
<p>In terms of the <u>broader statutory context and purpose</u>, section 15-5(1)(b) needs to be interpreted in light of the vehicle empowered to give effect to those objects (ACNC) and the overall ACNC Act regulatory system. In particular:</p> <ul style="list-style-type: none"> <li>• Supporting and sustaining the sector should take place in relation to the things that must happen under the regulatory scheme such as registration, governance standards etc; and the benefits of registration – such as availability of tax concessions. This is reflected in the point further below about the narrower focus on the ACNC as a facilitative regulator.</li> <li>• Section 110-10(2) suggests that the publication of information by the ACNC is primarily linked to the first object, not the second object.</li> <li>• Perhaps object (1)(b) should be interpreted in such a fashion as to enable the ACNC to be held to account for its role in implementing a facilitative regulatory setting for charities. That is, terms such as support and sustain indicate (and the broader purpose referred to above) that the ACNC ought to adopt a facilitative approach to regulation and not a command and control approach. And therefore, that it may be more important to develop indicators about ACNC actions to support and sustain than the measure vibrancy, robustness, independence and innovation. In this vein, section 15-10 references in (a), (d) and (h) suggest that the ACNC should help the NFP sector to thrive.</li> <li>• The section 15-10 (and 15-5(1)(a) and (c)) requirements to have regard to the maintenance protection and enhancement of public trust and confidence in the NFP sector and to minimize procedural requirements may colour the meaning of 15-5(1)(b) and suggest that the ACNC should support the sector to achieve those things and would be supporting the sector if it delivered reduced regulatory burdens. Indeed, some of the papers essentially suggested that rather than a broad facilitative role, the ACNC had a narrow facilitative role linked to its explicit administrative functions.</li> </ul>	<p>21123927 p2 21325152 p2</p> <p>21704279 pp 9-11; 21298709</p> <p>20949692 p8</p> <p>See, eg, 21325152 pp8-9; 10037407 pp6-7; 21704279 pp 9-10</p> <p>21123927 p8, 21298709 generally – need to recognize the role of the ACNC in administering the ACNC Act.</p>

<ul style="list-style-type: none"><li>• The second object can go towards the nature of the relationship the ACNC has with the sector.</li><li>• The ACNC Act generally does not seek to specify the modes by which charities pursue their purposes, other than matters relating to accountability, governance etc. Object 1(b) should be interpreted in this light to avoid measures that suggest particular modes by which charities or the sector should operate.</li></ul>	20949642 p 10  21298709 pp4-5
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## Question Two: Facilitating home ownership

### Summary

- The provision of temporary housing to relieve poverty has been regarded as charitable at common law (and so may come within a purpose of advancing social or public welfare). By analogy, the provision of longer term rights to housing or assistance in obtaining longer term rights, such as ownership rights, should also be charitable. See *Delmo Housing Corp v Finnegan* (1949) 85 F Supp220 and long term leases in *Joseph Rowntree* [1983] Ch 159 (relief of aged). The issue may then be how far the bounds of 'poverty' stretch and the extent to which activities (in terms of who receives assistance) are relevant to the entity's purpose.
- In thinking about the relief of poverty in a housing context, 'relief' infers the fulfilment of a need, rather than a luxury. If the purpose is the relief of poverty, then the nature of the assistance may indicate whether it is relieving the need versus providing some luxury to the recipient who merely happens to be poor. Eg rental assistance versus home ownership. Here, it may be relevant to show that housing stress and housing affordability are particularly marked for low income earners and hence that assistance in owning a home will address these marked problems.
- Other purposes may also be relevant, such as promoting or protecting human rights, advancing the security or safety of the Australian public, advancing health, relief of the aged and the promotion of urban and rural regeneration for the public benefit.
- In considering the impact of direct private benefits to individuals, a crucial factor is the weight to be accorded the indirect public benefit arising from the provision of the private benefits. And when those benefits will be too remote as in *Queenstown Lakes* and *Canterbury Development*. The question is whether the provision of economic benefits to individuals is itself a purpose, or instead a means to an overarching purpose of advancing social or public welfare etc.
- Indirect benefits can include greater social stability from increased home ownership and improved educational and health outcomes, along with productivity, plus enhanced economic activity.
- One way to make sense of this area is to return to *Word Investments* and its emphasis on the consequences of activities in setting the contours of the range of activities that are in furtherance of an overarching charitable purpose. If an entity has mechanisms in place to ensure that housing assistance benefits are targeted toward persons who are suffering from a lack of housing, then the natural and probable consequence of providing those benefits would be to relieve that disadvantage, up to the point that the individual assisted is no longer disadvantaged. It should not, however, generally matter that a lesser form of assistance could have been provided (eg rental versus home ownership), except where the resources lost would otherwise have meant a material difference in the advancement of the relevant purpose such

that questions might arise about whether the desired consequence is individual enrichment as opposed to public benefit.

### Question Posed

Helping people obtain home ownership is a topical issue. It has arisen in Australia (eg in relation to charities promoting housing) and in other jurisdictions (eg in New Zealand in *Queenstown Lakes Community Housing Trust* [2011] 3 NZLR 502). Critically analyse:

- (a) Whether a purpose of facilitating home ownership can be regarded as a charitable purpose and, if so, the relevant circumstances.
- (b) Whether the private benefit provided via home ownership can be consistent with those purposes being for the public (not private) benefit and, if so, the relevant circumstances.

### Key Ideas and Sources

Student assignment raised a number of key ideas in response to this question. Those key ideas are set out below, along with a cross reference to the relevant assignment source.

Key Ideas	Sources
<i>Charitable purpose</i>	
In considering a novel purpose, regard can be had to its likely benefits and detriments (see, eg, Jonathan Garton). Assistance to achieve home ownership may actually cause detriments to the extent that the means involve debt funding for vulnerable people who may default.	21302846 pp6-7; 21321596 p5
On the other hand, if those assisted must have a reasonably stable income in order to be able to meet repayments – are they really persons in need? At least if the purpose of providing housing is conceived under the relief of poverty.	21321596 p3; 21508101 p5
However, in determining an entity’s purpose, activities are generally considered by reference to whether they further a stated object of the entity, rather than by reference to any intrinsic nature of the activities – see <i>FCT v Word Investments Ltd</i> (2008) 236 CLR 204.	21321596 pp2, 6
For instance, assistance to obtain home ownership can be a means to achieving a purpose of helping relieve a need for housing.	
<b>Relief of Poverty/Advancing Social or Public Welfare:</b> As acknowledged in the CIS, the provision of temporary or low-cost housing (ie access to housing, not ownership of the housing) to relieve poverty has been regarded as charitable at common law (and so may come within a purpose of advancing social or public welfare).	21311261 pp2-5; 21313836 p4; 22556856 p3; 21505962 p3

<p>See also <i>Community Housing Limited v Clarence Valley Council</i> [2015] NSWCA 327.</p> <p>By analogy, the provision of longer term rights to housing or assistance in obtaining longer term rights, such as ownership rights, should also be charitable. See <i>Delmo Housing Corp v Finnegan</i> (1949) 85 F Supp220 and long term leases in <i>Joseph Rowntree</i> [1983] Ch 159 (relief of aged). The issue may then be how far the bounds of ‘poverty’ stretch and the extent to which activities (in terms of who receives assistance) are relevant to the entity’s purpose.</p> <p>In thinking about the bounds of poverty:</p> <ul style="list-style-type: none"> <li>• Co-ownership arrangements may make it difficult for a charity to withdraw support when a person ceases to be in poverty.</li> <li>• The EM to the <i>Charities Act 2013</i> (Cth), in discussing the purpose of advancing social or public welfare, expressly contemplates the provision of housing and accommodation support for people with special needs or in a special disadvantage in terms of their access to housing.</li> <li>• The Senate Economics References Committee’s report into housing affordability suggests that ‘housing stress’ is another name for poverty and may be seen as reinforcing the notion that a modest standard of living in contemporary Australia may involve affordable and appropriate housing in the form of home ownership. The Committee insists that housing affordability must be addressed to eliminate poverty and homelessness.</li> </ul> <p>In thinking about the concept of ‘relief’ of poverty:</p> <ul style="list-style-type: none"> <li>• The term ‘relief’ (ie the relief of poverty) may potentially be widely construed to include the prevention of poverty as studies have shown a causal link between declining housing affordability and the incidence of homelessness.</li> <li>• ‘Relief’ infers the fulfilment of a need, rather than a luxury. If the purpose is the relief of poverty, then the nature of the assistance may indicate whether it is relieving the need versus providing some luxury to the recipient who merely happens to be poor. Eg rental assistance versus home ownership. Here, it may be relevant to show that housing stress and housing affordability are particularly marked for low income earners and hence that assistance in owning a home will address these marked problems.</li> <li>• However, this difficulty is less pressing if the focus is on the broader purpose of advancing social or public welfare and if the home ownership benefit is more closely tied to the need (lack of housing) than other ‘luxuries’.</li> </ul>	<p>21508101 p7</p> <p>21313836 pp4-5</p> <p>21482422 p 6 - 7</p> <p>21482422 pp3 – 4, 11</p> <p>21505962 pp4-5; 21482422pp6-7 See also 21307893 p5</p> <p>21482422 pp 6-7</p>
<p><b>Promoting/Protecting Human Rights:</b> The Charities Act includes in s12 the purpose of promoting or protecting human rights. And article</p>	<p>21313836 pp5-6; 21307893 p 5;</p>

<p>25 of the Universal Declaration of Human Rights refers to an international human right to adequate housing.</p> <p>However, housing does not necessarily require home ownership (see eg in <i>Queenstown Lakes Community Trust</i>, the Court found that home ownership was more of a luxury than a necessity in these circumstances (ie in circumstances where beneficiaries of the trust had realistic alternative housing arrangements available to them).</p>	<p>21745848 p 4; 21505962 p6</p> <p>21482422 p 6</p>
<p><b>Advancing the security or safety of the Australian public</b> may permit the provision of housing – eg for people in circumstances of family violence.</p>	<p>21313836 p6</p>
<p><b>Other Purposes and ‘relief of need’:</b> advancement of health (eg where housing (ie ownership) is provided to ill people who need to relocate on a permanent / semi-permanent basis to seek adequate medical treatment) or relief of the aged may cover the provision of housing in some circumstances.</p> <p>Other purposes may also apply as other purposes beneficial to the general public, such as the promotion of urban and rural regeneration for the public benefit – which has been accepted in the UK.</p>	<p>22556856 p4; 21311261 p 5; 21505962 p5; 21321596 pp3-4; 21307893 p 5</p>
<p><i>Private benefit</i></p>	
<p>Some purposes are deemed (rebuttably) to satisfy the public benefit test (spread and net benefit), including several purposes relevant to home ownership – so to the extent, eg that home ownership is for the relief of poverty, this will be deemed.</p>	<p>21313836 p8; 21482422 p8</p>
<p>In considering the impact of direct private benefits to individuals, a crucial factor is the weight to be accorded the indirect public benefit arising from the provision of the private benefits. And when those benefits will be too remote as in <i>Queenstown Lakes</i> and <i>Canterbury Development</i>. The question is whether the provision of economic benefits to individuals is itself a purpose, or instead a means to an overarching purpose of advancing social or public welfare etc.</p>	<p>21302846 pp8-9 21311261 p7</p>
<p>Housing assistance to an individual can be seen as a means to a broader public welfare benefit. <i>Tangentyere</i> is a case where housing assistance was provided as a means to delivering a welfare benefit. In this regard, note Australian Institute of Health and Welfare descriptions of the welfare benefits of secure housing.</p> <p>One assignment neatly split benefits into 3 categories: (1) direct benefits just from access to housing such as shelter, legal security of tenure and access to services. These seem to fit within the welfare benefit identified above. Of course, this welfare benefit could also be viewed as a cost-saving to government and hence to society more broadly.</p>	<p>21313836 p11; 21745848 p 4-5; 21311261 p7</p> <p>21321596 p5;</p> <p>21321596 p5</p>

<p>Benefits flowing directly from home ownership itself, being both (2) tangible (legal title to property, enhanced ability to obtain finance); and (3) intangible benefits (feelings of security and independence).</p> <p>Although not split out, the assignment also discussed more indirect societal benefits too, such as greater social stability from increased home ownership and improved educational and health outcomes, along with productivity, plus enhanced economic activity.</p>	<p>See also 21482422 p12</p>
<p><b>Other indirect societal benefits:</b> the public benefit of home ownership itself (ref to in Dal Pont at 159). Assistance with obtaining housing can be considered to be for the public benefit where it results in a reduction in political/social pressure that would otherwise be imposed on government agencies to provide these services.</p> <p>And there may possibly be particular public benefits in disadvantaged groups of Australians (with lower rates of home ownership) being helped.</p>	<p>21313836 p11; 21505962 p 8; 21307893 p 6</p> <p>21505962 p8</p>
<p>The provision of housing does not need to be the most effective means of achieving a net benefit (so it may not be appropriate to compare home ownership with rental assistance)</p> <p>However, if it is not a particularly effective means, then there is a question about whether it is a means at all, or instead a separate purpose (of enriching selected individuals).</p> <p>Where the private benefits go above and beyond relieving poverty, the private benefits received may outweigh any public benefits</p>	<p>21313836 p11</p> <p>21311261 p8; 21321596 pp7-8</p> <p>21505962 pp 4-5; 21321596 p 3; 21302846 p 4</p>
<p>It may be easier for full-service charities (particularly community welfare/service organisations) to show that assistance in obtaining housing is one of a number of relief of disadvantage means that have an overall public benefit.</p>	<p>21745848 p 8</p>
<p>It is possible to make sense of the above by returning to <i>Word Investments</i>. In that case, when considering when activities might evidence a separate non-charitable purpose, the High Court accepted that activities can indirectly achieve a charitable purpose and quoted from an earlier charity case, stating:<sup>1</sup></p> <p style="padding-left: 40px;">In <i>Baptist Union of Ireland (Northern) Corporation Ltd v Commissioners of Inland Revenue</i> [(1945) 26 TC 335 at 348] MacDermott J said:</p> <p style="padding-left: 80px;">‘the charitable purpose of a trust is often, and perhaps more often than not, to be found in the natural and</p>	

<sup>1</sup> *Word Investments* (n **Error! Bookmark not defined.**) [38].

probable consequences of the trust rather than in its immediate and expressed objects.’

Similarly, the charitable purposes of a company can be found in a purpose of bringing about the natural and probable consequence of its immediate and expressed purposes, and its charitable activities can be found in the natural and probable consequence of its immediate activities.

The emphasis in this statement is on the consequences of activities in setting the contours of the range of activities that are in furtherance of an overarching charitable purpose.<sup>2</sup>

If an entity has mechanisms in place to ensure that housing assistance benefits are targeted toward persons who are suffering from a lack of housing, then the natural and probable consequence of providing those benefits would be to relieve that disadvantage, up to the point that the individual assisted is no longer disadvantaged. It should not, however, generally matter that a lesser form of assistance could have been provided (eg rental versus home ownership), except where the resources lost would otherwise have meant a material difference in the advancement of the relevant purpose such that questions might arise about whether the desired consequence is individual enrichment as opposed to public benefit.

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<sup>2</sup> *Ibid* [26]. See also Ian Murray, ‘Looking at the Charitable Purposes/Activities Distinction through a Political Advocacy Lens: A Trans-Tasman Perspective’ (2019) 19(1) Oxford University Commonwealth Law Journal 30, 36-8.



## **Appendix A**

### **Assignment responses on the interpretation of section 15-5(1)(b) ACNC Act**

## **Appendix B**

### **Assignment responses on facilitating home ownership**



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