



29 August 2023

Mr Alan Raine

Committee Secretary

Inquiry into the Housing Australia Future Fund 2023 package of bills

Department of the Senate

PO Box 6100

Parliament House

CANBERRA ACT 2600

via email: [REDACTED]

Dear Committee Secretary,

**Inquiry Submission of UDIA National: Housing Australia Future Fund and National Housing Supply and Affordability Council Bills**

Thank you for the opportunity to provide our comments to the second inquiry on the proposed bills for the Housing Australia Future Fund (**HAFF**) Bill, National Housing Supply and Affordability Council (**Council**) Bill, and Treasury Amendment Bill (**HA Bill**).

The Urban Development Institute of Australia is the development industry's oldest and most representative peak body for development and construction. UDIA's members span the entire housing market across 2,000+ member organisations – from top tier global enterprises, large and small housing providers, community housing providers, specialist consultants and local governments.

UDIA's members deliver new homes across the spectrum for all Australians, including the majority of affordable housing. Most housing created by our members is sold near or below median house prices.

### Appropriate Amendments

UDIA National supports the Federal Government HAFF and Council initiatives. Our recommendations are aimed at ensuring the HAFF is nimble enough to adapt as market conditions change over the next 5 to 25 years. In particular, we need to provide as many flexible options for delivery, finance and long run support of affordable and social housing as possible. The HAFF represents a significant opportunity for Australia to put in place a framework that can be built upon by Governments to tackle housing affordability, provide affordable housing and support real options for Australian's to access the fundamental right to long term, secure shelter.

We note that the proposed HAFF legislation introduced into the Lower House and referred to this Inquiry on 10 August are the original bills and have several negotiated refinements stripped out. The most material of these include:

- 1) an amended review date to ensure the legislation can be optimised far sooner than 2028; and

- 2) minimum funding of \$500m that can be increased by a disallowable instrument rather than a cap of \$500m.

UDIA National considers these two amendments (among others below), to be important enhancements to the legislation that should be reintroduced. We also feel that the review date should be within 12-18 months of the start date so there is a greater opportunity to optimise operations earlier.

We are concerned to ensure bill amendments are enacted to ensure the HAFF will have sufficient flexibility to respond to a continually changing economic environment. There are issues that should be addressed to reduce the risk of the HAFF failing to provide the targeted 30,000 houses over 5 years:

- **HAFF funding cap should become a funding minimum of \$500 million p.a.** – As noted above, we support the previous bill amendment to drop the \$500m funding cap for a minimum funding of \$500m. We understand that the \$500m funding is over and above any administrative costs and is fully available for investment as previously established.
- **No timely or effective mechanisms to assess performance** – There are no performance criteria to assess the efficacy of the grants nor the HAFF program itself over time against the objectives. As above, we also support the previous bill amendment to reduce the review time to 2026 (or preferably earlier). Critically, the 2028 time to review the HAFF is far too long. Complex, new initiatives need to be reviewed and adjusted within 18 months to 24 months to ensure they work as intended, otherwise you risk “cementing in” a sub-optimal approach.
- **The scope of the grants power is narrow, and the HAFF transfer power does not guarantee funds to HA for housing, potentially jeopardising housing delivery** – community housing providers (CHPs) and private housing providers (who are the primary deliverers of affordable housing) are unable to receive direct s18 HAFF grants for affordable or social housing, (only acute housing).
- Although s33 allows for transfer of HAFF moneys to the National Housing Finance and Investment Corporation (NHFIC), soon to be Housing Australia (HA), (enabling HA in turn to provide loans and make grants for acute, affordable and social housing), there is a lack of clarity in relation to the regularity and permanence of transfers under s33. There is also no requirement for an annual appropriation to be made to HA. Instead, payments are made at the discretion of the Housing Minister. Also, there is no indication of minimum funds (if any) to be provided to HA ongoing.
- If the guarantee of a minimum \$500m is adopted again through the Senate, it is valuable to also confirm what proportion of the minimum funding will be split between NHFIC under s33 and the Minister’s grants under s18.
- We note from discussions on the previous bill, it is expected that the Government will be (rightly) contractually committed to any long term funding under the HAFF. That will ensure the certainty of individual projects, however, many first-time institutional investors will want certainty and longevity of the entire HAFF program to commit resources and funding long term. The intensive nature of project origination for new programs means investors often want to know they will have time and certainty to commit to multiple projects and capitalise on their initial labour intensive efforts. The confirmation of the minimum funding proportion to NHFIC

will help establish certainty and confidence for investors currently unfamiliar with affordable and social housing programs.

- **No legislative definitions on acute housing, affordable housing nor social housing** – The HAFF grants power relies on terms that are not defined in the bill which creates confusion on the limits and requirements for housing delivery as well as undermining performance reporting. While it may be considered preferable to leave it undefined to prevent closing off possibilities, there are currently so many definitions in the market that clarity is needed.
- **Overlapping research and data functions need clarification** – The Council and HA will both need to undertake research into housing supply and affordability but there is no clear understanding of what each agency will do and coordinate. HA’s research function will be critical to making informed choices in administering the HAFF funds and the existing bond aggregator. There should be clarity on the research functions conducted by HA to ensure its activities are informed by enhanced data collection.
- **There are no established set of HAFF objectives** – The HAFF bill needs to set down the critical objectives of the funds including delivery of homes by grants or availability payments to CHPs and private housing providers that meet the acute housing, affordable housing or social housing definitions.
- **There is no mechanism to allow HA and the HAFF to respond flexibly to the market** – The HAFF does not contemplate a contingency clause that would allow HA and the HAFF to undertake any funding approach or grants to entities (not specifically prescribed), where a proposal would provide the same or better outcome. There is considerable risk that the HAFF cannot respond flexibly to changes in investment and housing delivery to avoid shortfalls.
- **HA may not be able to provide grants/loans to trusts which limits institutional investment** - Section 8(1A)(a) of the HA Bill restricts the provision of grants and/or loans to "constitutional companies" when section 8(1A)(c) refer to "entities" which is defined to include companies, trusts and partnerships. There is concern “trusts” may unintentionally be left out by using different wording and stop institutional investment.
- **HA should ensure the grants and availability payments can be coordinated with existing state and territory programs** for the delivery of affordable and social housing.
- **HA should ensure that charities and not for profits are not excluded from the HAFF because of their corporate structure.** Currently NHFIC (soon HA), is unable to include some charities and not-for-profits from NHFIC funding programs, based on their corporate structure. In some cases trusts holding property assets have been unable to obtain NHFIC funding because although they can provide security over the assets for funding, they cannot provide a fixed and floating charge over *all* the assets in the trust (due to holding assets of other parts of the organisation), which has stymied funding. This is particularly problematic for some faith-based organisations.

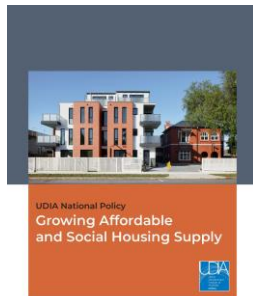
It is important that the HAFF be implemented with a broad set of powers that will give the HAFF Investment Mandate for HA (“**Investment Mandate**” - yet to be written), all options for harnessing the entire CHP and private housing provider market, to achieve its aims.

The Investment Mandate will be the critical detail that determines how easily Government can deliver the housing objectives. The directions on the Investment Mandate should be as broad as

possible regarding the project/applicant specifications for investment and designed/drafted in public consultation with Investors, CHPs and the private developer industry. The Issue

UDIA National strongly supports Federal Government initiatives to deliver more affordable and social housing and we have provided a clear pathway for optimising Government initiatives to deliver more affordable housing through our updated Affordable and Social Housing Strategy Paper.

Link [here](#)



The critical problem is that the 2021 NHFIC review determined we need 45,000 affordable and social houses a year to keep up with housing needs, but all Governments and CHPs combined only build about 8,500 each year. The HAFF plans to deliver some 30,000 houses over 5 years, (6,000 pa) with 4,000pa more over five years under the National Housing Accord – a positive step but not enough to cover the annual shortfall. Government and CHPs, currently have no practical way to close the gap on their own.

If the gap is not closed, the housing affordability crisis will worsen and more and more of the HAFF will be eaten up in costs.

The current iteration of the HAFF Bill contemplates that the Australian Government's will provide the 30,000 affordable and social houses with the grant funding or availability payments provided.

As mentioned, Governments and CHPs together currently only deliver 8,500 houses a year (and somewhere around 3,000 of those houses are new dwellings rather than replacing obsolescence). Under the HAFF all Governments and CHPs would need to almost double the combined delivery capacity just to make the additional 6,000 affordable and social houses year on year. Even if the five-year, 30,000 dwelling target is met, that still means only 14,500 affordable and social houses are built each year – well below the current 45,000 shortfall.

There is considerable risk that the Government and CHPs will not be able to double their capacity without enlisting the entire market – private and not for profit providers. HAFF grant funding should depend on outcomes not on the vehicle, providing the asset is continually maintained as affordable and social housing, managed by the CHP sector and final ownership transferred to the CHP sector at some point.

The capacity of the entire development industry and CHPs should be harnessed using HAFF grants or availability payments (or HA s33 transfers), to solve the capability challenge. Our strategy paper provides several options for doing this and explains the challenge in more detail.

## HAFF and Mandate Flexibility

Irrespective of who the Federal Government and HA give grants to under the HAFF, the HAFF bill, should be flexible enough to allow Government and HA to have the opportunity in the future to harness all market capable providers. Maximising opportunities for affordable and social housing involves providing options for private sector housing providers and constructors to deliver housing with and for CHPs.

Clearly, the operability of the HAFF will also depend heavily on the Investment Mandate and we strongly support the draft Mandate being workshopped with stakeholders from all relevant industries before public consultation.

The HAFF legislation needs to allow for varied timing for payments and transfer of housing to the CHP. The most likely delivery options that will still ensure CHP's end up owning the affordable and social housing include:

- a. **Take out up front** – this would be a turnkey solution where private housing providers, develop product in coordination with CHPs who own the housing upon construction or some point closely thereafter – Uplift and accelerated planning in return for affordable and social housing. This includes:
  - i. Private housing providers making a turnkey deal with HAFF and a CHP partner or where the CHP is added when the proposal is finalised.
  - ii. Fund-through where a private delivery partner is able to take delivery risk on behalf of a CHP for a development margin, but the construction (and land ownership) is funded through the CHP.
  - iii. The Federal Government must work with States to develop incentive and acceleration schemes in order to preference large mixed tenure projects, which will deliver affordable housing at scale.
  - iv. NHFIC deal team should change their KPIs to preference deals which deliver on the Housing Accord 1 million homes and the Affordable Housing.
- b. **Head Lease, Option to Buy** - Where CHPs do not have money immediately to takeout housing close to construction, the CHP can arrange for the private housing provider/institutional investor to hold the property for a period until it can be bought by the CHP or another CHP – this involves a head lease with option to buy (by the CHP). The value of affordable housing would to be determined upon construction and adjusted for CPI to ensure the CHP has a firm price. CHP would manage the tenancies.

The HAFF legislation should not specify timing of payments nor housing delivery. The investment mandate should specify the end parameters Government wants to see, but remain flexible on the pathways to get there – there will be investment and development options that have not yet been established that may be relevant in 5 – 20 years.

## The Solutions

Our solutions are aimed at giving the HA the opportunity to deploy funds as necessary, (how and when according to need), to achieve the Government's initiatives.

Fortunately, despite the list of issues above, there are relatively straightforward solutions to optimise Government's opportunities to achieve their objectives:

- **Publicly consult on drafting of the Investment Mandate** with Investors, CHPs and the private developer industry - ensuring the directions for investment are as broad and flexible as possible to harness all possible providers for housing delivery.
- **HAFF funding cap should become a funding minimum of \$500 million pa.**
- **Ensure review of the HAFF within 18 months of the date of enactment**, and thereafter on two yearly intervals.
- **Broaden the grants power** - by amending section 18(1) to mirror section 18(3) to also grant financial assistance to a person or body in relation to social housing and affordable housing.
- **Clarify the HAFF s33 Transfer authority** – by stating a minimal yearly proportion of HAFF funding available to HA for CHPs and private housing providers to deliver acute, affordable and social housing through HA grants. To give comfort investors can rely on ongoing funding.
- **Define critical terms under the HAFF** – acute, affordable and social housing should be defined having regard to the regulatory regimes (including existing definitions and terminology) at Commonwealth, State and Territory level, for consistency. At the very least, a broad definition should be in the act of each to ensure a reliable way to distinguish each category from the other and measure performance.
- **Remove uncertainty on how HAFF Grants or availability payments are applied** – by:
  - establishing a broad power for the Commonwealth to apply grants as the Commonwealth may deem necessary (or providing specific clarification on how grants will be applied).
  - clarifying the circumstances under grants might need to be repaid, including an express power to mobilise grant funding through finance structures, in particular in favour of CHPs, developers or other private entities delivering and holding affordable housing.
- **Clarify the research scope for HA and the Council** – to avoid overlap and ensure HA has the necessary data capability to support informed decisions for the HAFF and bond aggregator.
- **Establish objective criteria to measure performance** of the fund's activities.
- **Establish a set of critical HAFF objectives to measure performance**, including (as a priority), delivery of homes by funding to CHPs and private housing providers that meet the acute housing, affordable housing or social housing criteria.
- **Provide a contingency clause** that would allow HA and the HAFF to undertake any funding approach or grants to entities (not specifically prescribed), where a proposal would provide the same or better outcome. There is considerable risk that the HAFF cannot respond flexibly to changes in investment and housing delivery to avoid shortfalls.
- **Ensure trusts can receive grants or loans from the HA**, by replacing the "constitutional companies" reference in Section 8(1A)(a) with "constitutional companies or entities".



- **HA should ensure the grants and availability payments can be coordinated with existing and future state and territory programs** for the delivery of affordable and social housing. The HAFF program should at no stage preclude projects from obtaining the benefit of other programs and incentives at State and Local Government levels.
- **HA should ensure that charities and not for profits are not excluded from the HAFF because of their corporate structure.**

Attached at Appendix A is the table of major issues and solutions discussed above.

We are keen to discuss these reforms with you at your earliest convenience.

Please do not hesitate to contact the UDIA National Head of Policy and Government Relations - Andrew Mihno on [REDACTED] to discuss any aspect of this submission further.

**Maxwell Shifman**

UDIA National President

## Appendix 1: The Table of Issues and Solutions

<p><b>Issue:</b></p>	<p><b>Narrow scope for conferring grants under the Housing Australia Future Fund Bill (HAFF)</b></p> <p><b>The scope of the HAFF grants power is narrow, and the HA transfers power does not guarantee funds to HA for housing.</b> – CHPs and private housing providers, are barred from receiving direct s18 HAFF grants for affordable or social housing under the HAFF.</p> <p>Instead s33 allows transfer of HAFF moneys to HA (outside of HAFF grants) for acute, affordable and social housing by HA. There is no indication of minimum funds to be provided (or any), nor any clarification that grants are at HA’s discretion (ie: no limitations to funding social and affordable housing). There is no commercial comfort that investment will continue to be supported by grants and will impede institutional and private investment.</p>
<p><b>Impact:</b></p>	<p>The Commonwealth’s power to make grants to persons (as opposed to States or Territories) is limited to acute housing.</p> <p>The Commonwealth has no power to make HAFF grants to persons such Community Housing Providers or developers or other private entities developing and holding social and affordable housing in the ordinary course. Instead, the power to make HAFF grants in relation to social and affordable housing is confined to providing grants to States and Territories.</p> <p>The only mechanism for using HAFF funds for social and affordable housing by grants to CHPs and private housing providers would be s33 transfers to HA. There is no indication of the funds that would be made available.</p> <p>In effect the fund contains no guaranteed funding mechanism for the Commonwealth to directly engage with and support Community Housing Providers and developers or other private entities developing and holding affordable housing, engaged at the coal face in the delivery of social and affordable housing.</p>
<p><b>Solution:</b></p>	<p>The annual shortfall of social and affordable housing of 45,000 homes cannot be meaningfully met or reduced without the involvement of Community Housing Providers and developers or other private entities developing and holding affordable housing.</p> <p>The HAFF fund presents the Commonwealth with an opportunity to:</p> <ul style="list-style-type: none"> <li>• provide direct support to Community Housing Providers and developers or other private entities developing and holding affordable housing;</li> <li>• stimulate and support the growth of a capable Community Housing Providers with the balance sheets and expertise to deliver on the Commonwealth’s social and affordable targets.</li> </ul> <p>We recommend that the Commonwealth’s powers to make HAFF grants for social and affordable housing be broadened to encompass grants to Community Housing Providers and developers or other private entities developing and holding affordable housing.</p>



	<p>This can be done by amending section 18(1) to mirror section 18(3) so as to empower the Commonwealth to also grant financial assistance to a person or body in relation to social housing and affordable housing.</p> <p>We also recommend that the s33 transfer rules state a minimal annual proportion of HAFF funding that will be made available to HA for CHPs and private housing providers to deliver acute, affordable and social housing through HA grants. To give comfort investors can rely on ongoing funding.</p>
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<b>Issue:</b>	<p><b>Failure to define key terms</b></p> <p>The following key terms, although critical to defining the scope of the Commonwealth’s power to make grants, are not defined:</p> <ul style="list-style-type: none"> <li>• acute housing;</li> <li>• social housing; and</li> <li>• affordable housing.</li> </ul>
<b>Impact:</b>	<p>Although the Commonwealth’s power to confer grants under section 18 of the HAFF is linked to the provision of ‘acute housing’, ‘social housing’ and ‘affordable housing’, none of these terms are defined.</p> <p>Failing to define these terms may lead to ambiguity, uncertainty and inconsistency in relation to the scope for giving grants and also creates uncertainty in relation to the operation of the HAFF in conjunction with other regulatory regimes governing social and affordable housing.</p>
<b>Solution:</b>	<p>We recommend that these terms be defined having regard to the regulatory regimes (including existing definitions and terminology) at Commonwealth, State and Territory level, for consistency and ease of application.</p>

<b>Issue:</b>	<p><b>Overlap between the research functions of Housing Australia (currently NHFIC) and the National Housing Supply and Affordability Council (Council)</b></p> <p>Under Section 9 of the National Housing Supply and Affordability Council Bill, the Council must undertake research into housing supply and affordability.</p> <p>NHFIC’s current functions include undertaking research into housing affordability in Australia (see section 8 of the <i>National Housing Finance and Investment Corporation Act 2018</i> (Cth)).</p>
<b>Impact:</b>	<p>The appointment of the Council to undertake research into housing supply and affordability in conjunction with NHFIC (HA), creates uncertainty in relation to how the research functions will be managed between the two bodies, including whether functions will be shared or allocated between them, or even if there will be any interaction between the two bodies in exercising their research functions.</p>

	HA's research function will be critical to making informed choices in administering the HAFF funds and the existing bond aggregator. There should be clarity on the research functions conducted by NHFIC to ensure it's activities are informed by enhanced data collection.
<b>Solution:</b>	We recommend clarifying the scope of the research functions allocated to the Council and HA to avoid overlap.

<b>Issue:</b>	<b>Absence of mechanisms for assessing effectiveness</b>  The HAFF does not establish any performance criteria against which the efficacy of grants may be assessed e.g. in relation to value for money, or the achievement of the stated objectives of the fund. In addition, although a review must occur, this is only to occur in 2028, with reviews occurring thereafter every 5 years.
<b>Impact:</b>	Without adequate performance criteria and review processes it will be difficult to objectively assess the efficacy of the fund and make ongoing adjustments to improve outcomes.
<b>Solution:</b>	We recommend: <ul style="list-style-type: none"> <li>• establishing criteria against which the performance of the fund's activities may be assessed;</li> <li>• Establish a set of objectives for the HAFF;</li> <li>• requiring a review within 18 months of the date of enactment, and thereafter on two yearly intervals.</li> </ul>

<b>Issue:</b>	<b>No mechanism to allow HA and the HAFF to respond flexibly to the market</b>  The HAFF does not contemplate a contingency clause that would allow HA and the HAFF to undertake any funding approach or grants to entities (not specifically prescribed), where a proposal would provide the same or better outcome.
<b>Impact:</b>	There is considerable risk that the HAFF cannot respond flexibly to changes in investment and housing delivery to avoid shortfalls.  A contingency clause that enables the HAFF to be used in any relevant manner to achieve the objectives of the fund, will ensure the initiative can react to market changes.
<b>Solution:</b>	<b>Provide a contingency clause</b> that would allow HA and the HAFF to undertake any funding approach or grants to entities (not specifically prescribed), where a proposal would provide the same or better outcome.

<b>Issue:</b>	<b>The types of legal entities that HA can provide grants / loans appears limited</b>  Section 8(1A)(a) of Treasury Laws Amendment (Housing Measures No.1) Bill 2023 restricts the provision of grants and/or loans to "constitutional companies" that have a purpose of improving housing outcomes. Section
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	<p>8(1A)(c) however refers to "entities" which is defined to include companies, trusts and partnerships - although is limited in their scope.</p> <p>While constitutional entities may include trusts, the use of "entities" elsewhere suggests a different meaning and it is a concern it may inadvertently exclude trusts.</p>
<b>Impact:</b>	<p>The development and eventual long term ownership of land / housing can be held in a variety of legal entities, but in particular trust structures which is standard market practice in Australia for long term passive ownership of real estate. Therefore restricting grants and/or loans only to "constitutional companies" that have a purpose of improving housing outcomes may severely restrict private and institutional investment in this market as companies are generally less optimal than trust structures.</p>
<b>Solution:</b>	<p>Replace the "constitutional companies" reference in Section 8(1A)(a) with "constitutional companies or entities".</p>