

Chapter 2

Issues

2.1 The National Rental Affordability Scheme (NRAS) attracted strong support from a wide variety of submitters. The underlying reason given by witnesses for their support was the significant undersupply of affordable rental housing for those on low incomes. Making the basic shortfall worse is the fact that in some markets, such as in New South Wales, it is pushing rent up to 'a truly alarming level'.¹ The Department of Families, Housing, Community Services and Indigenous Affairs submitted that unmet demand in the construction of housing is running at about 30 000 dwellings per annum.² Typical of the support offered in this regard was that of Mr Adam Farrar, representing the New South Wales Federation of Housing Associations, when he submitted that:

The introduction of NRAS responds to an absolutely critical need...unlike the United States, we still have a significant undersupply problem, and so supply initiatives are very important, and that is one of the things that is so welcome about NRAS.³

2.3 This reasoning was elaborated on by Professor Julian Disney, representing the National Affordable Housing Summit (NAHS), who submitted that:

NRAS provides the opportunity to substantially improve over time the range of methods which are available to meet differing opportunities and challenges for boosting the supply of low-rent housing. In particular, it provides greater encouragement for the private sector to become involved, including major institutional investors as the scheme develops. This arises not only from the direct financial incentive but also from the improved encouragement and identification of non-profit organisations with the necessary skills and resources to manage low-rent housing for private investors.

...

It is also reasonable to expect the scheme to have a beneficial impact on the supply of affordable housing by counteracting inflationary pressures on rents in the lower-end of the market. This is due partly to the overall increase in supply which it will generate and also to this increased supply being rented substantially below market levels.⁴

1 Mr Adam Farrar, *Proof Committee Hansard*, 6 November 2008, p. 20.

2 FaHCSIA, *Submission 19*, p. 4.

3 Mr Adam Farrar, *Proof Committee Hansard*, 6 November 2008, p. 20.

4 National Affordable Housing Summit, *Submission 20*, pp 2–3.

2.4 The need to increase the supply of affordable rental accommodation, particularly for those on low to moderate incomes, is widely accepted, as is the belief that the NRAS will assist the situation. The committee was left in no doubt that the part of the housing sector concerning itself with low to moderate income earners considers the passing of the bills to be of utmost urgency. Mr Adam Farrar explained that:

I do want to stress that it is absolutely essential that the process that has begun isn't delayed. Our members have been very active in taking up the opportunity, but that does mean entering into agreements, going out and identifying opportunities, to acquire land, to acquire new properties to bring into the marketplace, and they are very concerned that those opportunities will be lost if there is any greater delay. A number of them have all the problems that are associated with substantial holding costs.⁵

2.5 However, the committee identified a number of issues of concern. The most significant of these was the anticipated effect of participation in the scheme on the tax status of entities operating as charities, or public benevolent institutions (PBIs).

The possible loss of charitable status

2.6 All witnesses who appeared before the committee representing the community housing sector agreed that their biggest concern with the Scheme related to the possibility that participation would jeopardise their charitable or PBI status. While the PBI issue would primarily affect not-for-profit organisations, the committee was also told that, although not-for-profit providers constituted only about half of applicants to the first round, the continued participation of for-profit entities in the program might also be affected by the PBI issue. This was because at least some of the for-profit applicants have a not-for-profit entity as a partner in their venture.⁶

2.7 The concern arose from a position taken by the Australian Taxation Office (ATO), summarised by Ms Carol Croce as follows:

The ATO have indicated that any organisation with charitable status will seriously jeopardise that status if they participate in NRAS. They have further indicated that organisations such as consortiums that participate in NRAS will not be endorsed as charitable organisations. Furthermore—and this is one that sent chills down the spine of the sector—participation in NRAS may cause the ATO to heavily scrutinise all of the activities of a participating not-for-profit organisation, not just those that pertain to participating in NRAS. The ATO have indicated that some of the current

5 Mr Adam Farrar, *Proof Committee Hansard*, 6 November 2008, p. 20. See also, for example, Ms Carol Croce, *Proof Committee Hansard*, 6 November 2008, p. 19.

6 See, for example, Ms Carol Croce, *Proof Committee Hansard*, p. 26; Mr Adam Farrar, *Proof Committee Hansard*, 6 November 2008, p. 26.

activities that our community housing organisations are involved with may no longer satisfy this test for charitable purpose.⁷

2.8 The rationale behind the ATO's position is that the Scheme aims to assist not only low income earners, but also people on moderate incomes. In this way, the ATO argues that participation by a charitable organisation in NRAS might fall foul of the 'sole purpose test', which requires that organisations holding PBI status have as their sole purpose the provision on charity.

2.9 The Community Housing Federation of Australia drew attention to the fact that the Scheme defines low and moderate income levels in a way that might be inconsistent with other relevant schemes. The Federation pointed out that the threshold used to define low income households⁸ for the purposes of the Commonwealth-State Housing Agreement (CSHA), fell *within* the relevant income threshold of NRAS.⁹ That is, some people who fall outside income eligibility limits under NRAS would be considered low income earners under the CSHA. The Federation went on to argue that:

It would appear that providing housing to households whose income falls within the CSHA low income measure would meet the test for charitable purpose without concern to the ATO. Providing housing to households with incomes higher than the CSHA levels (but within NRAS maximum levels) does not alter the charitable purpose of the organisation...¹⁰

2.10 The committee consistently heard from community housing organisations that the Scheme would attract few if any participants from the sector should the retention of PBI status not be guaranteed. Mr Farrar and Ms Croce agreed that the Scheme would be 'dead' if the PBI issue remains unresolved.¹¹

2.11 On 12 November the Treasurer, Hon. Wayne Swan MP, announced an amendment to the *Extension of Charitable Purpose Act 2004* to expand the definition of charitable purpose to include participation in the NRAS by an organisation holding charity status. The definition of charitable purpose would be extended only for the first 2 years of the Scheme's operation, pending the outcome of broader reviews into the taxation system currently underway.¹² The committee anticipates the amendment will address the primary concerns expressed by witnesses in relation to the possible loss of PBI status, and provide the necessary certainty for investment in the Scheme to commence.

7 Ms Carol Croce, *Proof Committee Hansard*, 6 November 2008, p. 18.

8 In the case of single people, childless couples, of couples with two children.

9 Community Housing Federation of Australia, supplementary submission, pp 1–2.

10 Community Housing Federation of Australia, supplementary submission, p. 2.

11 Mr Adam Farrer and Ms Carol Croce, *Proof Committee Hansard*, 6 November 2008, p. 26.

12 Media Release, Hon. Wayne Swan MP, 12 November 2008.

Other issues

Value for money: is the Scheme the best way to achieve affordable rental housing outcomes?

2.12 The committee was interested to hear the perspectives of a number of witnesses on the extent to which the Scheme makes best use of public resources to achieve its aims. Specifically, the committee queried the fact that, on average, a landlord would receive significantly more annual benefit under the Scheme than would be foregone under the requirement that rent be discounted by 20 per cent.

2.13 The committee heard that the most obvious alternative to the introduction of the Scheme, to expand the current Rental Assistance Scheme, would have a number of drawbacks. These included vast expense, a lack of targeting, and a significant risk that rental charges would rise sharply. Perhaps most importantly, such a move would not resolve the issue of undersupply.¹³

2.14 However, the ability to leverage private investment into low-end rental housing lies at the heart of the Scheme. Mr Adrian Pisarski explained it this way:

...[I]f you wanted to build, for example, 100 000 properties of public housing based on current figures in terms of the average cost of public housing units, you would be looking at direct government expenditure of something like \$30 billion or more. It might even be as high as \$50 billion by the time you deliver things in remote areas as well. Compared to that, the investment in NRAS is a very modest investment but will leverage the enormous amounts of money when it starts to work really properly. I just wanted to make the point that compared to direct investment, for example, in public housing this is a very efficient use of government money even if we do not get the stock permanently. But to get it permanently would cost a level of support that we do not think governments really have an appetite for at this point in time. I just wanted to put that comment on record as well.¹⁴

Enforceability

2.15 As outlined in chapter 2, tenant eligibility rests primarily on household income in defined circumstances. The Department submitted that landlords would be required to check on tenant eligibility annually but that no penalties (other than returning any relevant benefits) apply to landlords who fail to report accurately on tenant eligibility.¹⁵ This raises two primary concerns for the committee. The first concern relates to the lack of a deterrent mechanism for landlords who, in an attempt

13 Professor Julian Disney, *Proof Committee Hansard*, 6 November 2008, p. 8.

14 Mr Adrian Pisarski, *Proof Committee Hansard*, 6 November 2008, p. 32.

15 Ms Fox and Ms Ham, *Proof Committee Hansard*, 6 November 2008, pp 48–49.

to fill vacancies and minimise compliance costs, are less than vigilant in their assessment of tenant eligibility.

2.16 The second concern relates to the situation in which landlords may be placed by dishonest tenants. The committee heard that no power exists for landlords to require tenants to produce income documentation. This renders the landlord potentially liable to return to the ATO any benefit they received under the Scheme, notwithstanding their own honesty and diligence. The committee has become aware that detailed program guidelines have been made available to applicants for the first round, and that these may address this concern. The committee would simply raise the concern as a matter for possible further consideration when the Scheme is reviewed following the second tranche of allocations.

Adequacy of review arrangements

2.17 The Explanatory Memorandum describes an intention to conduct a post-implementation review of NRAS to test whether there is scope for simplification or reduction in the administrative burden associated with it, whether there are evolving issues of non-compliance, and whether the Scheme is adequately focussed on those who would otherwise be under rental stress.¹⁶

2.18 A representative of the Department elaborated on plans for the review at the committee's hearing, submitting that it was slated to begin at the conclusion of round two of the Scheme, and would evaluate the public process and hear from all stakeholders including tenants.¹⁷

2.19 The committee is encouraged by plans for a comprehensive evaluation of the Scheme, which Professor Disney was at pains to point out would require regular adjustment to respond to prevailing conditions.¹⁸ The committee predicts Professor Disney's prediction will be borne out, and urges the Department to review the Scheme thoroughly and systematically, and to respond to findings in a dynamic and timely manner so as to keep the Scheme efficient and effective over its term.

The need to moderate targeting

2.20 The committee's terms of reference charge the committee with inquiring into whether NRAS targets its efforts to those most in need. As discussed in a preceding section, while the Scheme is clearly designed to assist people in need, it is not directed solely at those on low incomes, but also purports to offer assistance to moderate incomes earners.

16 National Rental Affordability Scheme Bill 2008, *Explanatory Memorandum*, p. 5.

17 Ms Sue Ham, *Proof Committee Hansard*, 6 November 2008, p. 46.

18 Professor Julian Disney, *Proof Committee Hansard*, 6 November 2008, p. 9.

2.21 The National Affordable Housing Summit argued against targeting the program too tightly. It submitted that:

[the Scheme] needs to learn lessons from the 'over-targeting' of government housing which has aggravated poverty traps and work disincentives, created dysfunctional and stigmatised communities and reduced the cost-effectiveness of housing provision. Accordingly, while the scheme should make a substantial contribution to the task of housing people in the deepest distress it should not focus solely or overwhelmingly on them and thereby tend to entrench their disadvantage. A social mix of tenants also increases the attractiveness for investors and reduces the necessary size of public subsidy per dwelling.¹⁹

2.22 While recognising the need to deploy scarce resources effectively and efficiently, the committee sees merit in this argument, and trusts that the Government will carefully consider the ongoing level of targeting when the Scheme is reviewed at the end of round two.

Conclusion

2.23 The committee is under no illusion that the Scheme will be an instant, or entire, fix. Indeed, it is clear from the evidence that a medium to long term approach will be required for institutional investors to become substantially involved, partly because of the need to establish administrative procedures but also so as to allow investment through the NRAS to be integrated with existing corporate investment strategies.²⁰ Even should institutional investors be drawn to the Scheme in great numbers, it is clear from the evidence that NRAS will not in and of itself solve the housing shortfall, and nor was it designed to. Professor Julian Disney explained the rationale behind the scheme this way:

The experience of a broadly similar scheme in the United States clearly shows that it can and needs to develop momentum over time. When we originally proposed this scheme we had really quite modest projections for what could be achieved in the first five years or so. We also did not believe that it was realistic to expect major institutional investors and developers to come in before the first two years or so. That was one reason why we proposed that, and the government has adopted a broadly similar approach of an establishment phase of two years and then an expansion phase. The scheme needs to be bedded down in the establishment phase to get some of the basic administrative arrangements and legislative arrangements worked through. Then we can commence procedures for growing it in the expansion phase and getting institutional investors and developers involved. But it would be quite unrealistic, we believe, to expect them to come in in the first year or two, although one needs to start developing their interests towards perhaps the end of the first year. I will come back in a moment to how that might be done.

19 National Affordable Housing Summit, *Submission 20*, p. 2.

20 See, for example, National Affordable Housing Summit, *Submission 20*, p. 4.

Broadly speaking again, we feel the scheme has the essence of what is necessary to achieve greater institutional investment. It is important to bear in mind that it would be unrealistic and unaffordable to expect to attract investors and developers for all parts of Australia to provide fully affordable housing for all possible tenants. It would really be a mistake to try to pitch the scheme in that way. The scheme is an attempt to try to contribute in a substantial way over time to sharing the load of this problem of unaffordable rent. It is not meant to work everywhere under all circumstances for everyone.²¹

2.24 However, the committee is convinced that the Scheme will serve the purpose of efficiently and effectively supplementing the supply of affordable rental housing stock in Australia. Any residual matters of concern raised by witnesses during the hearing, and by the committee in this report, can be adequately dealt with in the course of the post-implementation review of the Scheme to take place after the announcement of the second tranche of allocations. On balance, the committee considers that its concerns do not warrant further delaying the introduction of the Scheme, and therefore recommends the bills giving effect to it be passed by the Senate.

Recommendation 1

2.25 The committee recommends that the Senate pass the bill.

Senator Claire Moore
Chair

21 Professor Julian Disney, *Proof Committee Hansard*, 6 November 2008, p. 3.