

Submission to Department of Housing, Local Government and Community Development – Amendments to the *Local Government Act 2019* (NT)

Submission by Venture Housing Company Limited

Background

- 1 On 14 April 2025, the Department of Housing, Local Government and Community Development (**Department**) proposed amendments to the *Local Government Act 2019* (**LGA**) through the release of a discussion paper.
- 2 As part of the discussion paper, the Department has released a questionnaire for direct feedback on the proposed amendments to the LGA. Venture Housing Company Limited (**Venture**) provides a submission in response to this questionnaire and particularly addresses Part B of the discussion paper.
- 3 Venture submits that its response should be considered in any final report.

Considerations for the Department

Chapter 7: Rates exemptions

- 4 Venture is a Community Housing Provider (**CHP**) which delivers safe, secure, and affordable housing for individuals and families unable to access the private rental market. It is a registered charity under the Australian Charities and Not-for-Profits Commission (**ACNC**) and holds Public Benevolent Institution (**PBI**) status. Venture works in partnership with the corporate sector, local businesses, all levels of government and other not-for-profit agencies to provide social and affordable homes across Darwin, Palmerston, Katherine and Tennant Creek.
- 5 Specifically, Venture provides the following four main types of housing services:
 - (a) NRAS Affordable Housing refers to housing made available by Venture under the National Rental Affordability Scheme (**NRAS**) to tenants who meet the eligibility criteria determined by NRAS, including those falling within specified income limits. Rent is limited to 74.99% of market rent which is lower than the NRAS requirement. The NRAS affordable housing subsidies will cease entirely in 2026, and will be transitioned to another type of housing provided by it, called Venture Affordable Housing;
 - (b) Venture Affordable Housing refers to affordable housing made available to tenants in a manner consistent with the Northern Territory Government Community Housing Asset and Tenancy Management policy which includes the provision of affordable rental property for key service workers. Part 5.2 of that policy requires Venture, as a community housing provider, to prioritise and target households that meet the eligibility criteria for public housing and/or affordable housing and have a demonstrated need for assistance to maintain housing affordability. Under the Venture Affordable Housing Program, rent is set at no more than 74.99% of market rent, determined by independent valuation every two years;

- (c) Social Housing refers to housing provided by Venture to people currently on the Northern Territory Government's public housing waitlist—inherently, these are people who meet eligibility requirements because of their economic and social needs and limited income and assets. The maximum rent charged for social housing by Venture is 25% of assessable household income plus 100% of Commonwealth Rent Assistance received by the tenant(s), capped at the gazetted rent for each particular property (gazetted rent is not equivalent to market rent). In some cases rent is charged at less than 25% of assessable household income, and the gazetted rent was last determined in 2017; and
- (d) Specialist Disability Accommodation refers to accommodation provided to tenants who are eligible under the NDIS for specialised accommodation. Irrespective of the financial circumstances of the tenant, the reasonable rent contribution made to Venture is fixed at 25% of the Commonwealth Disability Support Pension plus 100% of any Commonwealth Rent Assistance received. To charge any amount, Venture is required to have in place a tenancy agreement (also called a written service agreement) with the person in need of housing.
- 6 Rates exemptions play a crucial role in supporting Venture's ability to maintain affordable housing while managing limited resources effectively. The Northern Territory Government's focus on clarifying or reforming rating exemptions specifically for CHPs underscores the need to balance local government revenue with the imperative of maintaining housing accessibility. However, the current approach, without addressing specifically the various considerations of 'non-commercial' use, raise questions about how any proposed amendments will ultimately affect CHPs.
- 7 Venture supports an amendment to the definition of 'non-commercial use' under section 222(1)(g) of the LGA to ensure certainty for CHPs across the Northern Territory. This amendment should recognise CHPs as charitable organisations delivering essential social and affordable housing, consistent with the original intent of rate exemptions for charitable purposes. These organisations play a crucial role in supporting people who cannot afford to participate in the private housing market. Imposing council rates on CHPs reduces their financial capacity to maintain and expand affordable housing, ultimately disadvantaging the vulnerable tenants they serve.
- 8 The Northern Territory Government currently pays council rates on all its social housing stock. With plans to transfer approximately 40% of public housing—around 2,200 properties by 2032—and about 750 properties already transferred as of 2025, clear rating exemption guidelines for CHPs are essential.¹ Such exemptions also align with the NT Government's objectives of fostering social and affordable housing through partnerships with CHPs, as outlined in the *Northern Territory Community Housing Growth Strategy 2022-32*. This strategy recognises the vital role CHPs play in delivering sustainable, quality housing to vulnerable Territorians and supports the growth of the sector as part of the broader housing strategy.
- 9 Recently, the City of Palmerston purported to impose rates on a significant number of properties owned by Venture in its local government area.
- 10 In response, Venture has been successful in bringing an application for rates exemptions under section 222(1)(g) of the LGA. The 2025 NTCAT decision of *Venture Housing Company Limited v City of Palmerston* found that affordable housing provided by a registered charity qualifies as a 'non-commercial purpose' under Section 222(1)(g) of the LGA (even where rent is charged), supporting eligibility for rates exemption.²

¹ Northern Territory Government, *Community Housing Growth Strategy 2022-32*, Department of Housing and Community Development, https://dhlqcd.nt.gov.au/_data/assets/pdf_file/0009/1099170/tfhc-community-housing-growth-strategy-202232.pdf

² *Venture Housing Company Limited and City of Palmerston* [2025] NTCAT 1, <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nt/NTCAT/2025/1.html>

- 11 This decision aligns with the New South Wales Court of Appeal ruling in *Community Housing Limited v Clarence Valley Council* [2015], which recognised that providing below-market rent is a charitable activity.³
- 12 Additionally, the NTCAT also found in *City of Darwin v Kalyrnian Brotherhood Darwin Inc*, NTCAT, 4 May 2024, that section 222(1)(g) in the context of land used for cultural, religious and sporting purposes. The Tribunal then found that the funds raised by the community organisation from various activities went to pay for the substantial overheads associated with holding the land to enable it to carry out those non-commercial activities and the fact that it received donations and charged its members for use of the hall for social and cultural events such as weddings did not constitute a commercial use of the land.
- 13 However, as the decision of *Venture Housing Company Limited v City of Palmerston* is currently under appeal to the Supreme Court of the Northern Territory, legislative clarity is crucial to prevent any potential uncertainty and ensure consistent and equitable application across the Northern Territory.
- 14 Even if the Supreme Court upholds the decision of NTCAT, Venture has incurred and is continuing to incur significant legal cost as a result of the City of Palmerston's rates decision, and its appeal of the NTCAT decision.

Do you support the proposed change?

- 15 Venture largely agrees that section 222(1)(g) of the LGA requires amendments to resolve ambiguity in the legislation with respect to a 'non-commercial' use and ensure consistency in rate exemptions for CHPs.
- 16 However, Venture submits that the amendment should explicitly recognise:
- (a) that where rent is charged for CHPs providing social and affordable housing, and that rent is below market rent, this accounts for a 'non-commercial' use; and
 - (b) this should apply even where the land is owned by the CHP.
- 17 There is significant authority to support that properties are used for a non-commercial purpose even where leases have been entered into and rent is charged. In *Aboriginal Hostels Ltd v Darwin City Council* (1985) 75 FLR 197, the Court found that the fact that some payment is made for the accommodation does not detract from the general proposition that the land was used for the purposes of a public charity.
- 18 In *Salvation Army (Victoria) Pty Ltd v Fern Tree Gully Corporation* [1952] 85 CLR 159, the High Court considered whether land owned by the Salvation Army was land used "exclusively for charitable purposes" within the meaning of local government legislation in Victoria. If it met that criterion, the land would be exempted from the payment of municipal rates levied by the respondent, the Fern Tree Gully Corporation. The Salvation Army used the land as a farm for "delinquent, difficult, wayward or underprivileged" boys who were provided with accommodation and training in agricultural work. The farm was productive of pigs, cattle, fruit and vegetables and milk from a dairy herd. The produce that the resident boys did not consume was sold for a profit that was then applied to the cost of running the farm (which operated at a loss). It was held that, "if the use of the land for a charitable purpose produces a profitable by-product as a mere incident of that use the exclusiveness of the charitable purpose is not thereby destroyed."⁴

³ *Community Housing Limited v Clarence Valley Council* [2015] NSWCA 327, <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCA/2015/327.html>

⁴ *Salvation Army (Victoria) Pty Ltd v Fern Tree Gully Corporation* [1952] 85 CLR 159, 172.

How do you think this proposal will impact your council or community in practice

- 19 Clearer legislative criteria will reduce the prospect for disputation over rate exemption eligibility, improve administrative efficiency for councils, and provide operational certainty for CHPs. This will enable CHPs to allocate more resources toward meeting housing needs instead of navigating regulatory ambiguities.

Are there any unintended consequences or practical implementation issues you foresee with this change?

- 20 As outlined above, the definition of 'non-commercial' must be carefully crafted to avoid excluding CHPs that rely on below market rental income to maintain financial viability. Clear safeguards are needed to prevent misuse of exemptions by organisations that do not fully align with charitable objectives.

Do you have any additional support or feedback?

- 21 The decision in *Venture Housing Company Limited v City of Palmerston* strongly aligns with the above submissions and the legal principles set out in that decision should be used to reflect the amendments made to section 222(1)(g) of the LGA.
- 22 We propose that section 222(5) of the LGA could be amended to include a definition of 'non-commercial purpose' supported by a definition of 'charitable purpose' as follows:

(5) in this section:

...

Charitable purpose includes the following:

- (a) the purpose of advancing health;*
- (b) the purpose of advancing education;*
- (c) the purpose of advancing social or public welfare;*
- (d) the purpose of advancing religion;*
- (e) the purpose of advancing culture;*
- (f) the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;*
- (g) the purpose of promoting or protecting human rights;*
- (h) the purpose of advancing the security or safety of Australia or the Australian public;*
- (i) the purpose of preventing or relieving the suffering of animals;*
- (j) the purpose of advancing the natural environment;*
- (k) 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);*

***Non-commercial purpose** means a purpose where achieving profit or financial return, whether or not profit or financial return is in fact achieved, is not the dominant purpose of the land's use and, whether the land is used for a charitable purpose, is a factor in favour of a finding that the land is used for a non-commercial purpose.*

- 23 We consider that the proposed definition of 'charitable purpose' should largely mirror the definition as set out in section 12 of the *Charities Act 2013* (Cth) and could be used to further support the definition of 'non-commercial purpose' to provide greater clarity as to the legislature's intention.

Conclusion

- 24 Thank you for considering Venture's submission.
- 25 If you have any questions or wish to discuss this submission further, please contact Tim Sunwoo, CEO Venture Housing, t.sunwoo@venturehousing.org.au 0411 014 002.