

# DISSENTING REPORT BY COALITION SENATORS

## Introduction

1.1 Coalition senators acknowledge that adequate shelter is a basic human need. As a caring society, assistance should be provided to enable reasonable access to housing for all sectors of the Australian community. Particularly in these times of economic difficulty, we support the concept of innovative partnerships between the private sector and all levels of government to provide affordable rental housing.

1.2 Partnerships between developers and government which provide the incentives necessary to boost the nation's housing stock are an appropriate way of increasing access to affordable rental housing. Realistically, government-owned housing stock can cater to only a small proportion of those seeking to rent their own home. Indeed, the amount of stock owned by state and territory government agencies – much of it funded by the Federal Government through the Commonwealth State Housing Agreement – has diminished in recent years. Growing waiting times for public housing properties are a reflection of the insufficient number of such properties to cater to the needs of those who are unable to meet the high rental costs of dwellings on the private market.

1.3 Coalition senators further acknowledge that a partnership arrangement may provide stimulus to the building industry whilst increasing the available rental stock. However, the methodology for providing the necessary investment stimulus represented by the National Rental Affordability Scheme (NRAS) is of some concern. Coalition senators acknowledge the impetus for the scheme but believe there are many unaddressed problems, making it unlikely the scheme will achieve the targeted take up.

## Causes of Concern

### *i) The scheme fails to adequately address the undersupply of new dwellings on the rental housing market.*

1.4 This scheme in its current form will not have a significant effect on the overall housing stock. Whilst it is anticipated that there will be a shortfall of more than 200,000 units by 2009/10, the scheme in total is anticipated by the Government itself to deliver less than 5% of the projected shortfall, a maximum of 10,500 dwellings within this time frame. Even this maximum number of new dwellings presupposes that there will be adequate investment funding available, that rezoning and development applications will proceed unimpeded by any local planning restrictions, and that all trades will have the necessary skilled workforce available.

1.5 It is likely that the present freeze of the assets of some investment funds, brought about by the Government's mishandled bank deposit guarantee regime, will impact the NRAS targets if it continues for an extended period, as the freeze is dramatically affecting access to finance.

*ii) The effect of this scheme on the existing rental market.*

1.6 Current rental properties will not be included in the scheme. There are two aspects to this concern:

- An enormous range of suitable rental properties able to meet the needs of renters on low to moderate incomes will remain outside NRAS. Consequently, over time similar rental properties in the same community will be treated differently, some attracting generous subsidies from 2 levels of government and others attracting none.
- The impact of these subsidies on the businesses of existing landlords has not been explored. Treasury told the inquiry that modelling of this impact had not been conducted:

**Senator Humphries**—Is there any economic modelling which the department or any of the agencies have access to, about the effect on the rest of the market of this scheme operating?

**Mr Flavel**—We do not have access to specific modelling. The only point I would note is that this is but one of a number of government initiated housing policies that are in place. There are clearly things that do not directly affect the private rental market—things like the first home saver accounts and recent changes to the first home buyers grant and other changes—so it would be quite difficult to isolate the effects of this specific scheme in terms of the distortion that could occur.<sup>1</sup>

1.7 Coalition senators accept that such impact on the existing market will often be negligible; that may not be the case however if a large number of NRAS-subsidised dwellings are constructed in a community where a deficit of affordable housing is thereby largely eliminated.

*iii) Inadequacy of the incentive structure.*

1.8 There must be some doubt as to whether NRAS's incentive structure is adequate to entice sufficient participation by institutional and commercial investors.

1.9 Coalition senators understand figures provided by the Residential Property Council<sup>2</sup> highlight that any new asset class would need to achieve passing yields of 5% as a minimum, with total returns of at least 9% to be competitive compared to other types of investments. The NRAS has been designed to provide a passing yield of around 4.5%. Such projections may not

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1 Department of the Treasury, *Proof Committee Hansard* 6 November 2008, p48-49

2 Residential Development Council, *Submission to National Rental Affordability Scheme Technical Paper*, 31 May 2008, p. 7

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deter some investors, but if it deters any it may deplete the pool on which the success of the scheme depends.

1.10 Fixing of the incentive at a flat \$8,000 per annum is likely to be far more attractive for markets where rents are lower, such as regional and rural areas and in South Australia and Tasmania, but less so in some of the larger, more expensive metropolitan areas of Melbourne and Sydney. This is because to attract a subsidy in the former areas a landlord needs to reduce the rent by a smaller amount to meet the 20% requirement, but receives the same subsidy as a landlord in a high-rent area where the rent reduction is about equal in value to the subsidy the landlord receives. To alleviate this problem, in line with a suggestion of the HIA, the value of the incentive needs to more closely allied to the value of the project, weighted for location, and to the projected rents via the introduction of a sliding scale to ensure project viability<sup>3</sup>. With the current design of the incentives, it is likely that projects will be significantly more feasible on the urban fringes or in smaller communities.

1.11 The tax offsets offered are confined to those participants in the development who will directly derive rental income. The equivalent scheme in the United States allows for transfer of the tax credits to the financing parties who may be able to make better use of the offsets to pass on lower costs of finance to the project. Emulating this aspect of the US scheme may be appropriate, particularly in the current economic situation.

1.12 Coalition senators believe state and territory Governments should be required to make a greater financial input, at least to the level of the Commonwealth contribution, given that they will receive windfall benefits in terms of stamp duty and GST revenue resulting from the projects. We note that the scheme does not preclude a greater contribution by them, but we also note that many governments will be tempted to make only a token effort to buttress a scheme which is largely driven by Commonwealth dollars.

1.13 In particular, there needs to be a better articulated level of cooperation required from state, territory and local governments in terms of planning and rezoning applications. Large developments centring on low cost housing are often controversial. The current requirements to wait extended periods of time for rezoning approval, normally facing third party objections, and subsequent development approvals may push up the cost of these developments, particularly if they are large.

1.14 Consideration over time should be given to enabling payment of incentives to facilitate conversion of existing residential stock to provide affordable housing based on redesign and layout suited to the needs of specific disability, aged or other groups. This would provide a significant number of additional residential units at lower cost than newly constructed dwellings.

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<sup>3</sup> Housing Industry Association, *Proof Committee Hansard*, 6 November 2008, p. 33-34

**iv) Problematic tenant eligibility criteria.**

1.15 The tenant eligibility criteria exhibit some problems in relation to key worker and income levels. The scheme should be part of a series of measures to provide people with a pathway to home ownership. However, the tenant eligibility criteria appear designed mainly to shift the tenant base of public housing.

1.16 Coalition senators believe dealing with public housing waiting lists should be addressed by other measures under the National Affordable Housing Agreement. This may include increasing the volume of public housing stock or widening availability of rental subsidies.

1.17 In order to attract commercial investors, there must be a portion of intending tenants who are able to provide reliable income security for developers at 80% of market rents. This group may include those who are seeking to save for their first home, or sadly, through the current economic situation, have lost their homes and are forced onto the private rental market.

1.18 If the intent of the scheme is to alleviate rental stress for those in the private rental market, then there should be action to directly target those workers who are currently struggling in the private rental market. One of the key points in providing an affordable housing strategy is to ensure the housing necessary to ensure supply of key workers such as teachers, nurses, childcare workers, police, etc in key metropolitan locations. They should not be forced to move to the urban fringe and face long commuting times to serve their communities. Despite Government assertions that the scheme will address the needs of such key workers, many of these workers will fall outside of the eligibility criteria. For example the upper income limit for a single person is \$48,189 pa, yet award rates for police constables in Victoria and New South Wales are above that threshold.

1.19 Another concern relates to the situation in which landlords may be placed by dishonest tenants. The committee heard that no power is furnished for landlords to require tenants to produce proof of income documentation. Nor does the legislation provide criminal sanctions for dishonest representations by a tenant as to their eligibility to occupy NRAS-subsidised housing<sup>4</sup>. This renders the landlord potentially liable to return to the ATO any benefit they receive under the scheme in the event of tenant dishonesty, notwithstanding their own honesty and diligence. This could lead to the unacceptable situation where several years' worth of subsidy needs to be repaid by an honest landlord who has no recourse against his dishonest tenant for that loss. Coalition senators note with concern the potential damage NRAS's acceptance in the community will suffer if "orting" of this kind is played out in the media.

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<sup>4</sup> FaHCSIA, *Proof Committee Hansard*, 6 November 2008, p. 48.

v) ***Involvement of Not for Profit Organisations.***

1.20 The vast majority of community housing associations, as not-for-profit organisations, have Public Benevolent Institutional (PBI) tax status. A key requirement for such status is that the organisation must be a charity and the activity involved must be a designated charitable activity in the view of the Australian Taxation Office. However, the inquiry was left with serious and disturbing unanswered questions about the involvement of charitable NGOs in NRAS due to uncertainty on this question.

1.21 There is a significant risk that not-for-profit organisations will lose their charitable status if they comply with the NRAS criteria of 20% discount against market rentals as opposed to the organisation's requirement to retain their PBI status and meet GST requirements of 25% discount. This is due to confusion as to whether NRAS is considered a legitimate 'charitable' activity.

1.22 As housing is considered an essential commodity, ACOSS argues that the provision of housing for disadvantaged members of society should be recognised as a charitable purpose, therefore ensuring that involvement in NRAS would be considered a charitable venture. The impact on the community if not-for-profit organisations lost their charitable tax status due to NRAS not gaining recognition as a charitable activity would be enormous.

1.23 The concept of auditing not-for-profit agencies involved in NRAS would reduce the number of Agencies entering the scheme. Many not for profit housing agencies currently have PBI tax exemptions for delivery of social housing, and to suddenly remove this from charities who have expanded their current projects to offer affordable housing through NRAS would cause major disruption for similar businesses and would disadvantage many families struggling to find affordable housing.

1.24 It is important to continue using charitable organisations for supply of public housing, as they have vast amounts of experience in relation to what is involved and is expected by people who are housed by them.

1.25 The suggestion by the ATO that charities could establish 'subsidiary' organisations to progress with affordable housing would only increase the amount of bureaucracy and red tape for charitable organisations, overburdening organisations that are already understaffed and under-funded.

1.26 A major concern if the ATO confirms that public housing suppliers who undertake NRAS activities will have their PBI tax status overturned is that many organisations, including Aged and Community Services Australia members, will not participate in the scheme. This could result in a decrease in the amount of public housing available to people who desperately require affordable housing.

1.27 Coalition senators are reassured by the late advice to the Committee that the Treasurer has agreed to preserve the charitable status of those not-for-profit organisations that participate in NRAS. We note that this "safety net" is however provisionally grandfathered for 2 years. This issue will need to be considered again at that time.

## **Recommendations**

**1.28** Coalition senators acknowledge that NRAS will – and must be – a "work in progress". Witnesses to the inquiry emphasised the need for flexibility as the scheme develops and grows. Based on our comments above, Coalition senators believe great flexibility will be required to overcome many of the problems we foresee with this regime. However we believe the scheme should at the outset be differently structured to anticipate some of the problems.

### **Recommendation 1**

**1.29** Accordingly Coalition senators recommend that the Bill be amended to:

- Establish a sliding scale of incentives to take account of varying developments costs in different locations throughout Australia
- Enable successful applicants to transfer their tax offsets on a once only basis to project financiers
- Require state and territory governments to match the incentive provided by the Commonwealth under the scheme
- Allow future extensions to the upper income limits for tenant eligibility in each band to ensure access by key workers groups and those seeking to buy a first home
- Criminal sanctions be inserted for those who obtain benefits under NRAS by deceit.

### **Recommendation 2**

**1.30** Coalition senators further recommend that the ATO confirms participation in the NRAS as charitable activity for those organisations otherwise qualifying for Public Benevolent Institutional (PBI) status.

**Senator Gary Humphries**

**Senator Judith Adams**

**Senator Sue Boyce**