

**Joint submission to Senate Economics Legislation Committee**

**Inquiry into the provisions of the *Treasury Laws Amendment (National Housing and Homelessness Agreement) Bill 2017***

18 December 2017



The Governments of Victoria, New South Wales, Queensland, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory, are pleased to provide this joint submission to the Economics Legislation Committee on the provisions of the *Treasury Laws Amendment (National Housing and Homelessness Agreement) Bill 2017*.

## 1. The States recommend the withdrawal of the Bill

### Recommendation 1 (Primary recommendation of the States)

That the Committee reject this Bill and request a new amendment to the *Federal Financial Relations Act* be drafted which repeals the national specific purpose payment for housing services and introduces a new national housing and homelessness payment. The new legislation should operate in a similar fashion to the national health reform payments and the only condition for receiving Commonwealth assistance should be that the financial assistance is spent on housing and/or homelessness services. Consistent with other national agreements, the detail of the partnership and commitments that both levels of government enter into under the agreement can be articulated in the new NHHA.

### Context

People living in social housing or experiencing homelessness are among the most vulnerable in the community. Often, they can also face a range of other complex issues including mental illness, drug and alcohol issues or domestic and family violence.

Nationally, state and territories (the States) invest around \$5.2 billion per year for social housing and homelessness, compared to \$1.4 billion by the Commonwealth.<sup>1</sup> Most Commonwealth funding is provided to the States as untied grants through the National Affordable Housing Agreement (NAHA), allowing the States to direct funds to priority social housing and homelessness services. Tied grant funding is provided through the National Partnership Agreement on Homelessness (NPAH). The Commonwealth also provides direct assistance to people on low incomes for use in the private housing market through Commonwealth Rent Assistance (CRA).

Social housing provides homes to the nation's most vulnerable and in need and, for many, it gives them the foundation to stabilise other areas of their lives and participate in education, work and the community. Australia is experiencing increased levels of homelessness. The drivers of this growth are complex and wide ranging – from unemployment to housing unaffordability and inadequate income support. This increased demand is most visible at the crisis end of the system, but this is just one expression of homelessness. There are thousands more we do not see. Some people are sleeping in their cars or on friends' couches or in temporary and insecure accommodation.

Funding provided through the NAHA and NPAH is critical to supporting social housing and essential front line homelessness services in Australia. In 2011, there were over 105,000 homelessness people in Australia – an increase from 95,000 in 2006<sup>2</sup> and in 2015-16, over 279,000 clients nationally were provided support by specialist homelessness agencies to people experiencing homelessness or in crisis situations.<sup>3</sup> NAHA and NPAH funds also ensure the operation of over 320,000 public housing dwellings nationally, housing over 665,000 tenants<sup>4</sup> or around 3.6 per cent of all households nationally.<sup>5</sup> However, there continues to be significant unmet demand for these services. At 30 June 2016, more than 194,600 people were on a waiting list for social housing,<sup>6</sup> and in 2015-16 every day there were 275 requests for homelessness assistance that were unable to be met.<sup>7</sup>

There are significant interlinkages between the supports provided by the Commonwealth and the States. A significant proportion of public housing tenants receive Centrelink support, who without public housing,

<sup>1</sup> Steering Committee for the Review of Government Service Provision 2017, *Report on Government Services 2017*, vol. G, *Housing and homelessness*, Table 18A.2 and Table GA.1.

<sup>2</sup> Australian Bureau of Statistics, *Census of Population and Housing: Estimating homelessness*, 2011.

<sup>3</sup> Australian Institute of Health and Welfare (AIHW), *Specialist Homelessness Services 2015–16*.

<sup>4</sup> AIHW *Housing Assistance in Australia 2017*.

<sup>5</sup> Australian Housing and Urban Research Institute, 16 August 2017, *Census data shows falling proportion of households in social housing*.

<sup>6</sup> AIHW *National Housing Assistance Data Repository 2015–16*.

<sup>7</sup> AIHW *Specialist homelessness services 2015–16*.

would be in unstable housing or homeless. Acknowledging the interconnectedness of State and Commonwealth policies and the effect this has on whether a vulnerable person can access and maintain stable housing is critical to achieving positive, long-term outcomes across Australia.

There is significant work underway by the States to address housing and homelessness challenges in each jurisdiction and the States are committed to working with the Commonwealth to address these complex issues. Acknowledging the significant investment by the Commonwealth and the States and that each holds different policy levers, addressing housing and homelessness issues cannot be viewed as the sole responsibility of states and territories alone. Significant work is underway by the States and strategy and reform priority documents have been published over the last few years, by states, addressing these issues.<sup>8</sup>

The Intergovernmental Agreement on Federal Financial Relations (IGA FFR) establishes principles for collaborative working arrangements between the Commonwealth and the States. Additionally, the recent Productivity Commission draft report on Reforms to Human Services proposed stewardship, contestability and commissioning as the best way forward for maximising the efficiency and effectiveness of service delivery.<sup>9</sup> Rather than acting as a purchaser of services, the States encourage the Commonwealth to view the States as valuable partners in achieving service delivery and policy outcomes. The States also contend that the Commonwealth should demonstrate more willingness to use its own unique levers (such as taxation, migration and income support, including the level of CRA) to jointly contribute to outcomes.

The new National Housing and Homelessness Agreement (the NHHA) presents states, territories and the Commonwealth with the opportunity to achieve genuine reform. However, the Bill not only expands the scope of current arrangements without additional funding and introduces tied funding, it commits the States alone to actions to tackle these momentous challenges without access to all the necessary levers required to create meaningful change.

### **The Bill places funding for critical front-line social housing and homelessness services at risk**

The NHHA will provide \$4.6 billion nationally over three years for housing and homelessness. The conditions proposed by this Bill allow the Commonwealth to withhold all funding for the States for housing and homelessness under the NHHA. Therefore, billions of dollars of support for the most vulnerable in our communities could be at risk each year if the Commonwealth rejects the content of a state's own housing or homelessness strategy, or deems information provided by a state as being not compliant with the legislation. This places critical social housing and homelessness services at risk, prevents effective forward planning by service providers and may have serious impacts on vulnerable Australians.

This approach is punitive and disproportionate and does not work toward the stated objectives of the NHHA of improving housing outcomes for vulnerable people. The States are committed to working with the Commonwealth toward improving outcomes, transparency, reporting and data collection, but must have funding certainty to progress any significant reforms. The States would support additional incentive funding from the Commonwealth for initiatives beyond the scope of the current agreement.

**Impact of the Bill – scenario 1:** Homelessness service providers have experienced an extended period of funding uncertainty under the NPAH. Funding for the NPAH has been non-recurrent and renewed only for short periods and often late in the funding cycle. The States and service providers understood that the introduction of the NHHA would mean more stable and secure long-term funding arrangements for homelessness service providers. This was welcomed because, for the first time, the NHHA was to provide ongoing funding, funding certainty and indexation for the NPAH component of funding. However, under this Bill, all funding for homelessness can be withheld, which undermines this certainty. Front line homelessness services may be closed if funding is withheld by the Commonwealth. Service providers do not have the financial capacity to absorb the cuts in funding that may occur. This will increase the numbers of people experiencing homelessness who are unable to access services and crisis accommodation.

<sup>8</sup> NSW – *Future Directions for Social Housing in NSW*; Victoria – *Homes for Victoria and Plan Melbourne 2015-2050*; Western Australia – *Affordable housing Strategy*; Tasmania – *Affordable Housing Strategy 2015-2025*, and *Affordable Housing Action Plan 2015-2019*.

<sup>9</sup> Productivity Commission 2017, *Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services*, Draft Report, Canberra.

## 2. If the Bill is not withdrawn, the States recommend amendments

### States and territories are best placed to determine local responses to local needs via their housing and homelessness strategies

State and territory governments work directly with service providers to identify those in need of housing and homelessness supports, understand their individual needs, provide appropriate, evidence-based services to assist them and provide ongoing support to prevent a future loss of housing. The States understand the complexity of client needs and the unique challenges encountered by different cohorts in their local communities. The States are therefore best placed to plan for future housing and homelessness service delivery that will meet the needs of their communities. These plans are encapsulated in state and territory housing and homelessness strategies.

Rather than recognising the expertise and local knowledge that the States bring to the development of these plans, the Commonwealth is seeking through this Bill to legislate the content of these jurisdiction specific housing and homelessness strategies.

This Bill imposes a one-size-fits-all approach, which fails to take into account the different challenges faced across and within jurisdictions. For example:

- Housing affordability is currently an issue in Melbourne and Sydney, and remains an issue in Perth for low income households, but is not an issue in Hobart. Regional areas of NSW, Victoria and Western Australia have diverse social housing needs and, even within metropolitan areas, there are different challenges for different locations.
- Hobart has the lowest mean house price of all capital cities and remains the most affordable capital city to buy a home (when assessing average yearly earnings to mean house prices), however the rental accommodation market is increasingly constrained, so the Tasmanian Government is more focused on affordable housing and homelessness, rather than housing affordability.
- The housing market in Perth has softened in recent years following the recent commodity and investment boom, and housing affordability has improved. The supply of affordable housing will, however, continue to be a challenge for those on lower incomes.
- National housing affordability indicators conceal disadvantage in the ACT. The higher than average income levels mask the fact that the ACT has one of the most expensive rental markets in Australia. This creates a disparity of access and conceals the housing stress faced by the lowest two income quintiles when attempting to access the private rental market.
- Homelessness is 15 times the national average in the Northern Territory.

The challenges are best addressed by individual jurisdictions in their own state plans.

The highly prescriptive legislation proposed by this Bill would result in a lack of flexibility for the Commonwealth and the States to adapt to changing circumstances. While the Bill is prescriptive, there is simultaneously a lack of detail about the nature and content of the requirements provided for under the Bill, which provides the states with limited guidance on how they can meet the Commonwealth's expectations.

This Bill reduces the ability of the States to be innovative in their service design and delivery and restricts jurisdictions in their ability to respond quickly to economic, demographic and social changes. The States are best placed to determine the content of their own housing and homelessness strategies based on the specific circumstances within each jurisdiction. Accountability for delivering these strategies appropriately rests with each state's elected officials.

**Impact of the Bill – scenario 2:** The Bill would permit the Commonwealth to reject the content of a state government's Cabinet-approved housing or homelessness strategy because it does not meet the Commonwealth's 'credible housing strategy' expectations, which are not defined and are open to interpretation by the Commonwealth. Moreover, this allows the Commonwealth to hold the States to account for expenditure of states own-sourced revenue, which is outside of the scope of this agreement. If this were to occur, service providers in that state would not receive their expected funding. Without funding certainty, services could not effectively plan service delivery or maintain staffing stability. Many

thousands of people experiencing homelessness would not receive the support they need and further numbers of people may be forced into homelessness if they could not access support to gain or sustain housing. These cohorts would experience increased vulnerability, compounding their existing issues and reinforcing the cycle of disadvantage. This would also create additional burden on the broader social service system.

### **Changes to the Federal Financial Relations Act are contrary to the IGA FFR and introduces risk for state and territory services**

The *Federal Financial Relations Act 2009* (the Act) allows for the Commonwealth to provide financial support for the delivery of services by the States. The changes to the Act proposed by this Bill are in stark contradiction to the IGA FFR and present a risk to the services available to those in need that are funded under the agreement. The Bill provides for a more prescriptive and burdensome funding regime as it imposes a number of conditions for states and territories to receive funding.

The IGA FFR commits the Commonwealth to reducing its prescriptions on service delivery by states and territories and provides that national agreements will not include financial or other input controls imposed on service delivery by states and territories (IGA FFR, Part 3, Clauses 8(a), 19, 20 and 21). It also sets out that payments for ongoing service delivery are separate from those made to support the delivery of specified outputs or reforms (IGA FFR, Part 3, Clause 19).

Shifting away from the principles underpinning the IGA FFR in this manner will result in a less effective system that is constrained in its ability to flexibly adapt to emerging issues and the needs of clients. This is because services will be shaped according to legislative requirements, rather than solely in response to the real issues facing clients and the service systems designed to support them.

The inclusion of detailed pre-conditions for states and territories to receive Commonwealth funding proposed in Part 3B, section 15C are input controls in direct contradiction of section 21 of the IGA FFR, and will not necessarily support improved outcomes for people needing housing or homelessness services. Under current arrangements, the only legal requirement placed on funding is that Commonwealth's financial assistance is spent by States on housing services (section 14(6) of the Act). The current approach is consistent with other national specific purpose payments (skills and workforce development and disability services) and similar to the approach for national health payments, where funding is to be spent in accordance with the national agreement.

While the States are committed to funding responses to homelessness and the inclusion of matched funding as a legislative requirement is inappropriate. Funding arrangements should instead be included in the overarching NHHA. This allows for flexibility to adjust plans to a changing environment.

Further, including a legislative requirement around matched funding presents a risk that the Commonwealth will increasingly use such legislative requirements in the future in an attempt to control how the States direct their funding. As the States are best placed to determine where funds should be spent according to local need, this could have significant implications on service delivery.

States also have significant concerns in regards to how the prescriptive requirements in Section 15C of the Bill will be interpreted by the Commonwealth. This may require subjective judgement. This creates significant financial and service delivery risks for states and territories, including the risk that Commonwealth funding will be withheld if one or more elements of the prescribed yet subjective requirements are not delivered as assessed by Commonwealth officials or ministers. While the current Commonwealth Government has suggested that it will not require the States to implement particular policies under sections of the Bill, there is a significant risk that a future Commonwealth Government could interpret these legislative requirements more literally.

**Recommendation 2A:** That if the Bill retains reference to input controls (noting this is not supported by the States), that the Bill is amended to remove the requirements that would legislate the content of state and territory housing and homelessness strategies, including references to aggregate housing supply targets, projecting and meeting housing demand and identification of priority homelessness cohorts.

**Recommendation 2B:** That the Bill is amended to remove the requirement for matched homelessness funding, to preserve the independence of state and territory government fiscal management.

### **The Bill expands the scope to include housing affordability matters**

The Bill outlines that the NHHA will be broad in scope and inclusive of housing affordability in the broader residential property market. However, no additional funding is provided to address issues beyond the scope of social housing and homelessness supports that are currently funded under the NAHA and NPAH.

Existing funding under the NAHA and NPAH has not kept up with housing and service delivery costs. The IGA FFR recognizes that the States have primary responsibility for many areas of service delivery but coordinated action, including sufficient ongoing financial support from the Commonwealth, is necessary to address Australia's economic and social challenges.

This Bill creates the risk that funding for critical services for the most vulnerable will be diverted to a range of other areas that impact the supply and cost of housing (for example, planning and zoning reforms, assistance to people in the private rental market and home ownership).

It also makes the States responsible for responding to and financially supporting changes to Commonwealth levers, such as migration, taxation, welfare and the level of CRA, even though the States have no control over how these levers are used. This approach fails to acknowledge the Commonwealth's equal role in the functioning of the housing market and exacerbates vertical fiscal imbalances, further constraining States' ability to fund critical services.

Housing affordability is a complex and important issue and requires joined up approaches across all levels of government to achieve outcomes. However, this Bill shifts responsibility for housing affordability to the States alone. This is not feasible. To tackle housing affordability, the Commonwealth must use the levers it has at its disposal (such as taxation, migration and income support, including the level of CRA) and work in partnership with the States. There is no mechanism in the Bill that compels the Commonwealth to exercise these levers or undertake any activity to address housing affordability.

The States are committed to improving housing outcomes for all Australians. However, if a broader approach that encompasses housing affordability is to be pursued, this can only be achieved with a more holistic plan for the overall housing system and this approach must be supported by significant additional Commonwealth investment, as well as a commitment from the Commonwealth to use the many levers at its disposal.

**Recommendation 2C:** That, in the absence of significant additional Commonwealth investment and commitment to joint action, the Committee recommend removing references to 'housing affordability matters' as this significantly expands the scope of the NHHA beyond that of the current agreement and may divert funding away from critical social housing and homelessness services.

### **The Bill imposes onerous information requests tied to funding**

The Bill seeks to make payment of NHHA funds conditional upon the States fulfilling any data request of the Commonwealth Minister relating to housing, homelessness or housing affordability. There is no valid rationale for putting funding for the community's most vulnerable people at risk by making funding conditional on the delivery of undefined information requests.

The States are very supportive of improved transparency, reporting and data collection and willing to work with the Commonwealth to make these improvements. However, this should not come at the expense of funding certainty, which is a significantly disproportionate risk, nor should the Bill allow for unconstrained data requests that increase overheads in administering the NHHA. Any increases in administrative burden will also come at the expense of housing and homelessness service provision.

**Recommendation 2D:** That, to reduce uncertainty for the States, the Committee recommend replacing the broad reporting obligations imposed on the States with narrower specific obligations as specified in the primary housing agreement.