



13 April 2018

Mr Mark Fitt
Committee Secretary
Senate Economics Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Mr Fitt

**Inquiry into the National Housing Finance and Investment Corporation Bill 2018 and
the National Housing Finance and Investment Corporation (Consequential
Amendments and Transitional Provisions) Bill 2018**

Thank you for inviting the Local Government Association of Queensland (LGAQ) to make a submission to the Senate Inquiry into the *National Housing Finance and Investment Corporation Bill 2018* (NHFIC Bill) and the *National Housing Finance and Investment Corporation (Consequential Amendments and Transitional Provisions) Bill 2018* (NHFIC Consequential Amendments Bill).

As you may be aware, the LGAQ has previously made a number of submissions in relation to the establishment and operation of the National Housing Finance and Investment Corporation (NHFIC), including to the:

- NHFIC Consultation Paper – 20 October 2017
- Exposure Draft of the NHFIC Bill – 22 January 2018
- Exposure Draft of the NHFIC Investment Mandate Direction 2018 (NHFIC draft Investment Mandate) – 9 March 2018.

As the peak body for local government in Queensland, the LGAQ welcomes the announcement of the NHFIC and specifically the \$1 billion National Housing Infrastructure Facility (NHIF). The LGAQ appreciates the ongoing opportunity to provide comment on the proposed reforms, particularly the financing arrangements available to local government to support the creation of housing related infrastructure.

Notwithstanding, the LGAQ is disappointed that the recommendations made in its previous submissions to the Commonwealth Treasury have not been adopted and without response.

In relation to the current NHFIC Bill and the NHFIC Consequential Amendments Bill, the LGAQ would like to offer comments and recommendations related to five key aspects:

- objects of the NHFIC Bill
- consistency in terminology related to affordable, social and community housing
- functions of the NHFIC and matters covered by the NHFIC Investment Mandate
- decision making and reporting obligations of the NHFIC Board
- proposed consequential amendments to the *Administrative Decisions (Judicial Review) Act 1977* and the *Freedom of Information Act 1982*.



A summary of the six recommendations made in this submission are provided below for ease of reference. These recommendations are consistent with the LGAQ's previous submissions related to the NHFIC, which should also be considered as part of this submission.

Recommendation 1: The LGAQ recommends that the object of the current NHFIC Bill be updated to align with the wording stated in the Explanatory Memorandum to the NHFIC Bill and the NHFIC Consequential Amendments Bill (page 14, paragraph 1.8).

Recommendation 2: The LGAQ strongly recommends that consistent definitions for 'affordable housing', 'social housing' and 'community housing' be developed in consultation with state/territory governments and state-based local government associations (including the Australian Local Government Association) and applied to the NHFIC to support consistent decision making.

Recommendation 3: The LGAQ strongly recommends that the necessary amendments be made to retain the grant component of the NHIF, understood to be for \$175 million, for primary access by local government project proponents.

Recommendation 4: The LGAQ recommends that the reporting obligations contained in sections 36-37 of the Exposure Draft of the Bill be re-instated in the NHFIC Bill to align with section 19 of the *Public Governance, Performance and Accountability Act 2013* and the Explanatory Memorandum (paragraphs 3.41 and 3.42).

Recommendation 5: The LGAQ recommends that paragraph 3.40 of the Explanatory Memorandum relating to section 56 of the NHFIC Bill, be moved into Chapter 6 – Miscellaneous of the Explanatory Memorandum and renumbered accordingly.

Recommendation 6: The LGAQ recommends that the reasons for each investment decision of the NHFIC Board to either grant or refuse financing be published to the greatest extent practicable, subject to commercial confidentiality considerations.

Detailed comments supporting these recommendations are provided below.



Detailed comments regarding NHFIC Bill and NHFIC Consequential Amendment Bill

1. Objects of the NHFIC Bill

The LGAQ supports the overall intent of the NHFIC Bill to establish the NHFIC and provide financial assistance to support delivery of critical infrastructure to improve housing outcomes. However, the LGAQ notes a change in the object of the NHFIC Bill from the Exposure Draft that was released for public consultation in January 2018 – i.e. from ‘*The object of this Act is to establish the [NHFIC] **to contribute to efforts to increase the supply of housing by...***’ (Exposure Draft NHFIC Bill, emphasis added) to ‘*The object of this Act is to establish the [NHFIC] **to improve housing outcomes for Australians by...***’ (current NHFIC Bill, emphasis added).

In addition, the object of the current NHFIC Bill does not align with the wording contained in the Explanatory Memorandum to the NHFIC Bill and the NHFIC Consequential Amendments Bill (page 14, paragraph 1.8), which is a combination of the current NHFIC Bill and the Exposure Draft version – i.e. ‘*The object of the Bill is to establish the [NHFIC] **to contribute to efforts to improve housing outcomes for Australians by...***’.

The LGAQ supports the broader object to ‘improve housing outcomes’ rather than ‘increasing the supply of housing’ but considers that the NHFIC can only contribute to improved housing outcomes, rather than directly delivering the outcome itself.

For this reason, the LGAQ makes the following recommendation:

Recommendation 1: The LGAQ recommends that the object of the current NHFIC Bill be updated to align with the wording stated in the Explanatory Memorandum to the NHFIC Bill and the NHFIC Consequential Amendments Bill (page 14, paragraph 1.8).

2. Consistency in terminology – affordable, social and community housing

The LGAQ remains disappointed that definitions have not been included in the NHFIC Bill (section 5) for ‘affordable housing’, ‘social housing’ and ‘community housing’, despite the objects of the Bill relating to all three. The Explanatory Memorandum to the NHFIC Bill and NHFIC Consequential Amendments Bill, similarly does not provide any guidance in relation to these terms.

As stated in the LGAQ’s previous submissions, clarity regarding these terms is necessary to ensure transparency, consistency and equity in the allocation of financing by the NHFIC to eligible project proponents, and not inadvertently preference or disadvantage one jurisdiction over another. Currently, different jurisdictions adopt different definitions which may, or may not, be statutory.

For this reason, the LGAQ makes the following recommendation:

Recommendation 2: The LGAQ strongly recommends that consistent definitions for ‘affordable housing’, ‘social housing’ and ‘community housing’ be developed in consultation with state/territory governments and state-based local government associations (including the Australian Local Government Association) and applied to the NHFIC to support consistent decision making.

3. Functions of the NHFIC and matters covered by the NHFIC Investment Mandate

The LGAQ notes that the NHFIC Investment Mandate will contain directions about the performance of the NHFIC’s functions as per section 12 of the NHFIC Bill, and include details regarding the scope of eligible projects, proponents and financing mechanisms available under the NHFIC.



Since its submission on the NHFIC Consultation Paper in 2017, the LGAQ has maintained its position that local government should be the primary eligible applicant for financing under the NHIF for a number of reasons, including:

- the vertical fiscal imbalance that exists in Australia whereby local governments receive only a 3% share of the total taxation revenue
- the funding gap that exists for local governments in terms of revenue and costs associated with trunk infrastructure – estimated to be \$481.9 million annually across Queensland's high growth local governments.

In its submission on the Exposure Draft of the NHFIC draft Investment Mandate, the LGAQ expressed concern that *'the proposed scope of eligible project proponents has been expanded to include a 'State government-owned utility provider', a 'Territory government-owned utility provider', a 'registered community housing provider' and a 'special purpose vehicle', which limits the pool of financing available to local governments'*.

The LGAQ has also maintained the position that the lending component of the NHIF should be consistent with, or better than, the financing arrangements already offered to local governments through other means, including through public financiers such as the Queensland Treasury Corporation.

If this does not occur, there will be limited incentive for local government to access the lending component of the NHIF. To ensure the success of the financing program, it is fundamentally important that the grant component of the NHIF, be retained for primary access by local government.

For this reason, the LGAQ makes the following recommendation:

Recommendation 3: The LGAQ strongly recommends that the necessary amendments be made to retain the grant component of the NHIF, understood to be for \$175 million, for primary access by local government project proponents.

4. Decision making and reporting obligations of the NHFIC Board

The LGAQ notes the reporting obligations of the NHFIC Board contained in, Part 3, Division 4 of the Exposure Draft of the NHFIC Bill (sections 35-37) have been removed, except for the requirement to prepare an Annual Report (which has been moved to Part 6 – Miscellaneous of the current NHFIC Bill).

Despite the relocation of the annual reporting requirements in the NHFIC Bill, the Explanatory Memorandum (paragraph 3.40) still references the reporting obligations of the NHFIC Board in Chapter 3.

Furthermore, it is understood that the reporting requirements which have been removed, relate to section 19 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). Despite the removal of these reporting requirements from the NHFIC Bill, these are still referenced in the Explanatory Memorandum (pages 29-30, paragraphs 3.41 and 3.42).

The LGAQ is concerned that the removal of these requirements from the NHFIC Bill reduces transparency and accountability in decision making and therefore supports the retention of reporting requirements in the NHFIC Bill to align with the Explanatory Memorandum.

For these reasons, the LGAQ makes the following recommendations:

Recommendation 4: The LGAQ recommends that the reporting obligations contained in sections 36-37 of the Exposure Draft of the Bill be re-instated in the NHFIC Bill to align with section 19 of the *Public Governance, Performance and Accountability Act 2013* and the Explanatory Memorandum (paragraphs 3.41 and 3.42).



Recommendation 5: The LGAQ recommends that paragraph 3.40 of the Explanatory Memorandum relating to section 56 of the NHFIC Bill, be moved into Chapter 6 – Miscellaneous of the Explanatory Memorandum and renumbered accordingly.

5. Consequential amendments

The LGAQ has consistently advocated for transparency and accountability in the operation of the NHFIC and is concerned that the latest proposed amendments to the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) and the *Freedom of Information Act 1982* (FOI Act), undermine this outcome.

The proposed consequential amendments to the ADJR Act provide an exemption for the NHFIC from the requirement to provide reasons for decisions under section 13 of that Act, such as decisions to grant or refuse an application for financing. The Bill also proposes amendments to the FOI Act to exempt the operation of the NHFIC from the operation of that Act in relation to documents in respect of its commercial activities.

The Explanatory Memorandum (paragraph 7.3) cites the complexity, commercially sensitive and/or in confidence nature of information under the NHFIC Board's consideration as justification for the exemption under the ADJR Act, and the inability to produce a meaningful statement of reasons. The Explanatory Memorandum (paragraph 7.6) also states that the Investment Mandate will direct NHFIC in relation to the publication of information about its decisions (subject to commercial confidentiality).

In its submission on the Exposure Draft of the NHFIC draft Investment Mandate, the LGAQ recommended that *'section 32(2) the draft Investment Mandate be amended to require the outcome of all financial decisions (including the decision to refuse finance) to be published and include the reasons for the decision to either grant or refuse financial assistance for a particular project'*.

The LGAQ welcomed the requirement for the NHFIC to:

- provide reasons to the applicant for making a decision to finance, or not to finance, a particular project where it is practicable to do so (section 30(2) of the draft Investment Mandate); and
- publish certain information online within 6 months of making a financing decision under the NHIF (section 32(2) of the draft Investment Mandate).

However, the LGAQ also noted that *'for the purposes of transparency, it is important that the requirement to publish information online about a financing decision includes the reasons for the decision and applies to decisions to either finance, or not to finance, a particular project'*.

The LGAQ understands and supports the protection of commercial-in-confidence information, however maintains the position that the reasons for each investment decision by the NHFIC Board can be made public to the greatest extent practicable in some form, without breaching commercial confidentiality.

For this reason, the LGAQ makes the following recommendation:

Recommendation 6: The LGAQ recommends that the reasons for each investment decision of the NHFIC Board to either grant or refuse financing be published to the greatest extent practicable, subject to commercial confidentiality considerations.

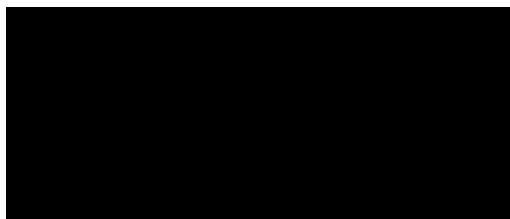
Finally, the LGAQ has noted a typographical error in the glossary of the Explanatory Memorandum (page 5) in reference to the ADJR Act, which should be referenced as ADJR Act **1977**, rather than ADJR Act 1997.



Thank you again for the opportunity to provide comment on the NHFIC Bill and the NHFIC Consequential Amendment Bill.

If you have any questions in relation to the feedback contained in this letter, please feel free to contact Ms. Crystal Baker, Principal Advisor – Planning and Development directly via [REDACTED] or [REDACTED]

Yours sincerely



Sarah Buckler PSM
GENERAL MANAGER – ADVOCATE