

Date: 24 September 2020

Structuring paper

Recommendations for a governance structure for
the Permanent Rental Affordability Development
Solution model





Structuring paper

1. Background, purpose and limitations

1.1 Background

- (a) This is a preliminary structuring paper prepared for Housing All Australians (**HAA**).
- (b) HAA is an Australia-wide group of private sector individuals and corporates with a shared vision that it is in Australia's long term economic interest to house all Australians, including those on very low incomes.
- (c) One of HAA's projects is the development of a national affordable housing rental model called 'PRADS' – Permanent Rental Affordability Development Solution (**PRADS Model**).
- (d) The PRADS Model proposes a model of affordable rental housing that is delivered by the private sector as a long term affordable housing rental stream which complements the existing public and social housing system. It proposes to do this at scale by the creation of a number of privately-owned rental dwellings within a development which are rented at below market rents to eligible households with low incomes.
- (e) Given that no legislative framework exists for this model (unlike NRAS, for example), it is proposed to contain the governance structure as part of the constituent documents of affordable housing funds (**Fund**).

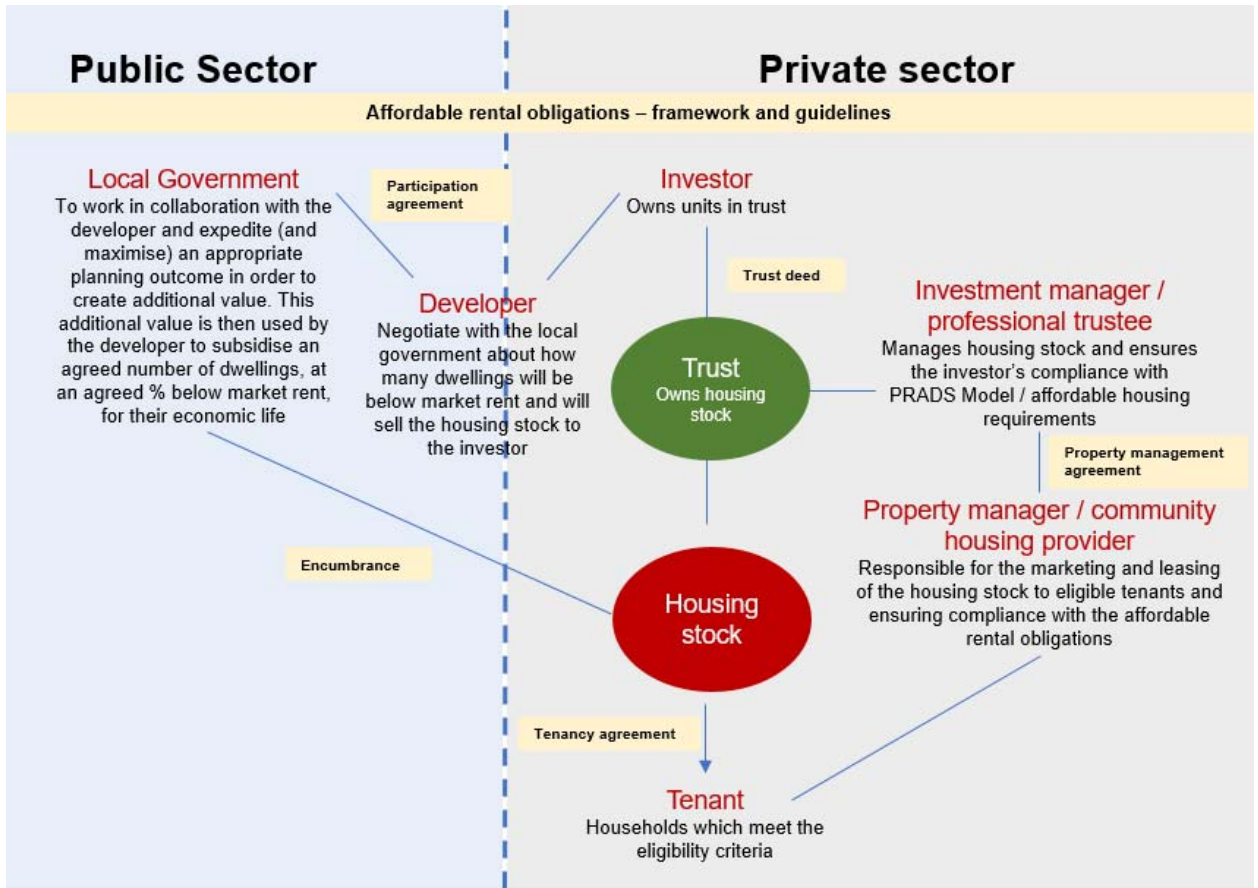
1.2 Purpose

The purpose of this structuring paper is to:

- (a) identify the key governance principles that should be built into the PRADS Model; and
- (b) recommend the manner in which those governance principles may be implemented and achieved.



2. Participants in the PRADS Model



We envisage that a 'management committee' will be established for each Fund which will consist of representatives of relevant stakeholders (eg local government, HAA and the investor). The management committee will have the ability to advise and direct the trustee in relation to certain matters and will approve key policies applicable to the PRADS Model.

3. Governance principles and manner of implementation

	Governance principle	Structure / manner of implementation
1	<p>Accountability and consequences for non-compliance</p> <p>The PRADS Model must include reasonable and appropriate checks and balances to ensure all stakeholders are held accountable for their actions.</p> <p>The responsibility for the overall supervision and monitoring of the scheme should be clearly stated, effectively implemented and understood by stakeholders.</p> <p>To provide 'teeth' to this obligation, the governance structure must have appropriate penalties to deter against non-compliance.</p>	<p>Whilst an independent government regulator would achieve optimal accountability and strict compliance, the establishment of such a regulator will require legislative reform and take a considerable amount of time.</p> <p>In the absence of a government regulator and to demonstrate proof of concept, we propose the PRADS Model includes an obligation on the Fund to, on an annual basis:</p> <ul style="list-style-type: none"> • prepare a 'statement of compliance' which is similar to the document required under regulation 43 of the NRAS Regulations (see Item 1 of Schedule 1); • have all statements of compliance or a sample size independently audited to verify compliance; and • provide a copy of the audit report to the local government and the management committee and publish it online for public viewing.



	Governance principle	Structure / manner of implementation
2	<p>Equity</p> <p>The social good aspect which underpins the PRADS Model requires stakeholders to uphold a high degree of equity. The PRADS Model must be equitable and ensure there is a consistent approach in the way tenants are selected and any discretion is applied.</p>	<p>The PRADS Model will include eligibility criteria similar to that contained in regulation 41 of the NRAS Regulations (see Item 2 of Schedule 1).</p> <p>As the NRAS scheme has been abandoned, the eligibility criteria contained in the PRADS Model will need to be linked to the relevant source data published by the Australian Bureau of Statistics.</p>
3	<p>Flexibility</p> <p>The PRADS Model must have the ability to react and appropriately respond to changes in economic circumstances. This principle must be subject to the fundamental requirement for the housing stock to be used for affordable housing for its economic life (eg 25 or 30 years).</p>	<p>Policies will be developed that set out the parameters around redevelopment of the properties and changing priorities / demands in certain locations. The management committee will approve the policies and any amendments to the policies.</p> <p>As a fundamental limitation, the Fund will require the consent of the management committee to develop / redevelop any land. This is further secured by a restrictive covenant or similar lodged on the titles for housing stock.</p>
4	<p>Independence</p> <p>To provide legitimacy and integrity to the PRADS Model, there must be a combination of actual and perceived independence. Independence should be enshrined in the structure of the model, there should be independence in the assessment of applications and the entities responsible for this function should be given independence to act objectively.</p>	<p>The trustee / investment manager and the property manager will be given independence under their respective agreements to administer the PRADS Model in a manner which is independent and fair and in accordance with their roles and responsibilities as outlined in the governance documents of the Fund.</p>
5	<p>Participation of stakeholders</p> <p>A well governed system will have active involvement and participation of the key stakeholders to ensure the system is meeting the needs of all stakeholders and that it is achieving its purpose. This may be direct involvement or through representatives.</p>	<p>Early consultation will be undertaken with local government representative organisations to obtain endorsement of the PRADS Model.</p> <p>The management committee will also provide a forum for key stakeholders to participate in the PRADS Model.</p>
6	<p>Requirement for the housing stock to be used for affordable rental purposes for its economic life</p> <p>As this is a fundamental aspect of the PRADS Model, the governance structure must include measures to ensure the housing stock is used for affordable rental purposes for its economic life (eg 25 or 30 years).</p>	<p>Whilst Victoria has a planning instrument which offers a more tailored solution, the same instrument is not necessarily available in other states. Further consideration of what solutions could be available in other states is required however in WA the local government will be granted a restrictive covenant over the housing stock to ensure the Fund's compliance with its obligations.</p> <p>Oversight by the management committee will also ensure compliance with relevant obligations.</p>
7	<p>Sale of housing stock – clear process to be followed</p> <p>A clear process is required to ensure the continued use of the housing stock for affordable rental purposes and the minimisation of any disturbances to tenants.</p>	<p>Policies will be developed that will contain clear parameters around the process to be followed in the event of a sale of the housing stock.</p> <p>Further discussion is required to agree the process to be followed in the event the investor wishes to sell the housing stock.</p>
8	<p>Simplicity</p> <p>The PRADS Model must be simple to understand and simple to comply with, from the perspective of <i>all</i> stakeholders.</p>	<p>Simplicity is achieved through appropriate marketing and communicating in a simple and easy to understand manner.</p> <p>In relation to the technical matters, given the familiarity of the NRAS scheme, we have recommended several of the important</p>



	Governance principle	Structure / manner of implementation
		governance principles can be achieved using the existing and well understood NRAS framework.
9	<p>Stability</p> <p>Given the target investor profile, investors will require long-term stability and certainty to invest large amounts of capital. Stability and certainty must be built into the PRADS Model.</p>	<p>Stability will be enshrined in the drafting of the constituent documents which will provide investors certainty to invest into the structure.</p> <p>Where a level of flexibility is required, policy documents will set out the basis on which such flexibility can be exercised.</p> <p>We propose to include the core and fundamental obligations of Fund in the constituent documents and draft the constituent documents in manner such that any amendment or variation to those obligations can only occur in limited circumstances and with certain approvals being first obtained.</p> <p>Other matters which are not fundamental to the PRADS Model will be placed in policy documents which can be more easily amended with the consent of the Management Committee to allow for the efficient operation of the PRADS Model.</p>
10	<p>Transparency</p> <p>To provide assurance to government and satisfy investors that the PRADS Model is well governed, measures should be taken to:</p> <ul style="list-style-type: none"> ▪ demonstrate the PRADS Model's compliance with its objectives; ▪ creation of an affordable housing register that records all commitments made with local government to deliver affordable housing under the PRADS Model; ▪ demonstrate the investor's administration of the PRADS Model is complying with the commercial requirements of providing affordable housing through compulsory reporting obligations; and ▪ educate stakeholders and third parties of the specifics of the structure and the duties and obligations of each stakeholder. 	<p>Similar to the point made at item 1 above, transparency would be best achieved if an independent regulator existed to verify compliance of the investor's obligations. HAA could perform the role of the independent regulator.</p> <p>However, in the absence of an independent regulator, the solution offered at item 1 above which requires self-reporting to the local government and publishing details online provides transparency.</p> <p>The creation of an affordable housing register enables all commitments to be recorded. This register would be segmented into 'commitments to create affordable housing under the PRADS Model' and 'affordable housing that has been delivered and achieved certificates of occupation'.</p>
11	<p>Verification of compliance with affordable rental obligations</p> <p>The PRADS Model must include a process pursuant to which compliance with the affordable rental obligations is independently verified and reported.</p>	See item 1 above.
12	<p>Verification of eligibility criteria</p> <p>Given the significant benefits to tenants arising from securing PRADS Model accommodation, the governance structure should include measures to check and verify the tenant's eligibility (and continued eligibility) for the accommodation.</p>	<p>A similar process to that undertaken under regulation 44 of the NRAS Regulations can be adopted for the PRADS Model (see Item 3 of Schedule 1). In short, the NRAS Regulations require the tenant to provide an annual statement setting out key information necessary to verify the tenant's continued eligibility.</p> <p>We also consider the parameters around an eligible tenant becoming an ineligible tenant in regulation 41(3) of the NRAS Regulations should be adopted in the PRADS Model (see Item 2 of Schedule 1).</p>



	Governance principle	Structure / manner of implementation
		The affordable rental obligations will include a process to be followed to transition ineligible tenants out of the housing stock.

MinterEllison

24 September 2020

For discussion purposes only



Schedule 1

1. Statement of compliance

43 Contents of statement of compliance

- (1) The statement of compliance must include the following for the NRAS year:
 - (a) a statement that at all times during the year, any tenant or tenants were eligible tenants, or details of any way in which this requirement was not met;
 - (b) details of the rent charged during the year;
 - (c) a statement that each charge of rent for the rental dwelling during the year was at least 20% less than the market value rent for the dwelling, or details of any way in which this requirement was not met;
 - (d) details of any period during the year in which the dwelling was vacant;
 - (e) whether or not there is an investor for the dwelling and, if there is an investor, the contact and other details of the investor required by the approved form;
 - (f) a statement that at all times during the year the approved participant complied with landlord-tenant, building, and health and safety laws of the State or Territory and local government area in which the dwelling is located, or details of any way in which such laws were not complied with;
 - (g) a statement that at all times during the year the approved participant complied with consumer protection laws in relation to the dwelling, or details of any way in which such laws were not complied with;
 - (h) a statement that at all times during the year the approved participant complied with the approved participants code of conduct, or details of any way in which this requirement was not met;
 - (i) a statement that all special conditions of the allocation for the dwelling have been complied with during the year, or details of any way in which this requirement was not met;
 - (j) a statement that none of the circumstances covered by the general conditions of the allocation happened during the year, or details of any happenings of those circumstances.
- (2) A statement of compliance may require any other information relevant to the operation of the Scheme.

2. Eligibility criteria

41 Eligible tenants

- (1) In this instrument:
 - (a) a reference to the tenants of a rental dwelling is a reference to the particular person or persons who are tenants of the dwelling; and
 - (b) the day on which those tenants become tenants of the dwelling is their start day; and



- (c) the 12-month period beginning on their start day or an anniversary of their start day is an eligibility year for those tenants; and
- (d) adult means:
- (i) a person 18 years of age or older; or
 - (ii) a person under 18 years of age living independently outside of the family home and who is not financially dependent on an eligible tenant; and
- (e) child means a person under 18 years of age who is financially dependent on an eligible tenant.
- (2) The tenants of a rental dwelling covered by an allocation become eligible tenants on their start day if their combined gross income for the 12 months ending on the day before the start day does not exceed the income limit for their household as set out in this section.
- Note: For working out the income limit, see subsections (5) to (8).
- (3) Eligible tenants cease to be eligible tenants if:
- (a) they cease to be tenants of a rental dwelling covered by an allocation; or
 - (b) their combined gross income exceeds the income limit for their household by 25% or more in 2 consecutive eligibility years; or
 - (c) a person (other than an eligible tenant) joins their household and the person's income for the previous 12 months exceeds the income limit for a first adult for the year in which the person joins the household.
- Note: See subparagraph (5)(a)(i) for the income limit for a first adult for a year beginning in the NRAS year beginning on 1 May 2019.
- (4) For the purposes of paragraph (3)(a), a person does not cease to be an eligible tenant only because of a move if the move:
- (a) is from one rental dwelling covered by an allocation to another rental dwelling covered by an allocation; and
 - (b) happens because of unexpected or exceptional circumstances.
- (5) The income limit for a household for a 12-month period beginning in the NRAS year beginning on 1 May 2019 is:
- (a) if the household does not include a sole parent:
 - (i) \$51,398 for the first adult; and
 - (ii) \$19,663 for each additional adult; and
 - (iii) \$17,050 for each child; and
 - (b) if the household includes a sole parent:
 - (i) \$54,060 for the first sole parent; and
 - (ii) \$19,663 for each additional adult; and
 - (iii) \$17,050 for each child.
- (6) For the purposes of this section a rental dwelling may only include one household.
- (7) The income limits mentioned in subsection (5), for a household for each subsequent NRAS year, are the amounts for the previous NRAS year indexed in accordance with the NRAS tenant income index for that subsequent NRAS year, rounded to the next whole dollar.



3. Verification of eligibility criteria

44 Tenant consent form

- (1) The approved participant for a rental dwelling covered by an allocation must give the Secretary a tenant consent form for each tenant of the dwelling.
- (2) The form must:
 - (a) be in the approved form; and
 - (b) include the information about the tenant required by the form for the purposes of the Scheme; and
 - (c) be signed by the tenant.
- (3) The form must be given to the Secretary before the next statement of compliance for the dwelling is given to the Secretary.

Note: No incentive is available for any period during which the approved participant fails to comply with this subsection (see subsections 13(2) to (4)).

[Click here](#) to view the approved form.

For discussion purposes only