

Chapter 2

Views on the bills

2.1 Overall, submitters to the inquiry acknowledged the difficulties faced by the community housing sector, and welcomed the proposals in the National Housing Finance and Investment Corporation Bill 2018 (NHFIC bill) and the National Housing Finance and Investment Corporation (Consequential Amendments and Transitional Provisions) Bill 2018 (NHFIC consequential amendments bill) to establish the NHFIC as a corporate Commonwealth entity to improve housing outcomes for Australians.

2.2 This chapter examines the evidence received in relation to the NHFIC and NHFIC consequential amendments bills. It considers the views on the establishment of the NHFIC, the Investment Mandate, and the Bond Aggregator. It then looks at the consultation processes undertaken by the government in relation to these initiatives, before considering the NHFIC consequential amendments bill.

Support for the establishment of the NHFIC

2.3 The majority of submissions supported the establishment of the NHFIC, with many urging the swift passage of the NHFIC and NHFIC consequential amendments bills in order to provide certainty to the community housing sector.

2.4 Common Equity NSW, a not-for-profit Community Housing Provider (CHP), submitted that:

Due to the significant level of unmet demand for affordable housing, we are keen to see the establishment of NHFIC as soon as possible and without delay.¹

2.5 St George Community Housing (SGCH), a CHP in New South Wales, went so far as to request that the committee 'ensure that the parliamentary process does not delay the implementation of this much needed reform'. It stressed that:

The ability for both the NHFIC and the CHP sector to work through any operational details is constrained by the operational commencement of the NHFIC. We look forward to ensuring the benefits of the NHFIC can be utilised as soon as possible, to improve housing affordability for those in our society with the greatest need.²

2.6 Indeed, Venture Housing Company Limited (Venture), a not-for-profit CHP which operates in the Northern Territory, indicated that it would be proactively seeking finance from the NHFIC for one of its Tennant Creek housing initiatives immediately upon its establishment.³

2.7 Matilla Advisory Pty Ltd, a corporate advisory firm, and Green Fabric, a cooperative housing facilitator in Western Australia, made a joint submission which

1 Common Equity NSW, *Submission 3*, p. 1.

2 St George Community Housing Limited, *Submission 7*, p. 5.

3 Venture Housing Company Ltd, *Submission 2*, p. 2.

also emphasised the need for the NHFIC to be established without delay. They observed:

We see no value in delaying the legislation and significant detriment to the community who are predominantly the homeless and social welfare recipients.⁴

2.8 Master Builders Australia emphasised that with:

...the growing number of households on the waiting list for public housing, which is currently estimated at over 190,000, it is important that the NHFIC is established as intended on 1 July 2018 and should aim to issue its inaugural bond by the end of calendar year 2018.⁵

2.9 In addition, the Property Council of Australia stated that the NHFIC 'has the potential to address one of the key constraints on the supply of new housing: the timely provision of enabling infrastructure'. They also commended the suitability of the NHFIC for increasing the supply of affordable housing, noting that:

The concept of an infrastructure fund has been introduced in a number of states, which brings strong learnings when establishing a successful Federal Government equivalent.⁶

Board of the NHFIC

2.10 As noted in Chapter 1, Part 3 of the NHFIC bill establishes the Board of the NHFIC, and provides for its membership. Several submissions expressed a preference for the Board of the NHFIC to contain representation from the CHP sector.

2.11 SGCH considered that to improve housing outcomes, the primary focus of the NHFIC should be on loans, investments and grants into social and affordable housing. As such, SGCH argued that the NHFIC Board should have members with experience and expertise related directly to social and affordable housing and the economic and social benefits of related projects. SGCH noted that while the current appointment framework in the NHFIC bill allows for such an appointment, 'this could be strengthened by requiring at least one Director with relevant skills and experience in social and affordable housing gained from the CHP sector'.⁷

2.12 In contrast, the Community Housing Industry Association (CHIA) considered the appointment framework outlined in the NHFIC bill to be sufficient to ensure the CHP sector would be represented on the Board.⁸

4 Mattila Advisory Pty Ltd and Green Fabric, *Submission 4*, p. 1.

5 Master Builders Australia, *Submission 12*, p. 2.

6 Property Council of Australia, *Submission 16*, p. 1.

7 St George Community Housing Limited, Answers to questions on notice received on 27 April 2018, p. 1.

8 Community Housing Industry Association, Answers to questions on notice received on 27 April 2018, p. 1.

Investment Mandate

2.13 As noted in the previous chapter, the ministerial directions constituting the Investment Mandate will not be made by disallowable legislative instrument.

2.14 Common Equity NSW supported this decision as it considered this to be the 'most administratively efficient and timely mechanism'. It stated:

We strongly recommend that Ministerial Direction (as opposed to Regulation) be retained as the mechanism to make future changes to the Investment Mandate. We base this view on the Community Housing Sector's lived experience of the National Rental Affordable Housing scheme which has operated via Regulation and led to significant complications and delays in addressing issues that have arisen from time to time. This will be particularly important in the establishment phase of NHFIC as it will allow it to be more responsive to the Community Housing Sector's needs.⁹

2.15 Mattila Advisory Pty Ltd and Green Fabric agreed, noting that an Investment Mandate by ministerial direction, as proposed, would allow changes to be readily made as new concepts and proposals emerge. They indicated that:

This will be particularly important in the establishment phase of NHFIC as it will allow it to be more adaptable and responsive to the Community Housing Sector's needs.¹⁰

2.16 CHIA considered the use of an Investment Mandate, rather than regulations, to direct the Board about strategies, policies and decision-making criteria would:

...[strike] an appropriate balance between protecting the interests of government and ensuring the Board has sufficient autonomy to properly discharge its responsibilities under this legislation.¹¹

2.17 CHIA considered that, particularly in the first years of the NHFIC's operation, an Investment Mandate will enable the government and the NHFIC to make necessary adjustments as the NHFIC evolves. However, CHIA also noted that the Investment Mandate will require further policy detail in relation to areas such as project eligibility, conditions for grants and loans, compliance and reporting requirements.¹² CHIA also acknowledged that there are some matters in the draft Investment Mandate relating to the bond aggregator which require further clarification.¹³

Bond Aggregator

2.18 Some submitters argued that the Bond Aggregator alone would not be sufficient to address the funding gap between the operating costs and the rental

9 Common Equity NSW, *Submission 3*, p. 1.

10 Mattila Advisory Pty Ltd and Green Fabric, *Submission 4*, pp. 1–2.

11 Community Housing Industry Association, *Submission 8*, p. 2.

12 Community Housing Industry Association, *Submission 8*, p. 2.

13 Community Housing Industry Association, *Submission 8*, p. 2.

income from social and affordable housing. CHIA explained that this funding gap occurs because, by design, CHPs charge rents below market rates to make housing more affordable for tenants.¹⁴

2.19 Compass Housing Services, an international social and affordable housing provider, was supportive of the establishment of the NHFIC and in particular the Bond Aggregator, but expressed concern that 'the potential impact of the NHFIC and the aggregator on the supply of social and affordable housing will be negligible unless attention is given to addressing the funding gap'.¹⁵ In particular, it noted that in order to make new construction projects viable, there needs to be recurrent government funding:

As noted by the Council on Federal Financial Relations Affordable Housing Working Group, establishing and maintaining a portfolio of below market rental housing inevitably requires ongoing subsidies to bridge the gap between the below market rental revenue and the operating costs (including debt servicing).

Without recurrent funding, CHPs are unlikely to be able to create the pipeline of work necessary to support the function of the aggregator. The success of the bond aggregator and of the NHFIC to fulfil a crucial part of its mandate therefore, will ultimately depend on the successful resolution of this issue.¹⁶

2.20 Venture also observed that while the NHFIC was critical to the future of its organisation, the bond aggregator 'does not solve the fundamental affordable/social housing viability equation (which requires deeper capital and recurrent subsidy)'.¹⁷

2.21 Compass Housing Services suggested a range of methods to address the funding gap, including stock transfers, inclusionary zoning and planning incentives, and developing the build-to-rent model.¹⁸

2.22 In order to improve social housing outcomes, Uniting Housing Victoria, a registered CHP, proposed incorporating a legislated provision in the NHFIC bill for 'a separate and distinct appropriation from the Commonwealth consolidated revenue fund for the purpose of providing grants for the direct acquisition of Social Housing dwellings'.¹⁹

2.23 SGCH likewise noted that whilst an important lever, the Bond Aggregator alone will not sufficiently address the funding gap to generate substantial increases in the level of affordable and social housing. SGCH considered that:

14 Community Housing Industry Association, Answers to questions on notice received on 27 April 2018, p. 2.

15 Compass Housing Services, *Submission 9*, p. 1.

16 Compass Housing Services, *Submission 9*, p. 5.

17 Venture Housing Company Ltd, *Submission 2*, p. 2.

18 Compass Housing Services, *Submission 9*, pp. 5–6.

19 Uniting Housing Victoria, *Submission 6*, p. 7.

...generating a significant scale of new social and affordable housing requires a range of policy levers and that all three tiers of government in Australia (Federal, State, Local) have a role to play.²⁰

2.24 The Treasury pointed out to the committee that the Affordable Housing Working Group report, *Supporting the implementation of an affordable housing bond aggregator*, noted that addressing the funding gap will require ongoing support from all levels of government.²¹

Support for CHP capacity building

2.25 Some stakeholders raised concerns about whether all CHPs would benefit equally from the bond aggregator. Uniting Housing Victoria expressed some concern that the bond aggregator would primarily benefit the larger Tier One CHPs, while smaller Tier Two and Tier Three CHPs will be 'largely ignored by the Act'.²²

2.26 PowerHousing Australia also raised this issue, noting smaller Tier Two and Tier Three CHPs may require further support:

Non-Tier One CHPs, who may not have tenure of ongoing development activities or only [have] one-off or small-scale development activities, could benefit from accessing NHFIC funding, but may need some initial capacity-building support.²³

2.27 However, despite this, PowerHousing Australia further informed the committee that its members were encouraged by Federal government investments into CHP capacity. It noted:

Part 5 of the Investment Mandate direction covers Support for capacity building, in which a cap of \$1.5 million applies to the amount of money the NHFIC can spend on capacity-building activities for registered CHPs. The NHFIC would purchase these services for registered CHPs, which would assist them to develop their financial, property development and management capabilities.²⁴

Warehousing facility

2.28 As noted in Chapter 1, the draft Investment Mandate provided that up to \$150 million of NHFIC's funding may be allocated to provide an interim 'warehouse facility' that extends bridging finance to registered community housing providers until a bond issuance can be made through the Bond Aggregator function.

2.29 The Housing Industry Association (HIA), who had no concerns with the NHFIC bill as drafted, suggested that the \$150 million restriction on the warehousing

20 St George Community Housing Limited, Answers to questions on notice, received 27 April 2018, p. 2.

21 Treasury, Answers to questions on notice, received 28 April 2018, p. 2.

22 Uniting Housing Victoria, *Submission 6*, p. 3.

23 PowerHousing Australia, *Submission 15*, p. 6.

24 PowerHousing Australia, *Submission 15*, p. 6.

function of the Bond Aggregator may be too low and could potentially become a constraint on the NHFIC's infrastructure investments. It considered that:

If the correct settings can be achieved in the Corporation's operations both administratively and financially, HIA believes the future work of the Corporation in supporting the supply of long term, clearly defined affordable housing projects will be positive.²⁵

Guarantee by the Commonwealth

2.30 CHIA welcomed the provision of a guarantee by the Commonwealth government under clause 51 of the NHFIC bill, which will help reduce the cost of finance from the bond aggregator.²⁶

2.31 Australian Housing and Urban Research Institute (AHURI) informed the committee that its research into international guarantee schemes suggested that a government guarantee would reduce the borrowing rate and reduce uncertainty for investors. It found that a government guarantee:

...overcomes many of the barriers to investment in affordable housing by offering investment opportunities at an appropriate scale, simplicity and risk weighted return. It is also attractive to housing providers because of its lower cost. The government guarantee would help establish a robust and competitive investment market.²⁷

Consultation

2.32 Many of the submitters to the committee's inquiry had been involved in the various consultation processes surrounding the establishment of the NHFIC discussed in Chapter One. Indeed, SGCH commended the level of consultation that the government had conducted since the establishment of the NHFIC was announced, and indicated that it looked forward to continued participation in the consultation process in the implementation phase for the NHFIC.²⁸

2.33 The National Affordable Housing Consortium (NAHC) maintained that ongoing and formalised engagement with the community housing sector was essential to the success of the NHFIC. NAHC supported the establishment of an Independent Advisory Committee representing the community housing sector, finance sector and other relevant stakeholders. It also endorsed the development of a formal engagement charter between the advisory committee and the NHFIC.²⁹

NHFIC consequential amendments bill

2.34 As outlined in Chapter 1, the NHFIC consequential amendments bill seeks to amend the *Freedom of Information Act 1982* (FOI Act) to exempt the NHFIC from the

25 Housing Industry Association, *Submission 1*, p. [1].

26 Community Housing Industry Association, *Submission 8*, p. 2.

27 Australian Housing and Urban Research Institute, *Submission 5*, p. 5.

28 St George Community Housing Limited, *Submission 7*, p. 4.

29 National Affordable Housing Consortium, *Submission 13*, p. 2.

operation of the FOI Act in relation to documents in respect of its commercial activities, and amend the *Administrative Decisions (Judicial Review) Act 1977* to exempt the NHFIC from the requirement to provide reasons for decisions under section 13 of that Act.

2.35 The Local Government Association of Queensland (LGAQ) expressed concern that the proposed measures in the NHFIC consequential amendments bill could undermine the transparency and accountability of the operation of the NHFIC. While the LGAQ understood the need to protect commercial-in-confidence information, in its view, 'the reasons for each investment decision by the NHFIC Board' should 'be made public to the greatest extent practicable in some form, without breaching commercial confidentiality'.³⁰

2.36 In contrast, Master Builders Australia supported the NHFIC consequential amendments bill as it considered the measures were 'important to protect the commercial confidentiality of private sector actors who may enter into financial arrangements with the NHFIC'.³¹

2.37 PowerHousing Australia also supported the NHFIC consequential amendments bill, noting in particular:

...information in applications for funding will contain commercially sensitive data and intellectual property (IP) that has been developed to secure these projects; allowing this information to become public could cause significant financial harm to businesses who have developed and/or invested in this IP.³²

2.38 The Office of the Australian Information Commissioner advised the committee that it had considered the provisions relating to the FOI Act and concluded that 'these amendments are similar to and consistent with existing provisions that operate to exempt particular agencies from the operation of the FOI Act in relation to documents in respect of commercial activities'.³³

Committee view

2.39 The committee believes that housing is fundamental to the wellbeing of all Australians, and a driver of social and economic participation that promotes better employment, education and health outcomes. The committee considers that the establishment of the NHFIC will form an essential part of the government's comprehensive and targeted plan to improve outcomes for Australians across the housing spectrum.

2.40 The committee notes the broad support for the establishment of the NHFIC and the accompanying calls for the two bills to be passed without delay so the NHFIC can commence operations on 1 July 2018.

30 Local Government Association of Queensland, *Submission 11*, p. 5.

31 Master Builders Australia, *Submission 12*, p. 1.

32 PowerHousing Australia, *Submission 15*, p. 4.

33 Office of the Australian Information Commissioner, *Submission 14*, p. 1.

2.41 The committee agrees with stakeholders that the NHFIC Board should have members with experience and expertise related directly to social and affordable housing and the economics and social benefits of related projects. The committee is of the view that the appointment framework outlined in the NHFIC bill will ensure the CHP sector will be represented on the Board of the NHFIC.

2.42 The committee considers that the use of an Investment Mandate, rather than regulations, to direct the Board of the NHFIC about strategies, policies and decision-making criteria strikes an appropriate balance between protecting the interests of government and ensuring the Board has sufficient autonomy to properly discharge its responsibilities under this legislation. The committee notes that a draft Investment Mandate was released by Treasury for public consultation in early 2018.

2.43 The committee acknowledges concerns that the Bond Aggregator alone would not be sufficient to address the funding gap between the operating costs and the rental income from social and affordable housing. The committee recognises that addressing the funding gap will require ongoing support from all levels of government.

2.44 The committee commends the level of consultation that the government has conducted since the establishment of the NHFIC was announced. The committee agrees with stakeholders that continuing and formalised engagement with the community housing sector is essential to the success of the NHFIC and notes that this is ongoing.

2.45 The committee acknowledges concerns raised by stakeholders that the proposed measures in the NHFIC consequential amendments bill could undermine the transparency and accountability of the operation of the NHFIC. However, the committee notes the advice of the Office of the Australian Information Commissioner, that it directly considered the provisions in the NHFIC consequential amendments bill relating to the FOI Act, and concluded that the proposed amendments are similar to and consistent with existing provisions that operate to exempt particular agencies from the operation of the FOI Act in relation to documents in respect of commercial activities.

Recommendation 1

2.46 The committee recommends that the bills be passed.

Senator Jane Hume
Chair