

The Senate

Standing Committee on
Community Affairs

National Rental Affordability Scheme
Bill 2008 [Provisions]

National Rental Affordability Scheme
(Consequential Amendments) Bill 2008
[Provisions]

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Senate Community Affairs Committee Secretariat:

Mr Elton Humphery (Secretary)

Ms Lisa Fenn (Acting Secretary)

Mr Tim Watling (Principal Research Officer)

Ms Leonie Peake (Research Officer)

Ms Ingrid Zappe (Executive Assistant)

Ms Cassimah Mackay (Executive Assistant)

The Senate

Parliament House

Canberra ACT 2600

Phone: 02 6277 3515

Fax: 02 6277 5829

E-mail: community.affairs.sen@aph.gov.au

Internet: http://www.aph.gov.au/senate_ca

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42nd Parliament

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Chapter 1

Introduction

1.1 On 15 October 2008 the Senate, on the recommendation of the Selection of Bills Committee, referred the National Rental Affordability Scheme Bill 2008 and the National Rental Affordability Scheme (Consequential Amendments) Bill 2008 to this committee for inquiry and report by 20 November 2008. Together, the Bills provide for the establishment of the National Rental Affordability Scheme (NRAS).

1.2 Reasons provided for referral of the bills and principal issues for consideration are:

- whether the Bills are targeted to deliver affordable housing to those in greatest need;
- whether the Bills are an efficient and effective way to deliver increased affordable housing; and
- whether the Bills facilitate investment in social housing by not for profit community housing organisations, as well as private investors.

1.3 Regulations form an important part of the operation of the scheme. A draft version was released by the Minister on 13 October 2008 and is available on the committee's website. The use of regulations is described in the Explanatory Memorandum to the Bill as being desirable for the purposes of maximising flexibility in the administration of the Scheme, and in particular, to respond to changes in determining market rent, tenant eligibility criteria, acceptable periods of vacancy, and reporting requirements in support of eligibility for incentives.¹

1.4 The Scheme was announced on 13 August 2007 during the 2007 Federal election. The measure was also announced in the 2008–09 Budget on 13 May 2008. A detailed proposal was released by the Minister for Housing for public consultation on 2 May 2008 in a paper titled *National Rental Affordability Scheme — technical discussion paper*. A prospectus calling for expressions of interest in the scheme was released by the Treasurer and the Minister for Housing on 24 July 2008.² The legislation is retrospective to allow for eligibility for incentives to date from 1 July 2008. Applicants were advised that they will be informed of any changes to the Scheme.

1 National Rental Affordability Scheme Bill 2008, Explanatory Memorandum, p. 5.

2 National Rental Affordability Scheme (Consequential Amendments) Bill 2008, Explanatory Memorandum, p. 3.

National Rental Affordability Scheme Bill 2008

1.5 Part 1 of the Bill deals with introductory matters, including the commencement date, objective and definitional matters. The objective of the bill is to encourage large-scale investment in housing by offering an incentive to participants in the National Rental Affordability Scheme so as to increase the supply of affordable rental dwellings and reduce rental costs for low and moderate income households.

1.6 Part 2 provides for regulations to prescribe the new Scheme, addressing matters such as the approval of participants, approval of rental dwellings and providing incentives to an approved participant if certain conditions are satisfied. There are a number of pre-requisites for eligibility, including that the dwelling is:

- new, or has been made newly habitable;
- rented to a tenant of a kind prescribed the regulations;
- rented for at least 20 per cent less than the market value rent.

1.7 The Scheme also imposes various requirements relating to the length of time the dwelling goes untenanted.³

1.8 Assessment criteria for applications include whether:

- there is a demonstrated need for the proposed housing capacity;
- accessibility and sustainability outcomes would be delivered;
- the proposal is financially viable; and
- the extent to which the proposal is consistent with certain priority areas of interest.

1.9 Priority Areas of Interest enumerated for the first round of the Scheme include:

- properties that will come onto the rental market in 2008–09;
- large-scale developments that will result in at least 100 dwellings;
- projects consistent with state, territory and local government affordable housing priorities;
- dwellings designed for tenants with special needs (such as older or Indigenous people, or those with disabilities); and
- maximising long term affordable housing for tenants.⁴

3 Clause 7, National Rental Affordability Scheme Bill 2008. See also Explanatory Memorandum, p. 7.

4 Clause 6, National Rental Affordability Scheme Bill 2008. See also Explanatory Memorandum, p. 5.

1.10 The Scheme offers incentives to providers of new dwellings on the condition that they are rented to low and moderate income households at 20 per cent below market rates. The incentive comprises a Commonwealth contribution in the form of a refundable tax offset or payment to the value of \$6000 per dwelling per year and a State or Territory contribution in the form of direct financial support or in-kind contribution to the value of \$2000 per dwelling per year. The incentive will be provided each year for 10 years to complying participants and will be indexed in line with the rental component of the Consumer Price Index (CPI). These arrangements are provided for in Divisions 2 and 3 of Part 2.

1.11 Part 3 provides for certain miscellaneous matters, such as a delegation power for the Secretary and the power for the Governor-General to make regulations.

1.12 The cost of the National Rental Affordability Scheme package, of which the National Rental Affordability Scheme Bill 2008 and the National Rental Affordability Scheme (Consequential Amendments) Bill 2008 are a part, is estimated at \$622.6 million over four years (including administration costs).

National Rental Affordability Scheme (Consequential Amendments) Bill 2008

1.13 The National Rental Affordability Scheme (Consequential Amendments) Bill 2008 amends the Income Tax Assessment Act 1997 (ITAA 1997) as a consequence of the substantive provisions in the National Rental Affordability Scheme Bill 2008. Amendments will enable entities participating in the Scheme to claim a refundable tax offset in their annual tax return, or through lodgement of a short form application by not-for-profit entities who would not ordinarily lodge a tax return. Amendments will also rule out any capital gains tax consequences from the receipt of incentives under the Scheme.⁵

1.14 The Bill makes provision for particular claimant circumstances, prescribing arrangements for access to the scheme in each case. Particular circumstances addressed include where a claimant:

- is an individual, company or a superannuation fund; or
- is a party to a non-entity joint venture; or
- receives the tax offset indirectly (such as in the case of a trust).

1.15 Amendments will also ensure that state and territory contributions to entities participating in the Scheme, whether in cash or in-kind, are non-assessable and non-exempt income for taxation purposes, ensuring that the after-tax treatment of assistance provided by state and territory governments is equivalent to the refundable tax offset.⁶

5 Schedule 1, item 6, paragraphs 118-37(h), (i) and (j).

6 Schedule 1, item 7, section 380-35.

Conduct of the inquiry

1.16 The inquiry was advertised in *The Australian* and posted on the Committee's website calling for submissions by 24 October 2008. The Committee also wrote to relevant organisations and individuals to notify them of the inquiry and to invite submissions. The Committee received 26 public submissions as listed in Appendix 1.

1.17 The Committee conducted public hearings in Canberra on 6 November 2008. Witnesses who appeared before the Committee are listed at Appendix 2.

Acknowledgement

1.18 The Committee thanks those who made written submissions to the committee, and who gave oral evidence at the committee's hearings.

Chapter 2

Issues

2.1 The National Rental Affordability Scheme (NRAS) attracted strong support from a wide variety of submitters. The underlying reason given by witnesses for their support was the significant undersupply of affordable rental housing for those on low incomes. Making the basic shortfall worse is the fact that in some markets, such as in New South Wales, it is pushing rent up to 'a truly alarming level'.¹ The Department of Families, Housing, Community Services and Indigenous Affairs submitted that unmet demand in the construction of housing is running at about 30 000 dwellings per annum.² Typical of the support offered in this regard was that of Mr Adam Farrar, representing the New South Wales Federation of Housing Associations, when he submitted that:

The introduction of NRAS responds to an absolutely critical need...unlike the United States, we still have a significant undersupply problem, and so supply initiatives are very important, and that is one of the things that is so welcome about NRAS.³

2.3 This reasoning was elaborated on by Professor Julian Disney, representing the National Affordable Housing Summit (NAHS), who submitted that:

NRAS provides the opportunity to substantially improve over time the range of methods which are available to meet differing opportunities and challenges for boosting the supply of low-rent housing. In particular, it provides greater encouragement for the private sector to become involved, including major institutional investors as the scheme develops. This arises not only from the direct financial incentive but also from the improved encouragement and identification of non-profit organisations with the necessary skills and resources to manage low-rent housing for private investors.

...

It is also reasonable to expect the scheme to have a beneficial impact on the supply of affordable housing by counteracting inflationary pressures on rents in the lower-end of the market. This is due partly to the overall increase in supply which it will generate and also to this increased supply being rented substantially below market levels.⁴

1 Mr Adam Farrar, *Proof Committee Hansard*, 6 November 2008, p. 20.

2 FaHCSIA, *Submission 19*, p. 4.

3 Mr Adam Farrar, *Proof Committee Hansard*, 6 November 2008, p. 20.

4 National Affordable Housing Summit, *Submission 20*, pp 2–3.

2.4 The need to increase the supply of affordable rental accommodation, particularly for those on low to moderate incomes, is widely accepted, as is the belief that the NRAS will assist the situation. The committee was left in no doubt that the part of the housing sector concerning itself with low to moderate income earners considers the passing of the bills to be of utmost urgency. Mr Adam Farrar explained that:

I do want to stress that it is absolutely essential that the process that has begun isn't delayed. Our members have been very active in taking up the opportunity, but that does mean entering into agreements, going out and identifying opportunities, to acquire land, to acquire new properties to bring into the marketplace, and they are very concerned that those opportunities will be lost if there is any greater delay. A number of them have all the problems that are associated with substantial holding costs.⁵

2.5 However, the committee identified a number of issues of concern. The most significant of these was the anticipated effect of participation in the scheme on the tax status of entities operating as charities, or public benevolent institutions (PBIs).

The possible loss of charitable status

2.6 All witnesses who appeared before the committee representing the community housing sector agreed that their biggest concern with the Scheme related to the possibility that participation would jeopardise their charitable or PBI status. While the PBI issue would primarily affect not-for-profit organisations, the committee was also told that, although not-for-profit providers constituted only about half of applicants to the first round, the continued participation of for-profit entities in the program might also be affected by the PBI issue. This was because at least some of the for-profit applicants have a not-for-profit entity as a partner in their venture.⁶

2.7 The concern arose from a position taken by the Australian Taxation Office (ATO), summarised by Ms Carol Croce as follows:

The ATO have indicated that any organisation with charitable status will seriously jeopardise that status if they participate in NRAS. They have further indicated that organisations such as consortiums that participate in NRAS will not be endorsed as charitable organisations. Furthermore—and this is one that sent chills down the spine of the sector—participation in NRAS may cause the ATO to heavily scrutinise all of the activities of a participating not-for-profit organisation, not just those that pertain to participating in NRAS. The ATO have indicated that some of the current

5 Mr Adam Farrar, *Proof Committee Hansard*, 6 November 2008, p. 20. See also, for example, Ms Carol Croce, *Proof Committee Hansard*, 6 November 2008, p. 19.

6 See, for example, Ms Carol Croce, *Proof Committee Hansard*, p. 26; Mr Adam Farrar, *Proof Committee Hansard*, 6 November 2008, p. 26.

activities that our community housing organisations are involved with may no longer satisfy this test for charitable purpose.⁷

2.8 The rationale behind the ATO's position is that the Scheme aims to assist not only low income earners, but also people on moderate incomes. In this way, the ATO argues that participation by a charitable organisation in NRAS might fall foul of the 'sole purpose test', which requires that organisations holding PBI status have as their sole purpose the provision on charity.

2.9 The Community Housing Federation of Australia drew attention to the fact that the Scheme defines low and moderate income levels in a way that might be inconsistent with other relevant schemes. The Federation pointed out that the threshold used to define low income households⁸ for the purposes of the Commonwealth-State Housing Agreement (CSHA), fell *within* the relevant income threshold of NRAS.⁹ That is, some people who fall outside income eligibility limits under NRAS would be considered low income earners under the CSHA. The Federation went on to argue that:

It would appear that providing housing to households whose income falls within the CSHA low income measure would meet the test for charitable purpose without concern to the ATO. Providing housing to households with incomes higher than the CSHA levels (but within NRAS maximum levels) does not alter the charitable purpose of the organisation...¹⁰

2.10 The committee consistently heard from community housing organisations that the Scheme would attract few if any participants from the sector should the retention of PBI status not be guaranteed. Mr Farrar and Ms Croce agreed that the Scheme would be 'dead' if the PBI issue remains unresolved.¹¹

2.11 On 12 November the Treasurer, Hon. Wayne Swan MP, announced an amendment to the *Extension of Charitable Purpose Act 2004* to expand the definition of charitable purpose to include participation in the NRAS by an organisation holding charity status. The definition of charitable purpose would be extended only for the first 2 years of the Scheme's operation, pending the outcome of broader reviews into the taxation system currently underway.¹² The committee anticipates the amendment will address the primary concerns expressed by witnesses in relation to the possible loss of PBI status, and provide the necessary certainty for investment in the Scheme to commence.

7 Ms Carol Croce, *Proof Committee Hansard*, 6 November 2008, p. 18.

8 In the case of single people, childless couples, of couples with two children.

9 Community Housing Federation of Australia, supplementary submission, pp 1–2.

10 Community Housing Federation of Australia, supplementary submission, p. 2.

11 Mr Adam Farrer and Ms Carol Croce, *Proof Committee Hansard*, 6 November 2008, p. 26.

12 Media Release, Hon. Wayne Swan MP, 12 November 2008.

Other issues

Value for money: is the Scheme the best way to achieve affordable rental housing outcomes?

2.12 The committee was interested to hear the perspectives of a number of witnesses on the extent to which the Scheme makes best use of public resources to achieve its aims. Specifically, the committee queried the fact that, on average, a landlord would receive significantly more annual benefit under the Scheme than would be foregone under the requirement that rent be discounted by 20 per cent.

2.13 The committee heard that the most obvious alternative to the introduction of the Scheme, to expand the current Rental Assistance Scheme, would have a number of drawbacks. These included vast expense, a lack of targeting, and a significant risk that rental charges would rise sharply. Perhaps most importantly, such a move would not resolve the issue of undersupply.¹³

2.14 However, the ability to leverage private investment into low-end rental housing lies at the heart of the Scheme. Mr Adrian Pisarski explained it this way:

...[I]f you wanted to build, for example, 100 000 properties of public housing based on current figures in terms of the average cost of public housing units, you would be looking at direct government expenditure of something like \$30 billion or more. It might even be as high as \$50 billion by the time you deliver things in remote areas as well. Compared to that, the investment in NRAS is a very modest investment but will leverage the enormous amounts of money when it starts to work really properly. I just wanted to make the point that compared to direct investment, for example, in public housing this is a very efficient use of government money even if we do not get the stock permanently. But to get it permanently would cost a level of support that we do not think governments really have an appetite for at this point in time. I just wanted to put that comment on record as well.¹⁴

Enforceability

2.15 As outlined in chapter 2, tenant eligibility rests primarily on household income in defined circumstances. The Department submitted that landlords would be required to check on tenant eligibility annually but that no penalties (other than returning any relevant benefits) apply to landlords who fail to report accurately on tenant eligibility.¹⁵ This raises two primary concerns for the committee. The first concern relates to the lack of a deterrent mechanism for landlords who, in an attempt

13 Professor Julian Disney, *Proof Committee Hansard*, 6 November 2008, p. 8.

14 Mr Adrian Pisarski, *Proof Committee Hansard*, 6 November 2008, p. 32.

15 Ms Fox and Ms Ham, *Proof Committee Hansard*, 6 November 2008, pp 48–49.

to fill vacancies and minimise compliance costs, are less than vigilant in their assessment of tenant eligibility.

2.16 The second concern relates to the situation in which landlords may be placed by dishonest tenants. The committee heard that no power exists for landlords to require tenants to produce income documentation. This renders the landlord potentially liable to return to the ATO any benefit they received under the Scheme, notwithstanding their own honesty and diligence. The committee has become aware that detailed program guidelines have been made available to applicants for the first round, and that these may address this concern. The committee would simply raise the concern as a matter for possible further consideration when the Scheme is reviewed following the second tranche of allocations.

Adequacy of review arrangements

2.17 The Explanatory Memorandum describes an intention to conduct a post-implementation review of NRAS to test whether there is scope for simplification or reduction in the administrative burden associated with it, whether there are evolving issues of non-compliance, and whether the Scheme is adequately focussed on those who would otherwise be under rental stress.¹⁶

2.18 A representative of the Department elaborated on plans for the review at the committee's hearing, submitting that it was slated to begin at the conclusion of round two of the Scheme, and would evaluate the public process and hear from all stakeholders including tenants.¹⁷

2.19 The committee is encouraged by plans for a comprehensive evaluation of the Scheme, which Professor Disney was at pains to point out would require regular adjustment to respond to prevailing conditions.¹⁸ The committee predicts Professor Disney's prediction will be borne out, and urges the Department to review the Scheme thoroughly and systematically, and to respond to findings in a dynamic and timely manner so as to keep the Scheme efficient and effective over its term.

The need to moderate targeting

2.20 The committee's terms of reference charge the committee with inquiring into whether NRAS targets its efforts to those most in need. As discussed in a preceding section, while the Scheme is clearly designed to assist people in need, it is not directed solely at those on low incomes, but also purports to offer assistance to moderate incomes earners.

16 National Rental Affordability Scheme Bill 2008, *Explanatory Memorandum*, p. 5.

17 Ms Sue Ham, *Proof Committee Hansard*, 6 November 2008, p. 46.

18 Professor Julian Disney, *Proof Committee Hansard*, 6 November 2008, p. 9.

2.21 The National Affordable Housing Summit argued against targeting the program too tightly. It submitted that:

[the Scheme] needs to learn lessons from the 'over-targeting' of government housing which has aggravated poverty traps and work disincentives, created dysfunctional and stigmatised communities and reduced the cost-effectiveness of housing provision. Accordingly, while the scheme should make a substantial contribution to the task of housing people in the deepest distress it should not focus solely or overwhelmingly on them and thereby tend to entrench their disadvantage. A social mix of tenants also increases the attractiveness for investors and reduces the necessary size of public subsidy per dwelling.¹⁹

2.22 While recognising the need to deploy scarce resources effectively and efficiently, the committee sees merit in this argument, and trusts that the Government will carefully consider the ongoing level of targeting when the Scheme is reviewed at the end of round two.

Conclusion

2.23 The committee is under no illusion that the Scheme will be an instant, or entire, fix. Indeed, it is clear from the evidence that a medium to long term approach will be required for institutional investors to become substantially involved, partly because of the need to establish administrative procedures but also so as to allow investment through the NRAS to be integrated with existing corporate investment strategies.²⁰ Even should institutional investors be drawn to the Scheme in great numbers, it is clear from the evidence that NRAS will not in and of itself solve the housing shortfall, and nor was it designed to. Professor Julian Disney explained the rationale behind the scheme this way:

The experience of a broadly similar scheme in the United States clearly shows that it can and needs to develop momentum over time. When we originally proposed this scheme we had really quite modest projections for what could be achieved in the first five years or so. We also did not believe that it was realistic to expect major institutional investors and developers to come in before the first two years or so. That was one reason why we proposed that, and the government has adopted a broadly similar approach of an establishment phase of two years and then an expansion phase. The scheme needs to be bedded down in the establishment phase to get some of the basic administrative arrangements and legislative arrangements worked through. Then we can commence procedures for growing it in the expansion phase and getting institutional investors and developers involved. But it would be quite unrealistic, we believe, to expect them to come in in the first year or two, although one needs to start developing their interests towards perhaps the end of the first year. I will come back in a moment to how that might be done.

19 National Affordable Housing Summit, *Submission 20*, p. 2.

20 See, for example, National Affordable Housing Summit, *Submission 20*, p. 4.

Broadly speaking again, we feel the scheme has the essence of what is necessary to achieve greater institutional investment. It is important to bear in mind that it would be unrealistic and unaffordable to expect to attract investors and developers for all parts of Australia to provide fully affordable housing for all possible tenants. It would really be a mistake to try to pitch the scheme in that way. The scheme is an attempt to try to contribute in a substantial way over time to sharing the load of this problem of unaffordable rent. It is not meant to work everywhere under all circumstances for everyone.²¹

2.24 However, the committee is convinced that the Scheme will serve the purpose of efficiently and effectively supplementing the supply of affordable rental housing stock in Australia. Any residual matters of concern raised by witnesses during the hearing, and by the committee in this report, can be adequately dealt with in the course of the post-implementation review of the Scheme to take place after the announcement of the second tranche of allocations. On balance, the committee considers that its concerns do not warrant further delaying the introduction of the Scheme, and therefore recommends the bills giving effect to it be passed by the Senate.

Recommendation 1

2.25 The committee recommends that the Senate pass the bill.

Senator Claire Moore
Chair

21 Professor Julian Disney, *Proof Committee Hansard*, 6 November 2008, p. 3.

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.¹

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 Council² 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

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

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 viability³. 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.

3 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 housing⁴. 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 "rotting" of this kind is played out in the media.

4 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

ADDITIONAL COMMENTS BY SENATOR LUDLAM

1.1 The National Rental Affordability Scheme (NRAS) is a welcome contribution to addressing the housing affordability crisis in Australia. It has potential to significantly increase the supply of rental stock, reduce the proportion of income that low to moderate income households are forced to spend on rent, and exert a deflationary influence on the rental market to the benefit of other renters who are not direct beneficiaries of the Scheme. As many submissions have pointed out, the NRAS alone will not resolve housing affordability and homelessness throughout Australia. But it will play a part alongside other initiatives that the community housing sector hopes to see included in the National Affordable Housing Agreement.

While I endorse the Committee's report, there are a few areas that I consider warrant further comment.

NRAS and housing sustainability

1.2 The NRAS as currently conceived does not afford a high priority to sustainable housing design in NRAS dwellings. Subclause (2)(f) of Schedule 1 of the draft *National Rental Affordability Scheme Regulations 2008* identifies 'proposals which maximize affordable housing outcomes for tenants including building and design features that reduce the overall costs for tenants' as 'priority areas of interest' that applicants are required to 'address' in their proposals. Sustainable design features, such as features that promote water and energy efficiency, meet this description, but applicants are only required to make comment on the priority areas. They are not required to deliver on them in the same way as the criteria listed at subclause 1(c) of Schedule 1.

1.3 Some submissions to the inquiry commented on the scope for sustainable design to feature in the NRAS, although in their submissions and their statements contributors were quick to make such considerations secondary to the primary goals of attracting investors to the scheme and ensuring that the scheme commences without delay. However, there is no need to choose between these important objectives. Many sustainable design features can be included in a dwelling without adding significantly to construction costs. Improvements in energy efficiency can be achieved at little cost through the orientation of a dwelling, the placement of windows, using insulation and energy efficient light fittings, locating the bathroom, kitchen and laundry close to the hot water system, and so on. Similarly, greater water efficiency can be achieved by installing water efficient tap and shower fittings, a rainwater tank, plumbing that enables grey water to be used on gardens. Other economical and effective examples could be listed. It should also be recognised that, as noted in the majority committee report, the NRAS provides benefits to landlords in excess of the rent forgone by renting dwellings out at 20% below market rates. If improving the

sustainability credentials of NRAS dwellings involved some minor additional expenditure, that would be perfectly reasonable in light of the public money participants in the Scheme will receive.

1.4 Giving sustainable housing design greater prominence within NRAS would serve two important purposes: it would contribute to ongoing housing affordability by reducing utilities expenses; and it would reduce the environmental impact of dwellings, which is particularly important in light of the urgent need to address climate change and water scarcity. In our present predicament, we should be seeking to promote greater environmental sustainability in all areas of public policy.

1.5 For these reasons, the NRAS ought to be amended to specifically require applicants to deliver sustainability outcomes. This should apply to future application rounds, to ensure that current proposals that have been developed on the basis of the current criteria are not delayed or abandoned.

1.6 There is a strong affordability argument for low-income housing to be constructed according to the highest standards of energy and water efficiency and close to public transport links so that ongoing living costs are kept as low as possible. With energy, petrol and water prices due to rise around the country, well-located energy and water efficient housing will prevent energy poverty and assist people on low incomes to manage the transition to a carbon-constrained economy.

The risk to the charitable tax status of non-profit participants in NRAS

1.7 The possible risk participation in the NRAS may pose to the favourable tax treatment many non-profit organisations enjoy was highlighted in virtually all of the submissions to the inquiry. Contributors have made it clear that many affected organisations will not participate if it will jeopardise their charitable tax status. With over half of the round one proposals coming from the non-profit sector, their withdrawal would clearly be highly disruptive. The provision of affordable housing under the Scheme would not only be reduced quantitatively, but also qualitatively. The non-profit sector had a significant hand in designing the Scheme from the outset and it has a history of innovative affordable housing provision. It also has a philosophical commitment to redressing poverty and disadvantage that can only benefit the low income households the Scheme is designed to assist.

1.8 The Government clearly recognises the advantage of securing the non-profit sector's participation in the Scheme. The provision for non-profit organisations to receive incentives by way of payment rather than tax credits demonstrates that their participation was always intended. To ensure that the Scheme operates as planned, the Government needs to act to conclusively eliminate the threat to non-profit organisations' favourable tax treatment.

1.9 The Government's guarantee toward the end of the inquiry that non-profit organisations' charitable tax status will be protected for the initial two years of the Scheme's operation is a welcome reprieve, but certainty in the longer term is required to prevent disruption to the Scheme once this period has expired.

Role for an independent expert advisory group

1.10 Numerous contributors to the inquiry spoke of the importance of refining and enhancing NRAS in various ways in light of evidence of the Scheme's performance. This is obviously an important element of effective, evidence-based policy. The National Affordable Housing Summit offered the following suggestion:

The group believes it is absolutely essential that an expert and independent group of advisers be asked to assist in detailed formulation of the Third Call and related aspects of the scheme. The group could include a person with high-level experience in business and finance, another with substantial experience in provision of low-rent housing and a third person with expertise in schemes of this kind.¹

1.11 This is a very sensible suggestion that would ensure that the Government had access to appropriate expertise to help it finetune the Scheme to achieve the best possible outcome for people in rental stress.

Continued consideration of proposals for smaller NRAS developments

1.12 Another common theme in submissions to the Committee concerned the desirability of continued inclusion of smaller (i.e. fewer than 100 dwellings) NRAS developments in the Scheme. I note that the Bills and the draft Regulations do not foreclose this possibility.

1.13 Smaller developments can play an important role in providing affordable housing in high density areas where larger developments may not be feasible, and in rural areas where there may not be a need for larger developments. It would be to the detriment of the Scheme if proposals for such developments were not afforded the same consideration as proposals for larger developments.

Recommendation 1

1.14 A housing sustainability criterion be included in subclause 1(c) of Schedule 1 of the *National Rental Affordability Scheme Regulations 2008*.

Recommendation 2

1.15 The Government acts to ensure the non-profit sector will not jeopardise their favourable tax treatment by providing affordable housing under the NRAS for the duration of Scheme.

Recommendation 3

1.16 The Government appoints a small group of independent experts to advise it on the future development of the NRAS.

¹ National Affordable Housing Summit submission, p.5.

Recommendation 4

1.17 Proposals for smaller developments continue to be considered for inclusion in the Scheme on an equal footing with larger developments.

Senator Scott Ludlam

APPENDIX 1

Submissions received by the Committee

- 1 Christensen, Cr George (QLD)
- 2 Edgerton, Dr Brett (QLD)
- 3 St Vincent de Paul Tasmanian Social Justice Committee (TAS)
- 4 Homeless Persons' Legal Service (NSW)
- 5 NSW Federation of Housing Associations Inc (NSW)
- 6 Shelter NT (NT)
- 7 Common Equity Housing Ltd (CEHL) (VIC)
- 8 Shelter ACT (ACT)
- 9 Queensland Community Housing Coalition (QLD)
- 10 Aged & Community Services Australia (VIC)
- 11 COLONY 47 (TAS)
- 12 National Shelter (QLD)
- 13 Australian Association of Social Workers (ACT)
- 14 Australian Council of Social Service (ACOSS) (NSW)
- 15 Housing Industry Association (ACT)
- 16 Seaborn, Ms Linda (TAS)
- 17 Benevolent Society (NSW)
- 18 Community Housing Federation of Australia (ACT)
- Supplementary information*
 - Supplementary submission received 11.11.08
- 19 Department of Families, Housing, Community Services and Indigenous Affairs (ACT)
- 20 National Affordable Housing Summit (NSW)
- 21 Planning Institute of Australia (ACT)
- 22 Students' Representative Council – University of Sydney (NSW)
- 23 Master Builders' Association of Tasmania Inc (TAS)
- 24 Fraser, Ms Michele (NSW)
- 25 Queensland Government (QLD)
- 26 Tenants Union of Victoria (VIC)

Additional information

Australian Taxation Office

Response to a question on notice from the hearing 6.11.08, received 11.11.08

APPENDIX 2

Public Hearing

Thursday, 6 November 2008
Parliament House, Canberra

Committee Members in attendance

Senator Claire Moore (Chair)
Senator Scott Ludlam (Substituting for Senator Siewert)
Senator Adams
Senator Bilyk
Senator Humphries
Senator Moore

Witnesses

Aged and Community Services Australia (ASCA)

Ms Leslie Dredge, A/g Chief Executive Officer
Mr Roland Naufal, Consultant to ACSA

Australian Taxation Office

Mr Mark Konza, Deputy Commissioner, Small and Medium Enterprises
Mr Michael Hardy, Assistant Commissioner, Parliamentary, Issues Management, Technical, Not for Profit, and Government.

Community Housing Federation of Australia

Ms Carol Croce, Executive Director
Mr Eddy Bourke, Policy Officer

Department of Families, Housing, Community Services and Indigenous Affairs

Mr Andrew Jaggars, Branch Manager Affordable Housing
Ms Julie Fox, Special Counsel - Commercial Section - Commercial and Indigenous Law Branch
Ms Sue Ham, Section Manager, National Rental Affordability Scheme

Department of the Treasury

Mr Mark O'Connor, Principal Advisor, Personal and retirement Income Division
Mr Christopher Leggett, Principal Advisor, Philanthropy and Exemptions Unit
Mr Matthew Flavel, Manager, Industry Tax Policy Unit

Housing Industry Association

Mr Chris Lamont, Chief Executive, Policy
Ms Kristen Thomkins, Executive Director, Building Policy

National Housing Affordability Summit

Professor Julian Disney, Chair

National Shelter

Mr Adrian Pisarski, Chair

NSW Federation of Housing Associations

Mr Adam Farrer, Executive Director