

The Senate

Economics
Legislation Committee

National Housing Finance and Investment
Corporation Bill 2018

National Housing Finance and Investment
Corporation (Consequential Amendments and
Transitional Provisions) Bill 2018

May 2018

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Chapter 1

Introduction

1.1 On 22 March 2018, the Senate referred 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 the Senate Economics Legislation Committee (committee) for inquiry and report by 7 May 2018.¹

1.2 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. The housing affordability plan included the establishment of the National Housing Finance and Investment Corporation (NHFIC).

1.3 In his second reading speech for the NHFIC bill, the Assistant Minister to the Treasurer, the Hon. Michael Sukkar MP, stated that:

Housing is critical to the social and economic wellbeing of Australians and the economy as a whole. It can impact on employment, education and health outcomes, and it is a significant driver of investment, productivity and economic growth. It's also the main savings vehicle for the majority of Australians.

While housing is primarily a state responsibility, the Commonwealth government nonetheless has an important role to play when it comes to addressing housing affordability and securing better outcomes for Australians, particularly the most vulnerable.²

1.4 The NHFIC bill establishes the NHFIC, a new independent corporate Commonwealth entity to improve housing outcomes by making loans, investments and grants. Mr Sukkar explained that the objective of the new entity was to 'improve housing outcomes for Australians, particularly vulnerable Australians who need social and affordable housing'. He noted further:

The finance corporation, which is modelled on successful initiatives in the United Kingdom, will strengthen efforts to increase the supply of housing by encouraging investment in housing, particularly in social and affordable housing. It will contribute to developing the scale, efficiency and effectiveness of the community housing sector and, importantly, will

1 *Journals of the Senate*, No. 91, 22 March 2018, p. 2884.

2 The Hon. Michael Sukkar MP, Assistant Minister to the Treasurer, Second Reading Speech, National Housing Finance and Investment Corporation Bill 2018, *House of Representatives Hansard*, 15 February 2018, p. 1621.

provide loans, grants and investments that complement, leverage and support Commonwealth, state and territory activities relating to housing.³

1.5 The NHFIC consequential amendments bill deals with consequential and transitional matters arising from the NHFIC bill.⁴

1.6 The NHFIC and the NHFIC consequential amendments bills are discussed in more detail below.

Conduct of the inquiry

1.7 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties, inviting submissions by 13 April 2018.

1.8 The committee received 15 submissions, which are listed at Appendix 1.

1.9 The committee thanks all individuals and organisations who assisted with the inquiry and took the time to make written submissions and provide responses to questions on notice.

Background

1.10 The explanatory memorandum⁵ notes that the continued growth in Australia's housing prices has affected the ability of Australians to purchase their first home or find affordable rental accommodation. Low-income and vulnerable Australians are disproportionately affected by the lack of affordable rental accommodation.⁶

1.11 The community housing sector in Australia has grown in recent years, but it remains relatively small. In order to meet current and future demand for affordable rental housing, the community housing sector must achieve the necessary scale and capability. However, substantial barriers, such as limited financial capability and fragmentation in the sector, may prevent the sector from meeting demand.⁷

1.12 On 7 January 2016, the Australian Government announced the establishment of an Affordable Housing Working Group (Working Group) to investigate ways to increase the supply of affordable rental housing through innovative financing models. The Working Group comprised members of the Commonwealth Treasury and Department of Social Services, as well as members from the New South Wales, Victorian, and Western Australian governments.

3 The Hon. Michael Sukkar MP, Assistant Minister to the Treasurer, Second Reading Speech, National Housing Finance and Investment Corporation Bill 2018, *House of Representatives Hansard*, 15 February 2018, p. 1621.

4 The Hon. Michael Sukkar MP, Assistant Minister to the Treasurer, Second Reading Speech, National Housing Finance and Investment Corporation (Consequential Amendments and Transitional Provisions) Bill 2018, *House of Representatives Hansard*, 15 February 2018, p. 1625.

5 The NHFIC and the NHFIC consequential amendments bills are supported by one Explanatory Memorandum.

6 Explanatory Memorandum, p. 7.

7 Explanatory Memorandum, p. 7.

1.13 The Working Group recommended the establishment of a bond aggregator taskforce to design a proof of concept for a bond aggregator model. The Bond Aggregator will facilitate greater private and institutional investment in affordable housing, and will lower the cost of capital for affordable housing projects. This recommendation was agreed to by the Council on Federal Financial Relations.⁸

1.14 As noted above, the government announced the establishment of the NHFIC in the 2017–18 Budget. Following this announcement, in September 2017, Treasury released a Consultation Paper on the NHFIC, the National Housing Infrastructure Facility (NHIF), and the Affordable Housing Bond Aggregator. According to the Mid-Year Economic and Fiscal Outlook 2017–18, the consultation process included targeted roundtable discussions with participation from more than 120 stakeholder groups across Australia. The consultation also received over 50 submissions.⁹

1.15 In January 2018, Treasury released exposure draft legislation for the NHFIC bill and conducted a consultation process from 12 to 22 January 2018.¹⁰ In addition, in February 2018, Treasury released an exposure draft Investment Mandate for the NHFIC and conducted a consultation process from 4 February to 9 March 2018.¹¹ The Investment Mandate provides details of the activities of the NHFIC and is discussed in more detail below.

Overview of the NHFIC bill

1.16 The NHFIC bill gives effect to elements of the government's housing affordability plan announced in the 2017–18 Budget by establishing the NHFIC.

1.17 As a new independent corporate Commonwealth entity dedicated to improving housing outcomes, the NHFIC will have broad functions that enable it to administer:

- a \$1 billion NHIF which will help to finance critical infrastructure to increase the stock of housing, particularly affordable housing, and to bring forward the supply of such housing; and
- an Affordable Housing Bond Aggregator which will improve the efficiency of financing for Community Housing Providers (CHPs), enabling them to improve housing outcomes for their clients. CHPs are non-government organisations, generally not-for-profit organisations, which provide subsidised

8 Explanatory Memorandum, pp. 7–8.

9 Commonwealth of Australia, *Mid-Year Economic and Fiscal Outlook 2017–18*, December 2017, p. 6. The submissions to the Consultation Paper are available here: <https://treasury.gov.au/consultation/c2017-222774/> (accessed 1 May 2018).

10 Treasury, 'National Housing Finance and Investment Corporation—Draft Legislation', <https://treasury.gov.au/consultation/c2018-t252521/> (accessed 1 May 2018).

11 Treasury, 'National Housing Finance and Investment Corporation—draft Investment Mandate', <https://treasury.gov.au/consultation/c2018-t263622/> (accessed 1 May 2018).

housing for people on a very low, low, or moderate income or for people with additional needs.¹²

1.18 The NHFIC bill, which was introduced in the House of Representatives on 15 February 2018, comprises six parts:

- Part 1 sets out the objects of the bill, arrangements for commencement, application to the Crown, and definitions;
- Part 2 establishes the NHFIC and sets out its functions, powers and constitutional limits; and provides for the Investment Mandate for the NHFIC;
- Part 3 establishes the Board of the NHFIC, and provides for its membership and meetings;
- Part 4 comprises two Divisions:
 - Division 1 establishes the CEO of the NHFIC, including:
 - procedures for appointment and resignation;
 - functions;
 - remuneration;
 - terms and conditions; and
 - acting appointments.
 - Division 2 deals with the recruitment of staff and consultants and committees;
- Part 5 sets out the arrangements for NHFIC's financial affairs in relation to:
 - maintenance of adequate capital and reserves;
 - payment of dividends to the Commonwealth;
 - borrowings;
 - guarantee by Commonwealth; and
 - taxation;
- Part 6 sets out delegations, the requirement for a review of the operation of the NHFIC Act, and the rule making power.

1.19 The object of the NHFIC bill, as outlined in clause 3 is:

...to establish the National Housing Finance and Investment Corporation to improve housing outcomes for Australians by:

- a) strengthening efforts to increase the supply of housing; and
- b) encouraging investment in housing (particularly in the social or affordable housing sector); and

12 Explanatory Memorandum, p. 43.

-
- c) providing finance, grants or investments that complement, leverage or support Commonwealth, State or Territory activities relating to housing; and
 - d) contributing to the development of the scale, efficiency and effectiveness of the community housing sector in Australia.

1.20 These objectives will be implemented through the NHFIC's initial activities of administering the Bond Aggregator and NHIF. The explanatory memorandum states:

The bond aggregator seeks to catalyse institutional investment into the community housing sector and improve the financial and management capabilities of this sector (capacity building)—thereby allowing the sector to better leverage the potential large-scale institutional investment enabled by the bond aggregator.

Under the NHIF, financial assistance will be made available to enable critical infrastructure to increase the stock of housing, particularly affordable housing, and to bring forward the supply of such housing. It does this by addressing impediments in building the infrastructure that is critical to unlocking new housing supply. These can take the form of financial constraints—such as mismatches between future revenue streams and the upfront costs of infrastructure—and coordination issues relating to the different stakeholders and different layers of government regulation and responsibilities.¹³

1.21 It is the government's intention that the Bond Aggregator and NHIF operate in conjunction with commercial lenders and State and Territory governments to ensure that its financing is additional to that otherwise available, rather than replacing finance available from other sources.¹⁴

Establishment of the NHFIC, functions, powers and constitutional limits

1.22 The NHFIC bill seeks to establish the NHFIC as a corporate Commonwealth entity. The NHFIC will operate independently from government in exercising its functions and adopt a corporate model of governance, making it subject to the *Public Governance, Performance and Accountability Act 2013*.

1.23 The NHFIC bill outlines the functions of the NHFIC, which include:

- making loans, investments, and grants to improve, directly or indirectly, housing outcomes;
- setting terms and conditions for such loans, investments, and grants;
- providing business advisory services and other assistance in capacity building to CHPs;
- any other functions conferred on the NHFIC by the bill or any other Commonwealth law;

13 Explanatory Memorandum, p. 14.

14 Explanatory Memorandum, p. 14.

- doing anything that is incidental to or assists in the performance of the above functions;
- granting financial assistance to States and Territories for the purposes of any of the matters mentioned above; and
- setting the terms and conditions of such grants of financial assistance.¹⁵

1.24 The NHFIC bill defines a CHP as 'a community housing provider (however described) that is registered under a law of, or under a scheme administered by, a State or Territory'.¹⁶

1.25 The NHFIC will have the power to do all things necessary or convenient to be done for or in connection with the performance of its functions, such as entering into any contract and entering into arrangements known as swaps, foreign exchange agreements, forward rate agreements, options or hedge agreements.¹⁷

1.26 The NHFIC bill expressly enables the NHFIC to perform its functions only for purposes related to specific constitutional powers. This ensures that it is not implied that the NHFIC can perform functions that exceed the Commonwealth's legislative power under the Constitution.¹⁸

Investment Mandate

1.27 The NHFIC bill outlines the role of the Investment Mandate, which will be the key vehicle for the government to set out its expectations for the NHFIC.

1.28 The Treasurer must issue the Investment Mandate which will give the NHFIC Board directions about the performance of the NHFIC's functions.

1.29 The Investment Mandate is not subject to disallowance as it forms part of a class of legislative instruments to which disallowance does not apply.¹⁹

1.30 The Investment Mandate may include:

- strategies and policies that the NHFIC must adhere to for its effective performance;
- decision-making criteria for the provision of financial assistance and capacity building activities;
- limits on the extent of financial assistance; and
- risk and return relating to the NHFIC's investments.

1.31 In order to ensure that there is sufficient flexibility to address emerging issues or other matters that the Government considers are important, the Minister may also

15 Explanatory Memorandum, pp. 17–18.

16 Explanatory Memorandum, p. 18.

17 Explanatory Memorandum, p. 18.

18 Explanatory Memorandum, pp. 18–19.

19 Explanatory Memorandum, p. 20.

include other matters in the directions. However, the Investment Mandate must take into account the object of the NHFIC bill, and in performing its functions, the NHFIC must take all reasonable steps to comply with the Investment Mandate in the course of undertaking its functions. This ensures that the NHFIC focuses on satisfying its Investment Mandate.²⁰

1.32 It is the government's intention to include the details of the Bond Aggregator and NHIF in the Investment Mandate. The explanatory memorandum notes this is because the Investment Mandate provides flexibility to allow NHFIC's operations to respond to the needs of the community housing sector and other recipients of financial assistance.²¹

1.33 The explanatory memorandum states that it is expected that the Investment Mandate will set out:

- the eligibility criteria for NHIF finance, investments and grants, and bond aggregator finance;
- the types of financing mechanisms for the NHIF and the bond aggregator functions;
- matters that must be considered by the Board when making lending decisions;
- matters that must be considered by the Board in determining lending conditions;
- benchmark returns for NHFIC investments and finance;
- the level of risk acceptable for NHFIC investments and finance;
- additional corporate governance and transparency matters; and
- the types of support services that the NHFIC may provide to CHPs to assist in building the capacity and capability of the sector.²²

Draft Investment Mandate

1.34 Key aspects of the draft Investment Mandate, which (as noted above) was released for public consultation in early 2018, include:

- providing directions about the two core functions of the NHFIC, the Affordable Housing Bond Aggregator and the NHIF, which will support investment in Australian housing;
- providing detail on the NHFIC, specifically eligible projects and project proponents, the financing mechanisms and lending criteria related to its activities;
- authorising the NHFIC to provide support to registered community housing providers to develop their financial and management capabilities;

20 Explanatory Memorandum, p. 20.

21 Explanatory Memorandum, p. 20.

22 Explanatory Memorandum, p. 20.

- stating that, of the \$1 billion allocated to the NHIF function for loans, investments and grants, a combined cap of \$175 million applies to the infrastructure grants and capability building activities;
- providing that up to \$150 million of NHFIC's funding may be allocated to provide an interim 'warehouse facility' that extends bridging finance to registered CHPs until a bond issuance can be made through the Bond Aggregator function; and
- outlining various general governance matters and setting requirements in relation to the maintenance of funds, benchmark rates of return and risk management.²³

NHFIC Board

1.35 The NHFIC bill establishes the Board of the NHFIC. The Board will comprise the Chair and a minimum of four members but no more than six other members. The explanatory memorandum states:

This is considered appropriate so that the Minister [Treasurer] can appoint a Board with the breadth of skills, qualifications and experience required to oversee NHFIC's functions.²⁴

1.36 To ensure that Board members have relevant expertise, in order to be appointed to the Board, the Treasurer must be satisfied that the person has appropriate qualifications, skills or experience in:

- banking and finance;
- law;
- housing, including social or affordable housing;
- infrastructure planning and financing;
- local government;
- public policy; or
- expertise prescribed by rules made by the Minister.²⁵

Overview of the NHFIC consequential amendments bill

1.37 The NHFIC consequential amendments bill deals with consequential and transitional matters arising from the NHFIC bill.

Consequential amendments

1.38 The NHFIC consequential amendments bill seeks to amend the *Administrative Decisions (Judicial Review) Act 1977* to exempt the NHFIC from the requirement to

23 Treasury, 'National Housing Finance and Investment Corporation—draft Investment Mandate', <https://treasury.gov.au/consultation/c2018-t263622/> (accessed 1 May 2018).

24 Explanatory Memorandum, p. 24.

25 Explanatory Memorandum, pp. 24–25.

provide reasons for decisions under section 13 of that Act. The purpose of this amendment is outlined in the explanatory memorandum:

This will ensure that the NHFIC is not required to provide reasons for decisions relating to its activities such as decisions to provide, or not to provide, financial or other assistance to particular entities. Information considered by NHFIC when making a decision is likely to be complex, commercially sensitive and/or provided in confidence. In order to produce a meaningful statement of reasons it would inevitably need to refer to such information. This exemption will ensure the efficient administration of the NHFIC and is consistent with the exemption afforded to the Export Finance and Insurance Corporation.²⁶

1.39 The NHFIC consequential amendments bill also seeks to amend the *Freedom of Information Act 1982* (FOI Act) to exempt the NHFIC from the requirements of the FOI Act in relation to documents in respect of its commercial activities. This exemption is similar to the exemption that applies to the commercial activities of the Export Finance and Insurance Corporation, NBN Co and other entities, such as Indigenous Business Australia. It is the government's intention that the Investment Mandate will direct NHFIC in relation to the publication of information about its decisions (subject to commercial confidentiality).²⁷

Transitional provisions

1.40 The government's intention is that the NHFIC's activities will commence on 1 July 2018.

1.41 Under the transitional provisions the NHFIC may not commence making decisions before 1 July 2018 (or such later date as the Minister determines) regarding:

- the making of loans, investments or grants, or to grant financial assistance to a State or Territory; or
- the provision of business advisory services or other capacity building assistance to CHPs.²⁸

Financial impact

1.42 The establishment of the NHFIC and the NHIF is estimated to result in a cost to revenue of \$173.9 million over the forward estimates period as set out in the table below:

26 Explanatory Memorandum, p. 41.

27 Explanatory Memorandum, p. 41.

28 Explanatory Memorandum, p. 13.

Table 1: Financial impact (as set out in Explanatory Memorandum)²⁹

| 2017–18 | 2018–19 | 2019–20 | 2020–21 |
|---------|----------|----------|----------|
| -\$9.6m | -\$53.6m | -\$55.7m | -\$55.0m |

Legislative scrutiny committees

1.43 The explanatory memorandum to the NHFIC and the NHFIC consequential amendments bills 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*.

1.44 The Parliamentary Joint Committee on Human Rights considered the bills in its *Report 3 of 2018* and found that they did not raise human rights concerns.³⁰

1.45 The bills were also considered by the Senate Standing Committee for the Scrutiny of Bills in its *Scrutiny Digest 3 of 2018*.

1.46 Concerns raised by the Scrutiny of Bills Committee in relation to the NHFIC bill focussed on 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 their terms and conditions, without any statutory guidance as to the types of terms and conditions under which financial assistance may be granted by the NHFIC to the States and Territories. The Scrutiny of Bills Committee also suggested that the NHFIC bill be amended to subject the NHFIC Investment Mandate to disallowance.³¹

1.47 The Scrutiny of Bills Committee also sought further advice from the Treasurer in relation to two subclauses of the NHFIC bill which seek to allow the Chief Executive Officer of the NHFIC to delegate and sub-delegate certain powers and functions to senior members of staff of the NHFIC.³²

1.48 The Scrutiny of Bills Committee made no comment on the NHFIC consequential amendments bill.³³

29 Explanatory Memorandum, p. 10.

30 Parliamentary Joint Committee on Human Rights, *Report 3 of 2018*, 27 March 2018, p. 137.

31 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 3 of 2018*, 21 March 2018, p. 29.

32 National Housing Finance and Investment Corporation Bill 2018, subclauses 55(1) and (2).

33 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 3 of 2018*, 21 March 2018, p. 31.

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

Additional Comments from Labor Senators

1.1 Labor Senators support the legislation establishing the National Housing Finance and Investment Corporation (NHFIC), with a number of amendments that reflect submissions received by the inquiry. At the outset we reiterate that the Government's so called 'comprehensive housing affordability plan' is a sham. The plan is heavy on slogans, light on substance and many stakeholders and analysts have criticised the piecemeal approach to reform in this area. A housing policy that ignores the need to reform negative gearing and capital gains tax concessions cannot be taken seriously.

1.2 To make matters worse, the Government is now spending taxpayer money to advertise its sham housing 'plan' to everyday Australians while being slow or unable to action its inadequate policy measures. To date, and after much fanfare following the 2017–18 Budget, the Coalition has failed to reach agreement with the States and Territories on implementation of the National Housing and Homelessness Agreement (NHHA).

1.3 Labor Senators have supported the establishment of the NHFIC for some time and particularly, the operation of the affordable housing bond aggregator. The establishment of a bond aggregator was part of Labor's housing affordability package announced in February 2016, well before the Government announced this policy in the 2017–18 Budget.

1.4 While the NHFIC and the bond aggregator are welcome developments, stakeholders continue to strongly argue that the bond aggregator alone, without additional support from local, State and Federal Governments, will be insufficient to bridge the gap between achieving required financial returns and offering affordable housing to Australians in need. The Community Housing Industry Association (CHIA) stated that:

CHIA agrees that while the bond aggregator will reduce the cost of financing social and affordable housing, it will not be sufficient to address the funding gap between the operating costs and the rental income. This is because, by design, community housing providers (CHPs) charge rents below market rates to make housing more affordable for tenants.¹

1.5 The Australian Housing and Urban Research Institute (AHURI) concurred:

AHURI research has argued that there is a need to address a funding gap in the context of new finance:

Whether involving new finance or the redirection of existing housing subsidies, government financial support is essential to complement private financing of additional affordable housing supply. Inadequate government

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

co-funding is the primary capacity constraint that providers currently face in their efforts to expand affordable housing (Milligan et al, 2017:1).²

1.6 The National Affordable Housing Consortium continues to criticise the Government's approach in not linking various policy initiatives to achieve housing outcomes that are greater than the sum of the parts:

Sourcing the actual rent/capital subsidy, at scale, to apply to Bond Funded affordable housing projects, remains the biggest barrier to the desired policy outcome, hence proposed link to NHHA.³

It is essential that the Australian Government effectively join the dots across these policy and financing mechanisms. Whilst the two prominent financing mechanisms, the Finance Corporation and MIT might enable significant investment in affordable housing via [mainly] debt and equity respectively, without the necessary policy underpinnings through the NHHA Multilateral and the required subsidy provisions via NHHA Bilaterals and the Infrastructure Fund [along with other subsidy arrangements], failure is all but assured.⁴

1.7 Labor Senators note the absence of government policy or a funding framework designed to bridge the funding gap. Bridging the funding gap is identified in many submissions as essential in supporting additional affordable and community housing outcomes and increasing housing supply.

1.8 It is also important to note that once again, the Government and Treasury is unable to provide any detail on the additional housing supply that can be expected from its policies.

Q: What is the assumed increase in the supply of social and affordable housing that the [Affordable Housing Bond Aggregator] AHBA by itself will generate? Please provide by the following breakdown:

a) Affordable housing dwellings?

b) Social housing dwellings?

A: Treasury has not assumed an increase in the supply of social and affordable housing resulting from the AHBA. The report, Establishment of an Australian Affordable Housing Bond Aggregator, prepared by Ernst and Young for the Affordable Housing Implementation Taskforce presented scenarios on savings generated based on different bond issuances. The report noted that the AHBA could generate savings of around \$56 million in the medium term. The extent to which these savings translate into supply depends on many variables such as: how the funds are used (retire debt,

2 Australian Housing and Urban Research Institute, Answers to written questions on notice, received on 27 April 2018, p. 2.

3 National Affordable Housing Consortium, *Submission 13*, p. 1.

4 National Affordable Housing Consortium, Treasury consultation, p. 3, see <https://treasury.gov.au/consultation/c2017-222774/> (accessed 7 May 2018).

maintenance or construction); how such funds are combined with other funding sources; location; and the mix of social and affordable dwellings.⁵

1.9 Labor Senators also note concerns raised by the Housing Industry Association⁶ and the CHIA⁷ in relation to the \$2 billion limit on the NHFIC's loan book. Labor Senators believe that the current proposed three-year review in the legislation be brought forward to no later than 2 years and for this review to include whether it is appropriate to extend the loan book limit to greater than \$2 billion.

1.10 Labor Senators also note comments from stakeholders such as St George Community Housing Limited who recommend that someone with expertise in social and affordable housing be present on the NHFIC board:

On this basis we would suggest that it benefits the objective of the NHFIC to have a Director or Directors with experience and expertise related directly to social and affordable housing and the economics and social benefits of related projects...

The current appointment framework in the Bill does allow for such an appointment on the basis of 18 (2) (c), though 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.⁸

1.11 Labor Senators agree that such representation would strengthen the operation of the NHFIC by ensuring the experience of the community housing sector is reflected on the board.

1.12 The CHIA also request that any returns from the NHFIC be prioritised towards supporting affordable housing over returning dividends to Government.⁹ Labor senators endorse this principle and believe that, given the significant unmet demand for community housing increasing the capacity for community housing providers to build an increase stock must be the priority.

1.13 Finally, when it comes to a comprehensive plan for housing affordability, only the Labor Party has a plan that will deliver for all Australians. Labor's announcements on housing affordability include:

- Reforming negative gearing and capital gains tax concessions, resulting in the construction of 55,000 new homes and a boost to employment by 25,000 new jobs per year;

5 Department of the Treasury, Answers to written questions on notice, received on 28 April 2018, p. 1.

6 Housing Industry Association, *Submission 1*, p. 2.

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

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

9 Community Housing Industry Association, *Submission 8*, p. 3.

- Improving the National Housing Affordability Agreement, re-establishing the National Housing Supply Council and appointing a dedicated Minister for Housing and Homelessness;
- Establishing a bond aggregator to increase investment in affordable housing;
- Working closely with the States and Territories on supporting and reforming the national housing agreement to strengthen benchmarks across the housing affordability spectrum such as housing supply, planning reform and inclusionary zoning;
- Providing \$88 million for a Safe Housing Fund to increase transitional housing options for women and children escaping domestic and family violence, young people exiting out-of-home care and older women on low incomes who are at risk of homelessness;
- Boosting homelessness support for vulnerable Australians;
- Facilitating a COAG process to introduce a uniform vacant property tax across all major cities;
- Limiting direct borrowing by self-managed superannuation funds; and
- Increasing foreign investor fees and penalties.

Recommendation 1

1.14 That the government develops, as a matter of urgency, a policy and funding framework that bridges the funding gap identified by numerous submitters and is essential in addressing housing affordability and securing better outcomes for Australians, particularly the most vulnerable. Failure to address this fundamental issue will mean that the objects of the bill will not be achieved and the bill will be insufficient to contribute to the development of the scale, efficiency and effectiveness of the community housing sector in Australia.

Recommendation 2

1.15 That the legislation be amended such that a review be conducted no later than 2 years after passage of the legislation and that the review include an evaluation of whether the \$2 billion loan limit is adequate to meet the objects of the bill and the cap of \$1.5 million for capacity building activities for registered community housing providers is sufficient.

Recommendation 3

1.16 That the legislation be amended to require at least one director on the Board of the National Housing Finance and Investment Corporation has relevant skills and experience in social and affordable housing gained in the community housing provider sector.

Recommendation 4

1.17 That the legislation be amended to remove the consideration of payment of dividends to the government unless the significant unmet demand for community housing for the vulnerable is adequately addressed and the

community housing sector has achieved the necessary scale and capability to deliver on the unmet demand.

Recommendation 5

1.18 That the Government adopt Labor's policy and establish a National Housing Supply Council to:

- **Provide advice on how state and national policies are tracking against housing policy objectives, including the National Housing Finance and Investment Corporation and the National Housing Infrastructure Fund;**
- **Provide better tracking and accountability of funds spent through the National Housing and Homelessness Agreement; and**
- **Provide advice on Commonwealth landholdings and opportunities for development, release to boost housing supply.**

Recommendation 6

1.19 Subject to the above recommendations that the bill be passed.

**Senator Chris Ketter
Deputy Chair**

**Senator Jenny McAllister
Senator for New South Wales**

**Senator Doug Cameron
Senator for New South Wales**

Appendix 1

Submissions and additional documents

Submissions

1. Housing Industry Association Ltd (HIA)
2. Venture Housing Company Ltd
3. Common Equity NSW
4. Mattila Advisory Pty Ltd and Green Fabric
5. Australian Housing and Urban Research Institute
6. Uniting Housing Victoria
7. St George Community Housing Limited
8. Community Housing Industry Association
9. Compass Housing Services
10. Business Council of Co-operatives and Mutuals
11. Local Government Association of Queensland (LGAQ)
12. Master Builders Australia
13. National Affordable Housing Consortium (NAHC)
14. Office of the Australian Information Commissioner
15. PowerHousing Australia
16. Property Council of Australia

Answers to questions on notice

1. Answers to questions on notice received from St George Community Housing Limited on 27 April 2018.
2. Answers to questions on notice received from the Australian Housing and Urban Research Institute on 27 April 2018.
3. Answers to questions on notice received from the Community Housing Industry Association on 27 April 2018.
4. Answers to questions on notice received from the Department of the Treasury on 28 April 2018.

