National Affordable Housing Providers Ltd.

Submission on the Social Services Legislation Amendment (Housing Affordability) Bill 2017

National Rental Affordability Scheme amendments

November 2017

Endorsed by

nsw Federation of Housing Associations inc

Community Housing INDUSTRY ASSOCIATION

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National Rental Affordability Scheme (NRAS) Amendments
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Thank you for the opportunity to comment on the proposed National Rental Affordability Scheme (NRAS) amendments contained in the Social Services Legislation Amendment (Housing Affordability) Bill 2017.

The National Affordable Housing Providers Ltd (NAHP) is a representative peak body whose purpose is to represent the collective interests of NRAS Approved Participants, in the Constitutional Objective of assisting in the delivery of affordable housing across Australia. Our members hold responsibility for over 50% of all NRAS delivery worth an estimated $9 billion in private investment. NAHP members are a mix of not for profit housing organisations, commercial and ASX listed entities, representing the broad interests of companies engaged in the field of providing private affordable housing in Australia, including NRAS and other State and Federal Government initiatives.

Support for amendments on vacancy periods and transferring allocations

The second item in Schedule 3 repeals highly prescriptive conditions for dealing with NRAS vacancy periods and replaces them with a more flexible approach. This amendment is a positive response to an issue NAHP raised in its submission on the Department of Social Services' (DSS) consultation paper *Improving the National Rental Affordability Scheme.* In our submission, NAHP argued that the Regulations (reflecting this Legislation) penalised Approved Participants for a 'quirk' in timing when their extended vacancy period straddled two NRAS years. We noted that rapidly changing rental markets in some areas, such as former mining communities, had resulted in long vacancy periods as Approved Participants and investors strove to attract tenants in a depressed market. Regulatory changes implemented in July 2017 also improved this situation, allowing for proportional reductions in the incentive for the vacancy period rather than imposing a nil incentive due to the extended vacancy periods.

The fourth item in Schedule 3 allows for the transfer of an allocation to another rental dwelling in certain circumstances. We support this further clarification around the transfer of allocations to better ensure that as many NRAS allocations as possible stay in the Scheme for the duration of the incentive. Recently NAHP undertook a survey of NRAS investors to find out what their intentions are for their NRAS properties as the incentive period comes to a conclusion. Of the 820 investors who responded, 28% indicated that they either planned to or were considering leaving the Scheme before their incentive ended. Given those intentions, NAHP believes it is essential to have a clear transfer policy in place in order to retain the maximum number of dwellings in the Scheme and continue to provide affordable housing homes for eligible households.

We made several recommendations in our submission on the regulatory consultation paper on how to facilitate those transfers and are providing input to DSS as they formulate a procedure for such transfers.

Rent charged amendment

The first item in Schedule 3 addresses a perceived ambiguity in the amount of rent charged to NRAS tenants, i.e. that it must, at all times, be at least 20% less than the market value rent for the dwelling. NAHP supports this affordable housing rental threshold and strongly believes in providing affordable housing at below market rent. However, it has been our experience that the interpretation of this requirement and its application has often been rigid and inconsistently applied; the amended language in this Bill does not alleviate that situation.

DSS has generally interpreted the '20% at all times' legislation as prohibiting rent rebates or credits when an unintentional overcharge has occurred. In the last year, DSS has allowed for some refunds due to minor errors such as rounding mistakes, and these are approved by the Delegate on a case-by-case basis. However, it is unclear what constitutes a 'minor error' other than the rounding example and guidelines on acceptable rent charging errors would be helpful. NAHP suggests that administrative errors and typing mistakes be considered minor errors and able to be corrected without penalty.

To better understand the circumstances that can result in unintentional overcharges, some background information on how rents are assessed and adjusted will help explain this situation.

Approved Participants are required to do market rent valuations (MRV) to determine the market rate to calculate the 20% discount. These MRVs are undertaken in Year 1 of the NRAS incentive and at the end of Years 4 and 7 (effectively in Years 5 and 8) and coincide with the dwelling's 'available for rent anniversary' (AFRA) date. The MRVs are the most accurate assessment of the market rent since they are done on the individual dwellings. During the other years, the rents are adjusted according to the NRAS Index. This is published at the beginning of the NRAS year (May) and reflects the rental CPI from the preceding December quarter for the capital cities in each State/Territory.

The NRAS Index does not always accurately reflect what is happening in all rental markets across a jurisdiction and can mask regional areas where rents are falling dramatically. For example, it is well established that there has been a downturn in the rental markets in former mining communities in parts of Queensland. Since the NRAS Index is based on the Brisbane market that has been doing well, the weaker outlying markets are not reflected in the Index figure (see table below).

Even in capital cities, there can be fluctuations within the rental market that are not picked up immediately through the Index. The ACT is an example on this point. When the ANU and the University of Canberra started building large amounts of student housing, it opened up the low cost rental market in Canberra as students moved onto campus leaving many vacancies in the private rental market. That triggered a reduction in rents at the affordable end of the market but since the rest of the Canberra market was doing well, it was not reflected in the Index. By 2015-16, that change was better reflected up in the Index and showed a negative figure

That was the first time the NRAS Index registered a negative figure, with the ACT showing an change figure of -1.8%. The following year in 2016-17, the ACT was joined by Western Australia and the Northern Territory with negative changes in rental values. By 2017-18, there are huge negative changes in WA and NT:

State/Territory	2017-18 (%)	2016-17 (%)	2015-16 (%)	2014-15 (%)	2013-14 (%)
WA	-7.2	-2.9	1.5	5.8	6.5
NT	-8.2	-2.7	2.7	8.4	4.2
QLD	.2	1.0	2.0	2.1	2.7
ACT	.2	-1.5	-1.8	.4	3.1

Rent reductions are not uncommon following an MRV. A significant number of NRAS properties were built in those now declining mining communities precisely to deal with the lack of affordable housing several years ago. In other communities, even a small market downturn can result in a slight decrease in an MRV and any reduction in rent, even a few dollars, must be implemented immediately.

There are a few ways that Approved Participants can run afoul of the 20% rule. NRAS Regulations require that a rent reduction resulting from an MRV must take effect no later than the AFRA. NRAS Regulations also permit an MRV to be undertaken within a 26 week period around the AFRA, i.e. 13 weeks on either side of the AFRA. That becomes a problem when the MRV is done during the allowable 13 week period *after* the AFRA. If the MRV unexpectedly results in a decreased valuation that triggers a rent reduction the Approved Participant is now non-compliant because the AFRA date has already passed. The Approved Participant is prohibited from rectify this unavoidable overcharge with a refund or credit and will lose a portion of their incentive.

A more common situation that can result in rent overcharges concerns rent payments in advance. Tenants often pay their rent at least a fortnight in advance (it is required in some jurisdictions) and sometimes pay their rent several months advance. Where there is a decreased MRV resulting in a rent reduction, the Approved Participant may be noncompliant even if they actioned the rent reduction on the AFRA date: the tenant may have already paid the higher rent weeks before because they paid in advance. Again, because the Approved Participant cannot rectify the unintended overcharge with a refund or credit, they are in jeopardy of losing a portion of their entitlement to a full incentive.

Rent reductions can also occur when there is a negative NRAS Index figure. However, there is an inconsistency in the timing of implementing rent reductions between MRVs and a negative NRAS Index. Approved Participants do *not* have to drop the rents immediately when the decrease is the result of a negative NRAS Index. The Index comes out around 1 May but any rent reduction only take place when the dwelling's AFRA date comes around. For example a current tenant lives in a WA NRAS dwelling whose AFRA date is in October. This year, the rent on that dwelling is subject to a variation based on the NRAS Index (-7.2) published 1 May 2017 and will most likely result in a rent reduction. Their rent will not be reduced until the October AFRA date and they are not entitled to a refund or credit for the period between May and October. Using the same strict interpretation of the 20% at all times rule applied for reduced MRVs, the tenant is effectively being overcharged from 1 May until the AFRA date.

NAHP asserts that refunds or credits should be permitted within a reasonable time frame as a way to rectify unintended or unforeseen overcharges. NAHP recognises that the Delegate has the authority now to accept refunds or credits on a case-by-case basis and believe the Delegate should have that discretion. However, NAHP proposes a more workable interpretation such that overcharges can be rectified by refund or credit if the correction and compensation is completed by the time the next rent payment is due. In this way a tenant would only be paying the old higher rent for no more than one payment period (at most) before the new lower rent rate took effect and they would be compensated for the overcharge in a timely manner.

Conditions of allocation

The third item in Schedule 3 gives DSS the legislative authority to vary or impose conditions on an NRAS allocation after the allocation has been made. According to the explanation of this amendment,

New section 7(c) clarifies that a condition provided for by the Scheme may be imposed on an allocation after it is made. A condition prescribed by the Scheme includes new or varied conditions of allocation. New conditions of allocation may be imposed to deal with emerging issues and circumstances

It is NAHP's view that this amendment gives DSS wide ranging power to significantly change the conditions of the allocation and to enact those changes at any time. There are no guidelines or parameters on what types of conditions might be imposed. Nor is there any indication that Approved Participants and investors would be consulted or their consent required before conditions would be altered.

For example, could DSS impose a condition that certain NRAS dwellings now be rented to people over 55 in response to a lack of such housing in a given area, i.e. varying conditions to "deal with emerging issues and circumstances"? This is not a far-fetched example as some allocations were made during the application rounds with the condition that they would be rented to people aged over 55.

In NAHP's discussions with DSS they have reported that this legislative authority is necessary to afford them the powers to address significant emerging risk. However, the amendment does not limit the scope of that authority to varying conditions in order to mitigate risk. Nor does the amendment provide any caveats that reflect the intention in the Bill's explanatory notes that the conditions be imposed to deal with emerging issues and circumstances. The amendment simply states "a condition provided for by the National Rental Affordability Scheme may be imposed on an allocation after the allocation is made". It appears to be a 'catch-all' authority to impose any condition not already specifically articulated in the Act.

NAHP believes this broad authority will result in investor uncertainty and distress if there is an ongoing possibility that the conditions of allocation can be varied and imposed at any time. Compliance with the new conditions of allocation could result in unanticipated costs and possibly a partial loss of the incentive if it proves difficult to comply with the new conditions in a timely manner.

NAHP acknowledges that DSS needs some flexibility to address situations that pose a risk to NRAS tenants and the overall operation of the Scheme. NAHP recommends that some parameters be included in the Legislation that indicate when it is appropriate to significantly vary the conditions of the allocation; and that there be established procedures for negotiation on any variations with Approved Participants and investors.