

Chapter 1

Introduction

1.1 On 16 November 2017, the Senate referred the Treasury Laws Amendment (National Housing and Homelessness Agreement) Bill 2017 [Provisions] (the bill) to the Senate Economics Legislation Committee (committee) for inquiry and report by 6 February 2018.¹

1.2 The bill seeks to amend the *Federal Financial Relations Act 2009* (FFR Act) to introduce new funding arrangements for Commonwealth support to states and territories for housing and to address homelessness. Specifically, it seeks to repeal the National Specific Purpose Payment (NSPP) for Housing Services and establish a new funding framework based on primary, supplementary and designated housing agreements.²

1.3 In his second reading speech, the Assistant Minister to the Treasurer, the Hon. Michael Sukkar MP stated that 'housing is fundamental to the wellbeing of all Australians. It is a driver of social and economic participation and promotes better employment, education and health outcomes'.³ The Assistant Minister explained that the measures in the bill will:

...support improved housing and homelessness outcomes by requiring jurisdictions to develop a detailed housing and homelessness strategy and to commit to improved data collection and reporting in exchange for significant Commonwealth funding. This approach will secure improved outcomes but in a way that the government believes is reasonable, that is achievable for the states and territories and does not jeopardise the funding of core social housing and homelessness services.⁴

Conduct of the inquiry

1.4 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties inviting submissions by 18 December 2017.

1.5 In total, the committee received 28 submissions, which are listed at Appendix 1.

1.6 A public hearing was held on 29 January 2018 in Melbourne. The names of witnesses who appeared at the hearings are listed at Appendix 2.

1 *Journals of the Senate, No. 71*, 16 November 2017, p. 2250.

2 Explanatory Memorandum, p. 3.

3 The Hon. Michael Sukkar MP, Assistant Minister to the Treasurer, Second Reading Speech, *House of Representatives Hansard*, 25 October 2017, p. 11891.

4 The Hon. Michael Sukkar MP, Assistant Minister to the Treasurer, Second Reading Speech, *House of Representatives Hansard*, 25 October 2017, p. 11891.

1.7 The committee thanks all individuals and organisations who assisted with the inquiry, especially those who took the time to make written submissions and responses to questions on notice.

Background

1.8 The government announced a comprehensive housing affordability plan in the 2017–18 Budget, including measures to improve outcomes for Australians across the housing spectrum, from first home buyers and renters to those in need of crisis accommodation and those at risk of or experiencing homelessness.

1.9 The Budget announcement stated that the new National Housing and Homelessness Agreement (NHHA) would combine funding currently provisioned under the NSPP for Housing Services and the National Partnership Agreement on Homelessness (NPAH).⁵

1.10 As part of the NHHA, the government announced that it would provide an additional \$375.3 million over three years from 2018–19 to fund ongoing homelessness support services, with funding to be matched by the state and territory governments.⁶

1.11 The bill enacts the government's decision, as part of the comprehensive housing affordability plan, to reform the way that the Commonwealth makes housing related payments to the states and territories. The bill seeks to replace the NSPP for Housing Services that supports the National Affordable Housing Agreement (NAHA), and introduces new, conditional funding arrangements from 1 July 2018.⁷

Current legislative framework

1.12 The FFR Act appropriates funds to provide financial assistance to the states and territories, and establishes payment arrangements in accordance with the federal financial relations framework agreed by the Council of Australian Governments (COAG) in the Intergovernmental Agreement (IGA) on Federal Financial Relations.

1.13 As part of this framework, the Commonwealth provides payments to the states and territories to support their efforts in delivering key services such as: health, education, skills and workforce development, community services, housing, Indigenous affairs, infrastructure and the environment.

1.14 In some policy areas, the payments are in the form of NSPPs, which require the funding under each NSPP to be spent only in the relevant sector (i.e. for Housing Services), but are otherwise unconditional. The Minister for Finance determines how funding under the NSPPs is distributed among the states and territories.

1.15 The FFR Act also provides for a range of payments in accordance with other parts of the IGA and other agreements with the states and territories, including:

5 Commonwealth of Australia, *Budget Measures: Budget Paper No. 2 2017–18*, p. 155.

6 Commonwealth of Australia, *Budget Measures: Budget Paper No. 2 2017–18*, p. 155.

7 The Hon. Michael Sukkar MP, Assistant Minister to the Treasurer, Second Reading Speech, *House of Representatives Hansard*, 25 October 2017, p. 11891.

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- GST revenue grants (sections 5 to 8 of the FFR Act);
 - national health reform payments (in relation to the National Health Reform Agreement) (section 15A of the FFR Act); and
 - national partnership payments (in relation to a wide range of National Partnership agreements) (section 16 of the FFR Act).⁸

Existing Housing and Homelessness Agreements

1.16 There are currently two separate agreements relating to housing and homelessness: the NAHA and the NPAH. The NAHA and the initial NPAH came into force on 1 January 2009. The NPAH has been subject to several short-term extensions since 1 July 2013, and the current NPAH is a one-year transitional agreement for the 2017–18 financial year.

1.17 The aim of the NAHA is to ensure that all Australians have access to affordable, safe and sustainable housing that contributes to social and economic participation. The NAHA is supported by the NSPP for Housing Services, an indexed ongoing payment to the states and territories to be spent to provide housing and homelessness services (estimated to be \$1.4 billion in the 2017–18 financial year).

1.18 States and territories have budget flexibility to allocate the funds received under the NSPP for Housing Services to support the mutually agreed housing and homelessness outcomes outlined in the NAHA. Under the funding arrangements, there is no requirement for the states and territories to match the Commonwealth funding, and no other conditions on the provision of this funding except that it is spent on housing services.

1.19 Under the NAHA, four performance benchmarks were agreed on to measure progress:

- From 2007–08 to 2015–16, a 10% reduction nationally in the proportion of low income renter households in rental stress;
- From 2006 to 2013, a 7% reduction nationally in the number of homeless Australians;
- From 2008 to 2017–18, a 10% increase nationally in the proportion of Indigenous households owning or purchasing a home; and
- From 2008 to 2017–18, a 20% reduction nationally in the proportion of Indigenous households living in overcrowded conditions.⁹

1.20 The 2016 COAG Report on Performance indicated that the first three of the above four benchmarks had not been achieved or were unlikely to be met.¹⁰

8 Explanatory Memorandum, pp. 5–6.

9 Australian Government, Department of the Prime Minister and Cabinet, Council of Australian Governments, *Report on Performance 2016*, March 2016, pp. 11–14.

10 Explanatory Memorandum, p. 7.

1.21 The current NPAH provides funding of \$117.2 million for the current financial year to enable the continuation of NPAH funded homeless services, focusing on women and children experiencing domestic violence and also on homeless youth. This is a transitional agreement to ensure funding continues while new funding arrangements are being implemented. As with the NAHA, states and territories retain budget flexibility under the NPAH. However, under this agreement states and territories must meet a number of requirements to receive funding, such as matching Commonwealth funding, developing project plans and directing a certain amount of funding to priority outputs.¹¹

Economics References Committee inquiry into affordable housing

1.22 In May 2015, the Senate Economics References Committee (References Committee) tabled its report on the inquiry into affordable housing. Evidence presented to the References Committee during this inquiry from the housing industry, community stakeholders and academics raised concerns about the NAHA.¹² In its report the References Committee recommended that:

- the NAHA be reformed to improve accountability and transparency; and
- the following particular reforms of NAHA be considered and acted upon:
 - expand the agreement to include all forms of housing assistance—funding for social housing, affordable rental housing, rent assistance and the various programs to support people to remain housed;
 - develop measurable benchmarks and ensure these benchmarks are used to evaluate the effectiveness of government expenditure on affordable housing;
 - improve the collection and publication of data, especially on the number of new homes added to the pool of social housing; and
 - ensure that funding is tied directly to concrete outcomes, for example, by tightening conditions on Commonwealth funding to the states that would realise growth in the stock of social housing.¹³

Overview of the bill

1.23 The bill proposes to amend the FFR Act to establish a new framework for the Commonwealth to make payments to the states and territories to support the delivery of programs, services and reforms with respect to housing (including affordable and social housing), homelessness and housing affordability matters. Specifically, the bill seeks to amend the FFR Act to:

11 Explanatory Memorandum, pp. 6–7.

12 The Treasury and Department of Social Services, *Submission 22*, p. 7.

13 Economics References Committee, *Out of reach? The Australian housing affordability challenge*, May 2015, Recommendation 34, p. 338.

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- Establish two separate frameworks for housing and homelessness related agreements with the states and territories through the introduction of primary and supplementary agreements; and designated housing agreements.
 - Introduce six legislated conditions under which financial assistance is payable to the States under the primary and supplementary agreement framework.
 - Repeal section 14 of the FFR Act which establishes the NSPP for Housing Services. Under the new NHHA, funding will be determined by the Minister for Finance in accordance with the proposed section 15C which references the need for relevant primary and supplementary housing agreements as well as other legislative conditions.¹⁴

1.24 The bill does not affect the operation of the current NPAH which is due to expire on 30 June 2018.¹⁵

Primary and supplementary housing agreements

1.25 The primary and supplementary housing agreements will provide the architecture for ongoing Commonwealth payments to the states and territories for housing (including affordable and social housing), homelessness or housing affordability matters.

1.26 The primary housing agreement will be a multi-party agreement entered into by the Commonwealth and all states and territories. It will contain:

- details of how the Commonwealth is to provide funding to the states and territories;
- set out any national objectives and outcomes; and
- include common details that apply to all jurisdictions.¹⁶

1.27 Supplementary housing agreements will be bilateral agreements between the Commonwealth and individual states and territories. The supplementary housing agreements will recognise jurisdiction-specific circumstances, such as differences in housing markets and policy priorities.¹⁷

Designated housing agreements

1.28 A designated housing agreement is an agreement between the Commonwealth and one or more states and/or territories that relates to housing (including affordable and social housing), homelessness or housing affordability matters.¹⁸ It is not contingent on a primary housing agreement or supplementary housing agreement and

14 The Treasury and Department of Social Services, *Submission 22*, pp. 11–12.

15 Explanatory Memorandum, p. 8.

16 Explanatory Memorandum, p. 10.

17 Explanatory Memorandum, p. 10.

18 Explanatory Memorandum, p. 14.

there are no legislated conditions. This type of agreement provides flexibility to enter into other agreements as needed from time to time.¹⁹

New legislated conditions

1.29 Proposed section 15C introduces six legislated conditions under which financial assistance is payable to the states and territories under the primary and supplementary agreement framework. A state or territory is entitled to funding for a financial year under a primary housing agreement if it satisfies the following conditions:

- it spends funds in accordance with the primary housing agreement and supplementary housing agreement;
- it has a published, up-to-date housing strategy in place;
- it has a published, up-to-date homelessness strategy in place;
- it matches Commonwealth funding designated for homelessness services;
- it provides information about housing, homelessness and housing affordability matters which may be required under the terms of the primary housing agreement or supplementary housing agreement to support the development and implementation of a nationally consistent data set for housing and homelessness; and
- it has entered into a supplementary housing agreement with Commonwealth.²⁰

Payment determinations

1.30 Proposed sections 15C and 15D seek to allow the Minister for Finance to make payments, by determination, to a state or territory that is a party to a primary and a supplementary housing agreement, or to a designated agreement. This determination is not subject to disallowance. The explanatory memorandum notes the exemption of the determination from disallowance is consistent with other payment arrangements, such as NSPPs and National Health Reform payments, where there is an obligation on the Commonwealth to make payments in a prescribed manner as part of an intergovernmental body or scheme involving the Commonwealth and a state or territory.²¹

Financial impact

1.31 As noted above, the new NHHA will combine funding currently provisioned under the NSPP for Housing Services and the NPAH. Between 1 July 2018 and 30 June 2021, this equates to total funding of around \$4.6 billion, including \$375.3 million of new funding for homelessness.²²

19 Explanatory Memorandum, p. 9.

20 Explanatory Memorandum, pp. 11–13.

21 Explanatory Memorandum, p. 14.

22 The Hon. Michael Sukkar MP, Assistant Minister to the Treasurer, Second Reading Speech, *House of Representatives Hansard*, 25 October 2017, p. 11892.

1.32 The revenue implications of the proposed measures over the forward estimates period are set out below in Table 1.²³

Table 1: Financial impact (as set out in Explanatory Memorandum)

2016–17	2017–18	2018–19	2019–20	2020–21
-	-	-\$121.1m	-\$125.1m	-\$129.1m

Legislative scrutiny committees

1.33 The explanatory memorandum to the bill states that the proposed legislation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1.34 The Parliamentary Joint Committee on Human Rights considered the bill in its *Report 12 of 2017* and found that it did not raise human rights concerns.²⁴

1.35 The bill was also considered by the Senate Standing Committee for the Scrutiny of Bills in its Scrutiny Digests 13 and 15 of 2017.

1.36 The concerns raised by the Scrutiny of Bills Committee in relation to the bill focused on:

- the appropriateness of exempting from disallowance and parliamentary scrutiny determinations made by the Minister for Finance to make payments to a state or territory that is a party to a primary and a supplementary housing agreement, or to a designated agreement;²⁵ and
- the appropriateness of delegating to the executive government the Parliament's power under section 96 of the Constitution to make grants to the states and territories, and to determine terms and conditions attaching to them, without any statutory guidance as to the types of terms and conditions that states and territories will be required to comply with (as is the case with designated housing agreements), or a statutory requirement that the relevant agreements be tabled in the Parliament and published on the internet.²⁶

23 Explanatory Memorandum, p. 3.

24 Parliamentary Joint Committee on Human Rights, *Report 12 of 2017*, November 2017, p. 96.

25 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 13 of 2017*, 15 November 2017, pp. 61–62.

26 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 13 of 2017*, 15 November 2017, pp. 62–63; and Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 15 of 2017*, 6 December 2017, pp. 108–109.

