

Submission to the Senate Economics Legislation Committee: *The National Housing and Homelessness Plan Bill 2024*

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Introduction

The authors of the present submission hold appointments at the City Futures Research Centre, UNSW Sydney, as the Centre's Associate Director and Professor of Housing Policy and Practice (Pawson) and Scientia Senior Research Fellow (Martin). We are the authors (with colleagues from UNSW and RMIT University) of the report *Towards an Australian Housing and Homelessness Strategy: understanding national approaches in contemporary policy*, published in 2023 by the Australian Housing and Urban Research Institute (AHURI) (Martin et al. 2023). We participated in consultation activities undertaken by the Department of Social Services (DSS) in preparation for the Government's National Housing and Homelessness Plan (NHHP). We drafted the May 2024 letter, co-signed by more than 100 housing and human rights experts, expressing concern at the evident inadequacy of the plan under development and calling for a more ambitious plan backed by legislation. We briefed Sen David Pocock and Kylea Tink MP on the drafting of the *National Housing and Homelessness Plan Bill 2024* and its counterpart introduced in the House of Representatives.

The primary focus of this submission is not on the need for a national plan. That need is rightly accepted by the Government, as reflected in its pre-election commitment to implementing a NHHP. The need for a national plan is also demonstrated by a mountain of evidence about Australia's housing and homelessness problems from researchers and advocates, summaries of which are presented in our AHURI report (Martin et al. 2023) and other publications (e.g. Pawson et al. 2020). These problems include barriers to home ownership; unaffordable and insecure private rental housing; declining social housing; persistent homelessness increasingly driven by housing system failures; extraordinarily high Indigenous homelessness; poor energy performance of the housing stock; and multiple negative impacts on wider economic productivity.

Rather than summarise the evidence again here, we emphasise how housing and homelessness problems are *complex*, with diverse causes, and relevant policy levers spread across multiple agencies

and levels of government. By the same token, resolving housing and homelessness problems can yield benefits across diverse agencies, policy areas and aspects of social and economic life. This complexity requires an authoritative framework for policy development, action and accountability – that is, a plan.

The primary focus of this submission is on the need for a national plan *with a statutory basis*. In our view, the Bill would establish several crucial legal foundations for successful national plan-making in housing and homelessness policy:

1. a basic **obligation on the Minister for Housing to prepare and implement a Plan, and to account to the Parliament** on its progress;
2. a set of **objectives based on Australia's human rights obligations**, that would guide development of the Plan and the diverse policymaking activities that would take place under its auspices, and provide a framework for reporting outcomes;
3. a **10-year timeframe** for the Plan, requiring a vision for housing and homelessness policy beyond the current election cycle;
4. a **collaborative approach** to preparation of the Plan, requiring consideration of information and advice from certain expert sources and persons with lived experience of housing need and homelessness;
5. new **institutions to provide independent advice** to the government on housing and homelessness issues, and on the progress of the Plan;
6. designation of **Housing Australia as lead agency** for preparing and implementing the Plan, clarifying responsibilities within government.

Whereas historically the Australian Government's involvement in housing and homelessness policy development has been patchy, even erratic, the Bill's framework would require the Government to apply itself to national policy leadership in a sustained way, continually accounting to the Parliament and the Australian people. The Bill would not *guarantee* a successful Plan; that would still ultimately depend on the Government and the quality of its policies and implementation. But the Bill would make a successful Plan much more likely.

Housing and homelessness policymaking in the Australian federation

Australia's federal system of government presents challenges for housing policy governance, but also underscores the necessity of a strategic and co-ordinated approach.

The Australian Constitution does not specifically refer to 'housing' or 'homelessness', so these matters are clearly within the legislative authority of the states. As such, state and territory governments hold important housing and homelessness policy levers and administer many housing service delivery agencies. However, the Commonwealth's powers regarding taxation, banking, money, corporations, social security and conditional grants are deeply influential on the housing system, and have been used by the Australian Government to make housing and homelessness policy.

Australian federalism's long trend has been the expansion of the Commonwealth's powers, mostly through the Commonwealth taking expansive legislative and fiscal action, subsequently supported by the High Court, rather than through formal constitutional amendment. The trajectory has tended to centralise policy leadership in the Australian Government, as well as reinforce the federation's 'concurrent federalism' character (Galligan 2015), with the Commonwealth and states expected to act and interact in many common policy areas.

However, as Galligan puts it, ‘Australia’s concurrent federal system is strong on concurrency but weak on intergovernmental relations and management’ (Galligan 2015). Lacking constitutionally prescribed institutions and forums for the conduct of intergovernmental relations, these are instead conducted at a sub-constitutional, political level. Over the past 40 years, governments have mostly sought to cast their interactions as ‘cooperative federalism’, while policymakers and scholars have sought to establish principles and institutions for this mode of intergovernmental relations (French 2018; McQuestin 2012). For most of that time, the Council of Australian Governments (COAG) was the primary forum for Australian intergovernmental relations and a focus for commentary on the principles of Australian federalism. COAG’s status was highest in the late 2000s and early 2010s, when the Rudd Government designated COAG the ‘workhorse of the nation’ in ongoing policy development, the COAG Reform Council operated as a public-facing evaluation and accountability body, and a substantial scholarly discussion was underway about how to optimally formalise cooperative federalism (Galligan 2015; Aroney 2011; Kildea and Lynch 2011). Since then, however, both the institutions and the discussion have been disrupted: by the 2014 abolition of the COAG Reform Council, the abortive 2015 ‘reform of the federation’ process, and the 2020 replacement of COAG by the National Cabinet. Less bureaucratic than COAG, but also more secretive (Saunders 2020), the National Cabinet has retained a ‘streamlined’ version of its predecessor’s Council on Federal Financial Relations (CFFR) and Ministerial Councils on priority policy areas. It still lacks the accountability provided by the earlier Reform Council. The institutions of Australia’s concurrent federalism, therefore, remain on weak foundations, and discussion of its principles is at an ebb.

The Bill would contribute to stronger federal relations, by requiring the Commonwealth to formulate a long-term plan for housing and homelessness policy, and be accountable for progressively realising that plan through a sustained engagement in policy development with the states and territories.

Housing and homelessness policymaking: a brief (plan-less) history

While its housing system influence has grown over the years, the Commonwealth’s housing policy leadership has not. It has never formally developed and implemented a national housing strategy or plan. In the early 1990s, the Australian Government sponsored a research program called the ‘National Housing Strategy’, which was intended to inform a national policymaking, but it was not itself an authoritative framework. In the event, it was overtaken by the election of the Howard Government, which adopted a narrow view of housing policy, dispensing with a housing ministry and relegating housing policy to the margins of the social services portfolio. From 2007 the Rudd Government restored the housing ministry and introduced some significant new housing and homelessness programs, but developed no overarching strategy and the programs were mostly short-lived. In 2017, the Turnbull Government announced a ‘comprehensive housing affordability plan’, although it was in fact less than comprehensive (a three-page factsheet). Nor was it preparatory to a wider collaborative effort on housing policy with Australia’s state and territory governments: the meeting of housing ministers convened that year was the last such meeting for five years, when they recommenced under the Albanese Government.

Australia’s highest-level housing policy instrument has been the decades-long series of federal funding agreements for social housing and (latterly) homelessness services.¹ These agreements have occasionally gestured at wider housing policy priorities – for example, the 2018 NHHA identified improving the security of private rental as a ‘priority’ – but without concrete commitments or accountability. In a recent review, the Productivity Commission was scathing of the NHHA:

The National Housing and Homelessness Agreement—intended to improve access to affordable, safe and sustainable housing—is ineffective. It does not foster collaboration

between governments or hold governments to account. It is a funding contract, not a blueprint for reform. (Productivity Commission 2022: 2)

Since 2018, these agreements have required states and territories – but not the Commonwealth – to publish their own housing and homelessness strategies. The formal requirements for the strategies are minimal, and the strategies themselves are highly uneven in quality. Some lack the basic qualities of a meaningful strategy: for example, NSW's 'Housing to 2041' strategy is in the style of a brochure, devoid of targets or strategic intent (Pawson and Milligan 2021). On the other hand, Queensland's 'Homes for Queenslanders' plan (Queensland Government 2024) contains a long-term social housing development target reportedly set according to demographic modelling of current and projected social housing need (Pawson et al. 2024) – virtually unprecedented for state-level housing plan-making, but there is nothing in the current agreement to drive other jurisdictions to meet the raised standard.

Further examples of the problems of doing housing policy without a strong plan can be seen in the experiences of the Albanese Government. Its commitment to a NHHP marked a welcome return to national housing policy leadership, but having yet to make the NHHP, it is struggling with housing policy. The past two years have seen a repeat of the familiar experience of housing policy development fragmenting, and agenda multiplying without sustained engagement in the development, implantation and evaluation of policy.

For example, three months after its election the Government announced the National Housing Accord, which set an 'aspirational target' of 1 million new dwellings over five years. This target was lifted 12 months later to 1.2 million new dwellings. Targets, occasionally revised, are sound elements in housing plan-making, but the basis for the Accord target has not been explained, and a wider discussion of supply factors – apart from the presumption that land use planning restricts supply – has not been ventured.

At the same time as the target revision, the Australian Government announced two more housing policy agenda had been agreed by the National Cabinet. One is the National Planning Reform Blueprint, comprising 10 high-level points, arguably perennial to planning policy, such as 'undertaking planning, zoning, land release and other reforms' and 'promoting medium and high-density housing in well-located areas.' There has been some limited follow-up to the Accord and the Blueprint, in the form of 'implementation schedules' negotiated by the Commonwealth Treasury with the states and territories: these specify each jurisdiction's share of the target, and spell out existing and proposed state/territory planning reforms and social housing funding programs.

The second new agenda is Better Deal for Renters, a nine-point tenancy law reform agenda. It is an uneven mix: the first point, 'a requirement for genuine reasonable grounds for eviction' is a significant advance on the law in all but two jurisdictions, while the ninth, 'phase in minimum quality standards for rental properties (e.g. stovetop in good working order, hot and cold running water)', appears not to realise that those features are already legal requirements in all jurisdictions (Martin et al. 2022). The agenda is now with the states and territories, some of which have already indicated that they will depart from it; it lacks a timeframe and a process for co-ordinating and evaluating reforms, and for identifying other reform priorities. Tellingly, the only published documentation of both the Blueprint and Better Deal for Renters is the National Cabinet media release that announced them.

Furthermore, all signs from the NHHP development process indicate that it will be inadequate for the purpose of sustained, accountable engagement by the Commonwealth in housing system reform. The DSS-produced Issues Paper (DSS 2023) listed current government initiatives at national and state/territory levels, but left undiscussed vast areas of policy directly relevant to housing. Virtually nothing on housing finance, nor taxation; nothing on migration and settlement policy; nothing on



income support. Lacking any analysis of housing system performance, or any proposed overarching goals, objectives or missions for the Plan, the Issues Paper was widely criticised by sector stakeholders and researchers. The published Summary Consultation Report indicates the want by consultation participants of ambitious principles for the NHHP – for example, ‘housing as a human right’ – but also a highly limited discussion of policy options (DSS and The Social Deck 2023).

The legislative framework in the Bill would provide necessary support, and some necessary guidance and discipline, to the current Australian Government, and to successor governments, as they confront Australia’s housing and homelessness problems.

International lessons in national housing plan-making

The Bill reflects lessons from the experiences of international comparator countries that have made housing plans and strategies. We reviewed the experiences of several countries in our AHURI research (Martin et al. 2023). These included Austria, Finland and Scotland, which are international exemplars for their traditions of legible, long-term schemes of policy and delivery co-ordination, conducted by enduring specialist institutions. However, more immediately relevant is the experience of Canada, which like Australia is a federation whose the national government has sought to exercise new leadership in housing and homelessness policy after a period of relative absence. It has done so by developing a 10-year National Housing Strategy, and enacting a *National Housing Strategy Act 2019* (Can).

The Bill corresponds with the Canadian approach in several respects; it also improves on some aspects and addressing deficiencies in others. The Canadian Act, like the Bill, enshrines a human rights-based approach to housing policymaking, and places an obligation on the Minister for Housing to prepare and implement on a national housing strategy. It also prescribes a 10-year period for the strategy, a collaborative approach to its preparation, and regular progress reports by the Minister to the Parliament. The Canadian Act establishes two new entities, the Canadian Housing Council and the Federal Housing Advocate, which correspond closely to the Bill’s Housing Consumer Council and National Housing and Homelessness Advocate, although there are differences between the two councils reflecting the existence of Australia’s National Housing Supply and Affordability Council (NHSAC), which also has functions in the Bill’s framework.

The Bill improves on the Canadian Act in its provisions regarding the content of the Plan; here the Bill makes clear that the proper scope of the Plan is the whole of the housing system. The Canadian Act lacks such provisions, and its National Housing Strategy is narrow – a deficiency strongly criticised by the housing experts interviewed in our AHURI research. The timing of the Bill also improves on the Canadian experience: there, the legislation was enacted two years after the commencement of the strategy, and the new statutory institutions were operational some years after that. Those institutions are now beginning to make valuable, critical input to policy development. The Bill would properly establish the framework for the Plan before it is made.

Part 1: the Bill’s objects, and the human right to adequate housing

The most important provisions of this Part are the Bill’s objects, which recognise the right to adequate housing affirmed in international law, including the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), and the principal of Indigenous self-determination in housing policy per the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). These objects are important for two reasons.

One is that they firmly place the Bill within the constitutional authority of the Commonwealth, specifically its power regarding external affairs, which includes international human rights obligations. There is a precedent for this in the *National Housing Finance and Investment Corporation Act 2018* (s 10(1)(b)(i)-(iii)).

The second reason is that the human right to adequate housing sets an appropriately ambitious mission for the NHHP, and serves as a useful starting point or common ground on which to engage the diverse agencies and stakeholders involved in housing and homelessness policy.

Part 2: the National Housing and Homelessness Plan

Part 2 makes provision for a National Housing and Homelessness Plan. The Bill does not itself create the Plan, nor does it prescribe all the details of its contents: these are matters for the government of the day, as represented by the Minister for Housing. The scheme of the Bill is that the government should be responsible for its Plan, and account to the Parliament for making progress on its Plan.

The Bill would place an obligation on the Minister to prepare and implement a Plan. It also makes several formal requirements of the Plan:

- **Timeframe.** The period of the Plan would be 10 years. This accords with the period indicated by the Albanese Government for its NHHP, and other international comparators (e.g. both the Canadian National Housing Strategy and Ireland's 'Homes for All' plan are for 10 years). This timeframe is appropriate because it would require the Government to think about action on housing and homelessness beyond the current electoral cycle. The Bill also requires a review of the Plan in its ninth year, and the making of subsequent 10-year Plan.
- **Preparation process.** The Bill would require the Minister to take a collaborative approach to the preparation of the Plan, which would include considering advice and reports from the NHSAC, the National Consumer Council and the National Housing and Homelessness Advocate (the latter two being established by the Bill), civil society organisations and persons with lived experience of housing need and homelessness. It may be noted that the states and territories are not referred to here. On the one hand, such a reference may be regarded as unnecessary, because so much housing and homelessness policy development and delivery is done by the states and territories that a national plan implicitly needs their collaboration. On the other hand, this implicit necessity could be made an express requirement by adding 'states and territories' to the list of collaborators.
- **Lead agency.** The Bill designates Housing Australia as the lead agency assisting the Minister in preparing, implanting and reviewing the NHHP. This clarifies responsibilities and capitalises on Housing Australia's domain knowledge across different housing sectors.
- **Plan contents.** The Bill requires that the Plan must be directed towards certain high-level outcomes, including 'ensuring that everyone in Australia has adequate housing', 'preventing and ending homelessness', and 'improving housing supply' (s 8). The scope of section 8 makes clear that the Plan should encompass all housing tenures and be systemic in scope. The Bill does not prescribe the policies and programs to deliver the outcomes listed. The substantive detail of the Plan is for the Minister to determine on behalf of the government.

We see nothing in the Bill that would prevent the Minister from amending or making a new Plan before the end of the 10-year period (for example, after a change in government). However, an amended or new Plan would be required to conform to the legislated requirements: i.e. contemplate a period of 10 years, be prepared collaboratively, and be directed to the required content.

Regarding the **legal status of the Plan**, the Bill makes clear that the Plan would not be a legislative instrument: it would not itself change existing laws or give the government new powers. So, the government might state in the NHHP that it will make a certain reform, but to actually change the law it would have to do so by the usual parliamentary means.

Neither the Bill nor the Plan gives new powers to the Commonwealth impinging on the states. The Bill would instead create obligations for the Commonwealth to plan and be accountable to the Parliament on its progress. Consistent with Australia's 'concurrent federalism' and aspirations of 'cooperative federalism', the Bill would equip and position the Australian Government as the dependably engaged leader of collaborations with the states and territories, for the better development, implementation and evaluation of housing and homelessness policy.

Part 3: the National Housing Consumer Council

A National Housing Consumer Council (Part 3) would be established to advise the Minister during Plan preparations, and on housing consumer issues as they arise. As a counterpart to the expert/industry voice of the NHSAC, the Consumer Council would include representation from persons with disability, lived experience of housing need and homelessness, and Indigenous persons.

The NHSAC's membership comprises experts from academia and housing-related industries and sectors. This membership is appropriate to the NHSAC's statutory functions, including its advisory functions within the Bill's framework. However, the NHSAC cannot substitute for a consumer voice, or the voice of lived experience – hence the necessity of the Consumer Council. It is appropriate that the Minister should be required to consider the advice of the Consumer Council, without being required to always agree or incorporate its advice into the Plan. As noted above, the content of the Plan is for the Minister to determine on behalf of the government.

Part 4: the National Housing and Homelessness Advocate

A new independent government officer, the National Housing and Homelessness Advocate, would be established by Part 4. A further advice and accountability mechanism, the Advocate would be charged with reporting annually on Plan progress and with conducting reviews of systemic housing issues, including in response to submissions from the general public. The Bill appropriately makes clear that the Advocate has no function or powers to review individual housing issues. The design corresponds closely to that of the Federal Housing Advocate per the Canadian *National Housing Strategy Act 2019*.

Recommended preparations towards a statutory Plan

It is possible, if not likely, that the Government will publish its DSS-developed NHHP in the absence of the statutory framework provided by the Bill.

In that event, we would recommend that the Government present the DSS-developed NHHP as a provisional Plan pending the enactment of a statutory scheme for the Plan, such as that of the Bill, and the making of a Plan according to that statutory scheme.

With the provisional Plan in place, the Government could begin making preparations for a Plan consistent with the framework of the Bill. We recommend that these include foundational analyses on four policy areas to be addressed in the Plan proper. These are

1. **A national social and affordable housing needs assessment.** The NHSAC should be engaged to conduct an assessment quantifying the amount and geography of current and projected unmet housing need, the cost of meeting that need through new social and affordable housing, and options for financing the necessary investment.
2. **Housing taxation.** The CFFR and the Housing and Homelessness Ministerial Council should jointly convene a working group to examine the impact on housing outcomes of (a) federal tax settings, including personal income tax (in particular, negative gearing and capital gain tax), GST and taxation of companies and trusts; and (b) state and territory tax settings, particularly land taxes and stamp duties. The working group should be on the model of the CFFR's 2016 Affordable Housing Working Group, which produced two well-regarded reports that prepared the way for the establishment of the NHFIC. Working group members were nominated by federal and state treasury departments and drew on information from experts within and outside governments.
3. **Housing regulation.** The CFFR and the Housing and Homelessness Ministerial Council should jointly convene a working group (as above) to examine the impact of, and reform options for, (a) the national regulation of housing finance (including the impacts of monetary policy and macroprudential rules); (b) state and territory regulation of residential tenancies; and (c) state and territory land use planning and development.
4. **Housing assistance.** The CFFR and the Housing and Homelessness Ministerial Council should jointly convene a working group (as above) to examine the effectiveness of, and reform options for, (a) first home buyer assistance; (b) rent assistance, including implications for community housing funding; and (c) permanent supportive housing for especially vulnerable persons experiencing homelessness.

In the Plan proper, the Government should commit itself to pursuing its preferred reform options in these areas, or to developing the options further in specified programs of investigation. It should also indicate a timetable for similar working parties and investigations of the range of other policy areas implicated in Australia's housing system.

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ⁱ Originally the Commonwealth-State Housing Agreements (1945-2009); latterly the National Affordable Housing Agreement (2009-2018), the National Housing and Homelessness Agreement (2018-2024) and now the National Agreement on Social Housing and Homelessness (2024-).