



Submission to the Senate Inquiry on the National Rental Affordability Scheme Bill 2008 and the National Rental Affordability Scheme (Consequential Amendments) Bill 2008

October 2008

Introduction

This submission to the Senate inquiry on the National Rental Affordability Scheme Bill 2008 and the National Rental Affordability Scheme Bill (Consequential Amendments) Bill 2008 (hereafter referred to as the inquiry) has been prepared by the Community Housing Federation of Australia (CHFA), the national peak body representing community housing organisations throughout Australia. It complements the response submitted by the National Affordable Housing Summit group, of which CHFA is a member. This submission has been prepared by compiling a range of CHFA's previous work on the National Rental Affordability Scheme (NRAS), feedback from CHFA's members and Board, and analysis of the abovementioned Bills and the exposure draft of the Regulations of the Scheme.

CHFA is strongly supportive of the Scheme, which will increase the supply of affordable rental accommodation in Australia. This submission will respond to each of the three terms of reference for the inquiry:

- 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.

This submission will also cover with a number of other issues.

Targeting affordable housing to those most in need

CHFA is a member of the National Housing Summit group, which was involved in the development of the NRAS. As the Scheme is targeted to low and moderate income households, the NRAS is not exclusively targeted at those in greatest need, on an income basis. The Scheme must not, however, be seen as an isolated policy response. As part of a broader suite of housing affordability measures within the National Affordable Housing Agreement, which is currently being negotiated, the Scheme will play a role in providing housing to some of those in greatest need. It is not yet known how this Agreement will address housing for people on very low incomes, or those with high and complex needs.

CHFA has made a range of recommendations about the NAHA, and these are detailed in a separate paper, which is attached. These recommendations include adopting a series of goals and targets. One of these is a goal aimed at halving the proportion of households in housing stress by 2020, and a set of targets, including mid-term ones, to support this goal. These targets will need to articulate the numbers of different types of dwellings that will have to be constructed, and what type of tenant population they will aim to house. The Summit group has proposed that these dwellings be divided up into 'bands'. Band A dwellings would include housing for which rents are kept at 25% of tenants incomes for at least 25 years. Band B would include housing for which rents must be kept at least 20% below market rents for at least 10 years.

Additionally, CHFA was one of the key organisers of a national day of advocacy action on rental housing, held in Canberra on 24 September 2008. As part of this day of action, a document was produced outlining a range of spending and policy priorities for housing, including increased capital funding over five years of \$5b to provide for 30,000 new Band A dwellings over the next four years.

Dwellings that are funded through NRAS in combination with other capital funding could be managed as Band A dwellings. In this way, a further quantity of NRAS stock will be made available to low-income households. It is important to note, however, that the Scheme must not over-target. If it does, it is likely that tenancy managers will experience the same problems that State Housing Authorities are now facing.

It should also be noted that, by housing a wide variety of people that are not eligible or unable to access existing social housing, the Scheme will take pressure off the private rental market and public housing waiting lists, which has flow-on effects across the housing system.

The Scheme as an efficient and effective way to deliver increased affordable housing

The NRAS is both an efficient and effective way of delivering increased affordable housing. There are a number of reasons to support this position:

- The Scheme brings in private investment and gives governments good value for money.
- It allows for innovation, both in terms of housing product, as well as project structure, such as joint ventures between a wide range of possible partners in both the private and the community sectors.

- By having a large volume of stock rented at below market value, the Scheme will have a deflationary impact on the wider rental housing market.
- By only providing the incentive for new stock or refurbished, uninhabitable buildings, the Scheme will help to increase the overall supply of housing in Australia. Unlike other markets, such as the US, Australia has serious supply-side problems facing its housing system.
- The Scheme targets institutional investors who can finance projects that deliver large tranches of affordable housing.
- The Scheme promotes the participation of not-for-profit housing providers, who have a track record of high quality tenancy management that delivers social outcomes as well as affordable housing outcomes.
- The Scheme will encourage investment and construction of modest dwellings that suit the needs of low and moderate income earners, and will go some way towards promoting this type of construction, rather than the current trend of new dwelling construction, which caters to investors that favour stock at the higher end of the rental market¹. In doing this, the Scheme will help to change the profile of Australia's housing stock. This impact will remain long after the ten year period of the Scheme.

The provision of housing under the Scheme can, and should, be more targeted in terms of housing priorities in future allocation rounds of incentives. Schedule 1 of the exposure draft of the Scheme's regulations details the assessment criteria by which Applications for NRAS will be judged. CHFA would like to see a more detailed and sophisticated approach to this Schedule in future NRAS rounds. This would allow for the Scheme to respond to area or population-based need, such as housing in a particular sub-market in a given city (e.g. in a certain set of suburbs), or a particular type of housing (such as aged accommodation). The regulations do not specify how many rounds of allocations can be offered by the Secretary, or how often, which provides scope for 'mini rounds' of NRAS.

Current provisions in NRAS allow for 20% of NRAS initiatives to be set aside for projects of fewer than 100 dwellings (with a minimum of 20 dwellings). This provision is meant to apply only during the establishment phase of the Scheme. CHFA recommends that this provision be continued into the expansion phase and subsequent rounds of applications.

Through CHFA's experience as Partnership Facilitators we have encountered many interested investors and community housing providers who had projects appropriate for NRAS that fell into this category. Smaller sized projects are also well-suited for brownfield and redevelopment areas in inner city locations where larger scale projects are not feasible. Further, maintaining the provision for projects of less than 100 dwellings provides an opportunity for investors to get involved in this new investment product on a smaller scale before entering into larger projects.

CHFA also believes that applicants applying for forward allocations should not have to specify the exact blocks of land on which they plan to build. Rather, they should identify the suburb/s where they intend to construct NRAS dwellings and the types of dwellings they intend to construct. This will allow some degree of flexibility for

¹ There are many commentators and housing experts, including Professor Julian Disney, chair of the Summit group, who argue that this is because of distortions in Australia's taxation system.

projects with a longer lead-time, whilst providing an assurance for applicants and investors that they will have the funds to make their projects financially viable.

Facilitating investment in social housing by not-for-profit community housing organisations, as well as private investors

CHFA recommends that for not-for-profit NRAS participants that receive the incentive as a cash grant, this payment should be available in advance, or at least more frequently. For example, up-front payments every six months might encourage smaller organisations with relatively low cash flows to participate in the Scheme, because it would reduce their risk, as well as the cost of interest payments on loans.

The Partnership Facilitator program that is already underway promotes participation in the Scheme by the community housing sector. CHFA recommends that this program continue. Additionally, there needs to be recognition of the value of ongoing sector development. This development should be strategic, and focus on organisations that are in the 'aspirational tier', as well as those that only require a small amount of assistance to become involved in the Scheme.

Capacity building for the not-for-profit community housing sector will be a crucial component in facilitating investment and involvement in the Scheme by this sector. CHFA recognises that there is \$1.5m already earmarked as part of the NRAS funding package. In 2007 CHFA developed a proposal for a business development unit that would address many of the sector development and capacity building needs of the community housing sector. It is important to note that an increased involvement by the not-for-profit community housing sector as equity players will mean that an increased amount NRAS funded stock will remain in the sector, rather than being sold into the private market after the ten year period of the incentive payment.

In order for the not-for-profit sector to build and expand its capacity, a national infrastructure needs to be established that directly engages and invests in the sector. To date, key components of an infrastructure such as the development of a National Regulatory Framework have been undertaken by Commonwealth and State government bureaucrats with virtually no input or engagement with the sector that is being regulated. The result has been an over-emphasis on a compliance framework that best suits the needs of government rather than a nationally consistent regulatory framework that promotes a robust not-for-profit housing sector.

Charitable tax status

A critical issue threatening the success of the NRAS is the risk that not-for-profit organisations will lose their charitable tax status if they participate in the Scheme.

Since the introduction of the GST and the requirement that the ATO endorse organisations' charitable status, most community housing providers were endorsed based on their stated purpose of the alleviation of poverty. The ATO has accepted providers' use of existing low income benchmarks² to articulate their compliance with the test for alleviation of poverty, i.e. providing accommodation for low income people is an allowable charitable activity.

² Examples include state public housing eligibility guidelines and the CSHA low income definition for data collection.

Further, the ATO has recognised that while an organisation's purpose must solely be to alleviate poverty, some activities are allowable if they can be shown to benefit the charitable purpose. For example, activities that raise funds for a charitable organisation are allowable as they contribute towards the purpose of alleviating poverty. The ATO has accepted that housing people on low incomes is a predominate purpose that alleviates poverty. It is a logical extension that providing housing that may not directly alleviate poverty but contributes to the predominant purpose of the housing organisation would be an acceptable activity. For example, some tenants on modest incomes who pay more rent than those on very low incomes would effectively contribute to the charitable purpose through cross-subsidisation.

Through discussions and a recent ruling, it appears that the ATO has moved the goalposts. It is their position that NRAS activities do not alleviate poverty and participation in the Scheme is not an allowable charitable purpose. The ATO no longer accepts benchmarks of low income as a measure of poverty. Despite this, the ATO has declined to define precisely what a poverty benchmark is, leaving community housing organisations in the untenable position of having to deduce at what point a low income household ceases to be considered in poverty and therefore their tenancy no longer is a permissible charitable purpose.

The ATO has stated that any organisation with charitable status will seriously jeopardise that status if they participate in the NRAS.³ The ATO has further indicated that entities formed to participate in NRAS, such as consortiums, will not be endorsed as charitable organisations, and those with existing charitable status will be heavily scrutinised by the ATO for *all* their activities, not just those pertaining to NRAS.⁴

The ramifications of the ATO position are monumental. The ATO is in effect developing public policy through its positioning on the NRAS and through recent rulings. Their current position is inconsistent with previous rulings and endorsements of existing charitable housing organisations. Further, it could potentially undo much of the work that Commonwealth and State governments have undertaken developing and promoting the community housing sector. It also jeopardises the ongoing existence of hundreds of community housing organisations whose operations for more than two decades have been recognised as charitable purposes by the ATO.

CHFA advocates a three pronged approach:

1. **The ATO provide a letter of assurance to NRAS applicants that participation in NRAS will not of itself cause the ATO to review or revoke their charitable tax status.** There is a precedent for this in Victoria where such letters were provided to community housing organisations registering under the new Victorian housing legislation. The ATO indicated providers' tax status was in jeopardy due to what it perceived as excessive government control over the organisations' operations. The advice was general in nature and not binding on the Commissioner but organisations were assured that the Commissioner would not depart from this advise unless:
 - there were legislative changes since the advice;

³ Meeting with ATO, Treasury, FaHCSIA and not-for-profit industry representatives, 20 October 2008

⁴ *ibid*

- a Tribunal or Court decision affected the ATO's interpretation of the law since the advice had been given; or
- the advice was no longer considered appropriate (a copy of this letter is attached).

An assurance of this nature would provide not-for-profit organisations with secure advice at the ATO level that their participation or mere application to NRAS would not provoke an audit of all of their operations, including non-NRAS housing provision, and possible loss of charitable status.

2. **A legislative amendment to safeguard the charitable status of not-for-profit organisations that participate in NRAS.** CHFA sees this as an *interim* measure necessary to expedite the roll out of the Scheme by providing a legislative assurance to organisations that they will not be risking their charitable tax status if they are successful NRAS applicants. This does not assist new entities, such as consortiums, that have not been endorsed by the ATO and do not have a tax status determination. However, the letter of assurance (above) would provide confirmation to not-for-profit consortium members that their charitable tax status will not be challenged by the ATO.
3. **A Statement of Intent from the Treasurer to deem the not-for-profit provision of affordable housing as a charitable purpose under tax law.** CHFA believes it is essential that affordable housing delivered by not-for-profit organisations be recognised as a charitable purpose to ensure the long term viability of the not-for-profit housing sector and affordable housing initiatives such as NRAS. There is a precedent for this extension of charitable purpose in relation to non-profit child care services:

"From 1 July 2004 there is a statutory extension to common law meaning of charity. The change means that non-profit child care providers are no charities for Australian tax law purposes provided they meet all the characteristics of a charity."⁵

A Statement of Intent would indicate a commitment from the Treasurer to resolve this issue through a similar amendment to tax law. This in contrast to the interim legislative amendment which would provide a stop gap measure until the issue can be addressed more comprehensively through the Henry Review of the Tax and Transfer System.

CHFA strongly advocates that both a legislative amendment and a Statement of Intent are required to provide the assurances necessary for the community housing sector to actively participate in NRAS and other similar initiatives at the State and Territory level.

⁵ ATO website

Other issues

CHFA believes that the regulations for the Scheme should not allow an NRAS tenancy manager to increase rent if a new tenant arrives. Rent should be reviewed regularly, but tenant turnover should not provide a basis for such a review.

The NRAS regulations should specify that the income eligibility is indexed in-line with CPI. At the moment, the income eligibility must be changed by legislative instrument (i.e. through regulation or the parliament), which could mean the income limits fail to keep pace with inflation. CHFA recommends that the income eligibility limits be indexed in line with CPI.