



Australian
Council of
Social Service

**Submission to the Senate Community Affairs Committee
inquiry into the *National Rental Affordability Scheme Bill 2008*
and the *National Rental Affordability Scheme (Consequential
Amendments) Bill 2008***

ACOSS, October 2008

Introduction

The *National Rental Affordability Scheme Bill 2008* and the *National Rental Affordability Scheme (Consequential Amendments) Bill 2008* ('the NRAS Bills') have been referred to the Senate Community Affairs Committee for inquiry and report. The 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.

The NRAS Bills support the implementation of the National Rental Affordability Scheme ('NRAS or the Scheme') which offers incentives to encourage institutional investment in affordable rental housing. Under the Scheme, an annual incentive will be paid to providers of new dwellings on the condition that they are rented to low and moderate income households at 20% below market-rates. The Scheme is to provide 50,000 additional affordable rental dwellings in the first five years and a further 50,000 dwellings available from 2012 onwards. The incentive is comprised of a Commonwealth Government contribution in the form of a tax offset or grant and a State and Territory Government contribution in the form of financial and/or other support.

The Australian Council of Social Service (ACOSS) is the peak council of the community services and welfare sector and the national voice for the needs of people affected by poverty, disadvantage and inequality. Consistent with this mission, we are concerned to ensure that low income and disadvantaged people are able to access safe, secure, appropriate and affordable housing.

As the peak representative body for the community and welfare services sector, we also seek to protect and enhance the viability and sustainability of the community sector. In the context of the National Rental Affordability Scheme (NRAS), this means that we are concerned to ensure that the participation of non-profit community housing providers is encouraged and that these providers are not disadvantaged in any way by the operation of the Scheme.

ACOSS is a member of the Housing Summit Group which has been closely involved with and supportive of the development of the NRAS. This submission is intended to complement the response of the Summit Group. We welcomed the Government's announcement of the NRAS Scheme and are pleased that an expansion of the Scheme is proposed beyond the initial 50,000 dwellings. We have also welcomed the other housing initiatives announced by the Government including the Housing Affordability Fund, the Housing Supply Research Council, the Homelessness Green Paper and the *A Place to Call Home* strategy.

Rental stress: who is in greatest housing need?

ACOSS released research last year which showed that an estimated 2,210,000 people, or 11.1% of Australians, are living below the poverty line.¹ These Australians are currently excluded from the benefits of national prosperity, missing out on adequate housing, education and health care and often excluded from the employment market.

The housing affordability crisis has had a severe impact on low income Australians, with research suggesting that nearly 30% of low income households (or 800,500) are experiencing housing stress². Housing affordability indexes generally define low-income households as those whose household income falls within bottom 40% of household incomes. Those experiencing the most acute stress in the current market are those in the private rental market with 65% of low income private renters currently experiencing housing stress.³ This is consistent with the distribution of low to moderate income households in housing stress, 52% of whom are private renters compared to 36% who are home purchasers.⁴ At its most severe, rental stress can push people into homelessness.

The current stress on the private rental market is attributable to a number of factors. The decline in public housing stock and the increase in house prices have both played a role. Public housing stock has diminished from 365,000 dwellings in 1995 to 341,000 dwellings in 2006, estimated to be a reduction of 100,000 dwellings in real terms, resulting in tighter targeting and shorter tenure periods in many states and territories.⁵ As a result of these factors, many low income earners have been forced into the private rental market. For a significant number, this is likely to be a long-term prospect, with exit into home purchase or public housing unlikely.

The need for affordable housing is greatest in areas which are close to employment opportunities and social services. Many of these locations are in inner-urban areas, where rents are particularly high such that many low-moderate income earners have been driven to outer-ring suburbs.

Are the NRAS Bills targeted to deliver affordable housing to those in greatest need?

The Scheme is designed to improve access to affordable housing for low-moderate income households. This is reflected in the eligibility criteria for dwellings under the Scheme:

Part 2 of the *National Rental Affordability Scheme Bill 2008* provides for regulations to prescribe the Scheme. Most of the administrative details of the Scheme's operation are to

¹ Australia Fair, *Australia Fair: Update on those missing out*, 2007, published on behalf of Australia Fair by the Australian Council of Social Service.

² AHURI, Yates J and Gabriel, M. (2006) *Housing Affordability in Australia*, February 2006 and Yates, J (2007) *The polarization of housing affordability*, August 2007. We note that this is even higher than the 685,000 figure revealed by NATSEM research cited in the Technical Paper. In this paper, we use the generally accepted housing affordability measure of 30 per cent of household income allocated to housing costs for households in the lowest 40% of income distribution.

³ Yates, J and V Millegan, *Housing Affordability: A 21st Century Problem*, National Research Venture 3: Housing affordability for lower income Australians, for AHURI at 19.

⁴ Yates and Gabriel, *Housing affordability in Australia*, February 2006.

⁵ Australian Institute of Health and Welfare, *Australia's Welfare 2007*, at 237.

be set out in regulations rather than the Bill itself to provide flexibility to adapt to changing circumstances.⁶ These details include changes in determining market rent, tenant eligibility criteria, acceptable periods of vacancy and reporting requirements in support of eligibility for incentives.⁷ The draft *National Rental Affordability Scheme Regulations 2008* ('the draft Regulations') set the income limits for eligibility as follows:

Income limits for eligibility for household types.			
Item	Household type	Income limit \$	Upper income limit \$
1	Single person with no children	39 351	49 189
2	Couples or sole parents with up to 1 child	55 991	69 989
3	Couples or sole parents with 2 children	69 423	86 779
4	Couples or sole parents with 3 or more children	82 855	103 569

The Government has estimated that up to 1.5 million households will be eligible to be tenants under the Scheme.⁸

'Low-income' households can be defined as those households whose family income is in the bottom 40% of household incomes, those whose incomes in 2006 were below about \$40,000 for families and \$30,000 for individuals. The NRAS eligibility limits are designed to include both low and moderate income households and the thresholds are therefore set higher than these low income benchmarks. This is desirable to ensure the viability of the Scheme and avoid the dangers of over-targeting experienced in the public housing system.

As a result, the income limits will include most people on income support, low income workers (the minimum wage is set at approximately \$27,000 per annum) and moderate income earners (for example, 'key workers').

However, although income support recipients are eligible under the Scheme, it is unlikely that they will be able to afford to pay rent set at 20% less than market rate without additional assistance, particularly in high cost rental markets. This contrasts to the level of affordability provided in public and community housing, with rent set below 30% of household income which ensures full affordability on the 30/40 affordability index. Under the NRAS, rents may be set at lower levels by property owners 'if, for example, providers wish to achieve greater improvements in affordability and/or to obtain the tax concessions available to charities that require rents to be set below specified levels.'⁹

The Summit Group has advocated for the NRAS to be complemented by other initiatives to improve the affordability of the Scheme for low income tenants:

⁶ The Parliament of the Commonwealth of Australia, House of Representatives, *National Rental Affordability Scheme Bill 2008* – Explanatory Memorandum, Circulated by the authority of the Minister for Housing, the Hon Tanya Plibersek MP, pg 5.

⁷ Ibid.

⁸ Treasurer Wayne Swan, Joint Press Release with The Hon Tanya Plibersek MP, Minister for Housing, 'Government launches National Rental Affordability Scheme Prospectus', 24/7/2008.

⁹ Australian Government, *National Rental Affordability Scheme – technical discussion paper*, May 2008 at 18.

...complementary assistance would need to be provided to achieve reasonable affordability in some circumstances (for example, for some very low-income people or households with special needs). Some of this complementary assistance would come from existing Federal or State schemes. This applies, for example, to Commonwealth Rent Assistance, State rent subsidies and grants for community housing. But additional assistance would also be necessary in some cases (e.g., States could provide a supplement to [the incentive] on condition that rents for low-income tenants are below a specified percentage of their household income).¹⁰

This assistance could take the form of an increase in the maximum rate of Commonwealth Rent Assistance (CRA), consistent with the recommendation made by a coalition of housing and welfare organisations, including ACOSS, at the National Housing Advocacy Day last month that:

Commonwealth Rent Assistance (CRA) should be reviewed to ensure that it best meets the needs of all low income renters. As a first step, the maximum rate of CRA should be increased by 30% (approximately \$15 per week) for low income households currently receiving the highest rate of CRA at a cost of \$500 million per annum.¹¹

The Summit Group has always intended that particular dwellings could attract both an NRAS incentive payment and a grant from a Capital Grants Program under the National Affordable Housing Agreement (NAHA) to encourage providers to rent to low-income and high need households and/or to provide a greater rent discount than is required by the scheme and/or for a longer period. This would be especially important for non-profit organisations wishing to keep stock as permanently affordable housing or to focus on households with special needs that increase the cost of their housing or management.¹²

ACOSS supports the Summit Group's suggestion that additional incentives might be provided to housing providers who rent dwellings to very low income or high-need households and offer heavily discounted rent. Incentives could also be used to encourage the construction of dwellings in areas which are in inner-urban areas, close to employment opportunities and social services to meet the need for affordable rental housing in these areas.

ACOSS recommends that a number of measures be developed to expand the stock of affordable housing for low income tenants. With the Summit Group, we have called for the NAHA to set targets for different 'bands' of affordable housing, with Band A defined as housing which is rented at 25% of tenant income and Band B housing defined as rental housing in which rents are set at 80% of market rent (capturing NRAS). With the Summit Group and a coalition of housing organizations, we have called for a substantial increase in funding to expand the stock of Band A dwellings (see recommendations from the National Housing Advocacy Day below).

¹⁰ National Affordable Housing Summit, 'Outline of the proposed National Affordable Rental Incentive Scheme (the NARI Scheme)', accessed at <http://www.housingsummit.org.au/media/NARISOutline.pdf>.

¹¹ ACOSS, National Shelter, Community Housing Federation of Australia and Homelessness Australia, *National Rental Housing Advocacy Day Position Statement*, 24 September 2008, available at: <http://www.australiafair.org.au/public/Publications.aspx?ArticleID=5184>.

¹² 'A National Affordable Rental Incentive – Outline of a proposal by the Australian Council of Social Service, Australian Council of Trade Unions, Community Housing Federation of Australia, Housing Industry Association Ltd and National Shelter', July 2007.

ACOSS has also recommended that future NRAS rounds target low income and high needs households through the National Assessment Criteria (which may include criteria on the profile of tenants, especially their income levels) and through Calls for Expressions of Interest which may include additional eligibility criteria in addition to those specified in the National Eligibility Requirements and National Assessment Criteria.

In addition, the Summit Group has called for benchmarks to be included in the new National Affordable Housing Agreement relating to low-income households, for example:

- An increase in the supply of affordable rental dwellings should include a minimum number of dwellings for which rent must be kept below 25% of residents' incomes for a minimum period in addition to a minimum number of dwellings for which rent must be kept at least 20% below market rates; and
- A designated percentage of new affordable rental dwellings should be occupied by low-income and/or high needs households [e.g. 25-50%].

In our submission to the NRAS Technical Paper we also raised some concerns about the focus on key workers, where this might lead to discrimination against income support recipients. We noted that although there was some suggestion in the Technical Paper that the Scheme is designed to provide housing for key workers in areas closer to employment opportunities, it is unclear whether this is intended to be included in eligibility requirements or Calls for Expressions of Interest. We indicated our concern to ensure low income and disadvantaged households are able to access dwellings under the Scheme on an equitable basis stating that:

We are cognisant of the benefits of social mix in particular developments and acknowledge the broader social benefits of housing 'key workers' in proximity to places of employment. However, we would be concerned if the Scheme enabled property managers to discriminate against low income or high needs households in favour of 'key workers' or higher income earners in selecting tenants. Criteria which designate a specific proportion of the dwellings to low-income households, as suggested above, could address these issues. The regulation of tenancy managers will also play an important role in ensuring that the interests of low income households are protected.¹³

The Explanatory Memorandum indicates that the Scheme will be reviewed in its early years of implementation to test 'whether or not there is scope for simplification of reduction in the administrative burden, whether there are evolving issues of non-compliance that need to be addressed, and whether the Scheme is adequately focused on those who would otherwise be in rental stress.'¹⁴

In addition to the direct benefits to low-income or high-need tenants who can access NRAS dwellings, the Scheme will generate indirect benefits through the alleviation of pressure on the private rental market and public and community housing by providing low-cost housing to those who are on public housing waiting lists or are ineligible for public housing but struggling in the private rental market.

¹³ ACOSS Submission, Response to the National Rental Affordability Scheme - Technical Discussion Paper, May 2008, pg 5.

¹⁴ *National Rental Affordability Scheme Bill 2008*, Explanatory Memorandum at pg 5.

Is the NRAS an efficient and effective way to delivery affordable housing?

The NRAS represents an efficient and effective way to delivery affordable housing for low-moderate income earners due to the:

- cost-effectiveness of leveraging large-scale institutional investment;
- diversification of affordable rental stock;
- flexibility of the Scheme, which enables Governments to take a proactive approach by defining the characteristics of each round, make forward allocations and respond to emerging areas of need (for example, population groups, geographic areas, housing type etc);
- involvement of experienced and effective tenancy managers, particularly from the not-for-profit housing sector;
- scope for innovation, for example though joint-ventures between diverse entities; and
- alleviation of pressure on other parts of the rental market, including private, public and community housing sectors through increased housing supply.

Do the Bills facilitate investment in social housing by not for profit community housing organisations, as well as private investors?

In ACOSS' submission in response to the NRAS Technical Discussion Paper, we stressed the important role of non-profit tenancy managers:

ACOSS supports the Summit Group position that all eligible managers should be subject to the same requirements relating to the management of tenants under the Scheme. Given the absence of regulatory frameworks for for-profit managers, we also support the position that tenancy management be limited to non-profit housing managers, at least during the establishment phase.

The Technical Paper suggests that non-profit providers will be preferred tenancy managers, at least during the establishment phase of the Scheme, and that those with a 'track record' of maintaining longer tenures will be viewed as 'highly desirable'. ACOSS emphasises the importance of the role of experienced and skilled housing managers in the Scheme, particularly in managing dwellings occupied by very disadvantaged or high needs households. These households are more likely to need support to sustain their tenancies.

There are some serious concerns about the tax implication of participation in the Scheme for not-for-profit housing providers. In the context of the pressing need for comprehensive reform of charity law, ACOSS has consistently argued that the provision of housing for people disadvantaged in the housing market should be recognised as a charitable purpose. Given housing is one of the key essentials of life, this is an important component of the relief of poverty (an already recognised 'head of charity') and the advancement of social and community welfare (proposed by the Charities Definitions Inquiry and included in the Charities Bill in 2003 and supported by ACOSS). At the time, ACOSS argued that social housing not be included in the list of charitable purposes in the interests of keeping the

definition short, simple and flexible enough for the courts (or regulator) to keep interpretations up to date with changes in society, but that it should be included in the Explanatory Material accompanying charity legislation as a 'key example of 'the advancement of social and community welfare.' We are aware the Henry Review of the Tax and Transfer System will be investigating and making recommendations on charity law but that the timeframe for reporting is well beyond the timeframes for legislating the NRAS.

In this situation, ACOSS therefore recommends that the Government clarify in the interim, either through legislative or other means, that the not-for-profit provision of social housing is a charitable purpose. There is precedent here. The *Extension of Charitable Purpose Act 2004* provides that 'the provision of child care services on a non-profit basis' is a charitable purpose. This deeming applies, from 1 July 2004, in determining whether an institution or fund is charitable for the purposes of the ITAA 1997, the FBTAA and other Commonwealth Acts.

In determining whether or not an institution is charitable, the ATO's latest tax public ruling on these matters, TR05-021, makes it clear that an institution is accepted as charitable if its sole purpose is charitable. A charitable institution does not have any purpose that is independent of its charitable purpose. A charitable institution may have a purpose incidental or ancillary to its charitable purpose, in fulfilment or furtherance of that charitable purpose. Finding an institution's purpose involves an objective weighing of all its features. These include its constitutive or governing documents (memorandum and articles of association, trust deed, constitution, and so on), its activities, policies and plans, administration, finances, history and control, and any legislation governing its operation. An institution's operations and activities can sometimes help confirm that, despite features which would be non-charitable if taken in isolation, it is in fact for charitable purposes only. On the other hand, the operations and activities of an institution can show that the substance and reality of its purposes are not charitable, despite the presence of features which would be charitable if taken in isolation.

Activities and incidental purposes which could be described as commercial or business-like are not necessarily incompatible with charity. In many situations charities can carry out activities to make profits or in a business-like fashion, where they are clearly part of or incidental to carrying out the charitable purpose.

If it is accepted that the not-for-profit provision of social housing should be a charitable purpose (and we argue that it should be under **either the poverty head of charity or the broader proposed purpose of the advancement of social and community welfare**, whichever is most appropriate in the individual circumstance) then the test is whether this is the sole or dominant purpose of the institution. Reference to the activities of the organisation should simply confirm whether these are in furtherance of its purpose or not.

Finally, the participation of the community sector in NRAS could be further supported by ensuring that community housing providers are able to receive payment in advance for participation in the Scheme (for example, without nominating the parcel of land on which the dwellings are to be constructed) and that the role of partnership facilitators is strengthened.

The NRAS must be complemented by a broader suite of housing affordability measures

The NRAS can play an important role in increasing the availability of affordable housing. However, it forms part, and not all, of the solution. It is essential that funding for NRAS by the Commonwealth and the States is not seen as a substitute for adequate investment in other forms of affordable housing, particularly public and community housing.

It is also important that the NRAS is linked to other Commonwealth, State and Local Government subsidies and incentives to maximise its value. There is also a need for greater clarity about the interaction between the NRAS Scheme and other housing initiatives, including the Housing Affordability Fund, Commonwealth Rent Assistance, the National Affordable Housing Agreement and homelessness initiatives.

ACOSS has consistently maintained that a suite of measures is required to improve access to affordable housing, including:

- Increasing investment in public and community housing;
- Strengthening rental tenancy protections to provide secure, affordable long-term rental;
- Reviewing the Commonwealth Rental Assistance program to ensure that it best meets the needs of struggling renters; and
- Improving support for those experiencing, or at risk of, homelessness (including early intervention, prevention, crisis and post-crisis support).

ACOSS, and a coalition of housing and welfare organisations, recently made six key recommendations for inclusion in the National Affordable Housing Agreement (NAHA) to improve access to affordable rental housing for low-income households as part of a National Housing Advocacy Day:

1. A Growth Target should be established involving an increase in the stock of public and non-profit housing by 30,000 additional dwellings by 2012;
2. An Affordable Housing Growth Fund should be established with funding of \$7.5 billion over 4 years strictly ear-marked for expanding the stock of public and non-profit housing, contributed on a proportional matching basis by the Commonwealth and the States/Territories;
3. An Operating Subsidy Program should be established, with funding of \$3.5 billion over four years provided by the Commonwealth;
4. These funding arrangements will require approximately \$5 billion above funding currently provided by the Commonwealth and State/Territory Governments through the Commonwealth State Housing Agreement (CSHA);
5. New stock should meet standards relating to dwelling quality, disability accessibility and energy efficiency;
6. Commonwealth Rent Assistance (CRA) should be reviewed to ensure that it best meets the needs of all low income renters. As a first step, the maximum rate of CRA should be increased by 30% (approximately \$15 per week) for low income

households currently receiving the highest rate of CRA at a cost of \$500 million per annum.¹⁵

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¹⁵ ACOSS, National Shelter, Community Housing Federation of Australia and Homelessness Australia, *National Rental Housing Advocacy Day Position Statement*, 24 September 2008, available at: <http://www.australiafair.org.au/public/Publications.aspx?ArticleID=5184>.