

# SHELTER NSW SUBMISSION

## Review of the provisions of the Treasury Laws Amendment (National Housing and Homelessness Agreement) Bill 2017

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Submission to Economics Legislative Committee, from Shelter NSW

### 1. About Shelter NSW

Shelter NSW is the peak body working for a fairer and more effective housing system for lower income households in NSW. We are a non-government, non-profit organisation and unite the voices of low-income households and non-profit organisations working on their behalf. Shelter NSW undertakes research on and advocates for the housing interests of low-to moderate-income and disadvantaged people, and provides community education to build the capacity of non-profit organisations to provide housing and housing-related services. Shelter NSW is not aligned to any political party or commercial organisation.

### 2. Background

The Bill under consideration is intended to enable the transition from the current National Affordable Housing Agreement (NAHA) to a new National Housing and Homelessness Agreement (NHHA).

In doing so, it makes a number of important changes to the nature and outcomes of the Agreement.

The NAHA was a multilateral agreement through which the Commonwealth provided funding to the States and Territories for homelessness programs, the provision of social housing and related housing assistance measures. However, it was conceived of as the centrepiece of a broader collaborative effort between the Commonwealth and the States to improve housing affordability across the country and to reduce homelessness. As a result, the outcomes agreed by the Commonwealth and States were very high level improvements in these areas.

Since such outcomes required the application of policy levers that were unrelated to the funding provided through the Agreement, the most important of which (most notably taxation) were Commonwealth responsibilities; and since almost no such policy action was taken to address housing affordability (and hence the underlying driver of homelessness), only one of the objectives has shown any improvement over the life of the Agreement.

As well as this fundamental disconnect between the putative objectives of the Agreement and the purposes for which the funding was actually provided (what the Explanatory Memorandum refers to as the NSPP for Housing Services), the Agreement limited any transparency about the use and actual outcomes of the funding to support the Agreement. Nor is there effective transparency about the State financial contribution to providing housing services. This is because “States have budget flexibility to allocate the funds received under the NSPP for Housing Services to support the mutually agreed housing and homelessness outcomes outlined in the NAHA. There are no other conditions on the provision of this funding except that it is spent on housing services”.

Funding of homelessness services was complicated by the fact that one source of funding, the previous Supported Accommodation Assistance Program (SAAP) was rolled into the NAHA with no matching requirements or transparency of its application; while a separate stream was provided under the National Partnership Agreement on Homelessness (NPAH). NPAH funding was matched by the States, was conditional on provisions of project plans and agreed priorities, but was time-limited. It has been renewed a number of times, but with resulting periods of funding uncertainty. The result of these mixed arrangements is that there is no clear indication of the Commonwealth funding that could be expected to be expended on homelessness services, or of the expected State contribution.

There was a final fundamental limitation in these arrangements. That is that a substantial part of the funding under the NSPP funded part of the operating deficits of state public housing operations. That means that these funds cannot be directed to *improving* housing affordability as proposed by the NAHA objectives, but rather, are required to help prevent further *loss* of social housing.

The need to fund this deficit is the product of rationing in the face of significant reductions in Commonwealth funding under the previous CSHA, under which supply could not meet the growth in demand due to population growth (exacerbated by two decades of escalating housing costs), and a response of rationing available social housing to those with more complex or urgent housing needs. This increased operating costs and reduced income streams leading to structural deficits in all state housing authorities.

The importance of these latter observations is that:

- the unavoidable use of NAHA funds to part fund operating deficits has not been made explicit in the arrangements between the Commonwealth and States, leading to periodic political tensions;
- the need to utilise Commonwealth funds in this way will also apply to the NHHA; and

- it highlights that the social housing system has been critically and unsustainably underfunded for a considerable period of time.

While the responsibility for restoring funding to the minimum levels required to sustain the current system and to expand it to meet current and future demand may well be a shared responsibility that should be negotiated between the Commonwealth and States, the appropriateness of the proposed NHHA can only be assessed in the light of current critical underfunding of social housing and housing assistance generally.

The new NHHA addresses some of these issues, but introduces other problems. The most fundamental one relating to funding adequacy is not addressed.

- The new agreement seeks to restore transparency. It does so by imposing conditions on the receipt of funds under the Agreement; and by proposing to negotiate new outcome measures.
- The new Agreement abandons the shared NAHA objectives to improve housing affordability and reducing homelessness under “the overarching objective to ensure that all Australians have access to affordable, safe and sustainable housing that contributes to social and economic participation.” Instead, it requires States to develop plans for both housing and homelessness to achieve certain required objectives.
- As a result, the new Agreement makes funding conditional, rather than providing States with guaranteed funding and complete flexibility in its application. To do this, the agreement ceases to be a ‘national specific purpose payments’ under the Federal Financial Relations Act 2009, and becomes a new class of conditional agreement defined under an insertion in section 4 and a new Part 3B 15c & 15D.
- The new Agreement rolls the current NPAH into the NHHA; but requires the NPAH component to be indexed at a set rate and to be matched by the States. In so doing, it removes the current periodic funding uncertainty. It does not, however, seek to restore any transparency (or formal matching) to the component of NAHA funding that had been contributed from the previous SAAP agreement.

The following submission responds to these changes, including their impact on the limitations of the current NAHA outlined above.

### **3. Shelter NSW Response to the proposed changes introduced under the NHHA**

#### **3.1 Introduction of conditionality**

While the previous Agreement was not conditional, Shelter NSW does not believe that a sensible level of obligation is inappropriate in principle. The current national health reform payments, for example, are to be spent by the States in accordance with the National Health Reform Agreement; and the previous housing agreement, the Commonwealth State Housing

Agreement (CSHA) placed agreed obligations on the States. However, there are a number of problems with the proposed changes to the Federal Financial Assistance Act.

First, we are concerned that the proposed requirement on States to develop plans dealing with matters specified in Commonwealth legislation appears to trespass on the States' constitutional responsibility.

The specification of this level of detail in legislation appears to be unprecedented. The long-running CSHA that preceded the NAHA was a disallowable instrument under the then Commonwealth Housing Assistance Act.

That Act provided the power to make agreements with the States and to specify conditions for those grants including: the obligations of a State in relation to the spending of the grants; arrangements for the planning, funding and carrying out of identified housing programs; expenditure by a State from its own resource; the measurement of the performance of a State in the carrying out of its obligations; and arrangements for the evaluation of such an agreement. But the legislation did not specify the nature of such plans or performance measurement.

Practically speaking, the obligations of the States and the Commonwealth under the CSHA reflected the mutual respect and interest of the jurisdictions in achieving the Objects of the Act and the Agreement. A key failure of the NAHA has been the disconnect between its Objects and the purposes of the funding, as well as the disengagement of the jurisdictions (including the Commonwealth) from any agreed measures to achieve the broader housing affordability Objects. The proposed Agreement does not appear to strengthen any mutual commitment between jurisdictions to achieve housing affordability for lower-income households or homeless people.

We are also very concerned that the proposed amendments changes the status of the Commonwealth's agreement with the States on housing compared to the other National Specific Purpose Payments. Indeed it stops being such a payment.

Finally, it is crucial that the reasonable expectation that States will accept obligations in respect of funding under the Agreement, is balanced against the impact on vulnerable consumers of any withdrawal or delay in funding. Commonwealth funding provides the recurrent operational funding of crucial homelessness services that could not continue to operate if funding were suspended. But it should also be recognised that, as things currently stand, the funding also supports the continued operation of public housing, and without it – or more clearly negotiated State responsibilities – the supply of social housing will collapse.

### **3.2 Appropriateness of proposed requirements**

#### **Required strategies**

The principal requirement proposed is that the States Plans prepare a credible housing strategy and a credible homelessness strategy. Shelter supports a requirement for jurisdictions to develop affordable housing and homelessness strategies to guide the

expenditure of funding under the Agreement in the context of the State's own efforts. This is not new. Between 1989 and 1996, the CSHA required jurisdictions to prepare state plans and to consult widely in their preparation.

However, there are three significant problems or limitations with the current proposal:

- It is essential that the plans proposed specifically relate to the purposes of the funding under the Agreement. The proposed housing strategies make no specific reference to social or affordable housing or to the other forms of housing assistance; nor are they framed in terms of lower income households.
- There is no obligation to develop the strategies in consultation with service providers, consumers, housing experts or other community stakeholders. Such an approach would ensure a bottom up identification of need and ensure that the strategies adequately responded to identified need. The earlier CSHA model should provide a model for such consultation.
- Perhaps most important, there is no obligation for the Commonwealth to develop a similar affordable housing strategy, despite the fact that they control some of the most important policy levers. The lack of any agreed and coordinated policy framework and commitment to address housing affordability utilising the respective powers and responsibilities of the State and Commonwealth jurisdictions is the reason that the objectives of the NAHA have not been achieved. For this new agreement, it is essential that such a national framework exists together with state strategies reflecting the different conditions in each jurisdiction.

### **Housing strategy**

As noted above, the proposed requirement to develop a credible housing strategy is framed as a strategy that indicates “the level of housing supply needed to respond to projected housing demand, and outlines the reforms and initiatives that will be implemented to meet this need”. Not only does this not refer to the needs of low-income households in housing stress (which is the purpose of the funding), but it focusses on aggregate supply which (while important in planning for future growth) is widely agreed to have very limited impact on housing affordability, particularly for lower income households. It is the wrong policy lever for the purposes of this agreement.

Shelter strongly recommends that even if this level of specification remains in the legislation, it be fundamentally reframed. But this problem and the parallel problems noted in the homelessness strategies discussed below, demonstrate the inappropriateness of this kind of specification within the legislation.

### **Homelessness strategies**

Similarly, the specification of what should be contained in homelessness strategies is inappropriate. In this case it requires strategies to be framed in terms of “priority homelessness cohorts”. However, while the varying needs of different cohorts will always be important in any homelessness strategy, and the identification of particular ‘cohorts’ or ‘regions’ for which there is an inequitably inadequate suite of responses may identify

particular priorities, this may not be the most effective way to frame a strategy. The framing of strategies will vary according to circumstances. For example the models of response (such as housing first) may be the primary way in which an appropriate strategy is framed. The key issue is that it will always be inappropriate and inflexible for the legislation to specify the form in which a strategy to reduce homelessness is framed.

To some extent the specification of information to be provided is unclear. In particular, if “information relating to performance indicators and benchmarks that may be used to monitor and report on sector-wide performance through an annual performance dashboard” suggests new performance data will be required for all specialist homelessness services (or community housing providers), this would be a matter of considerable concern in an already stretched sector. The data collection required under the Agreement must be framed with an emphasis on minimizing the impact on service providers.

### **Credible**

While the main condition for the receipt of funds is that the States have developed the relevant strategies, the acceptability of these strategies is to be determined by the Commonwealth minister. The criterion for such acceptance is that the strategy is “credible”. However, there is no indication of what constitutes a credible strategy. To avoid politically driven disputes, it is essential that further definition of the term ‘credible’ be provided.

### **Effect on transparency**

The requirement to provide information that can be used as

- “evidence for the review of the agreement and future development of housing, homelessness and/or housing affordability policy”; and
- “evidence of government expenditure on housing and homelessness, including for the purposes of matched homelessness funding”

has the potential to provide significantly improved transparency about not only the use of funds provided under the Agreement, but expenditure and resources (particularly social housing supply) for housing assistance generally. This is very welcome.

However, existing data sources have failed to apply effective and consistent data rules to enable genuine understanding (and transparency) of matters such as the cost of provision or changes in the level of social and affordable housing supply. Such agreed counting rules must be applied consistently both with and between jurisdictions.

### **3.3 Need for additional funding**

As noted in the background to this submission, the most important limitation on any Agreement whose objective is to improve housing affordability or the more limited task of improving responses and services for low income households in housing stress, is the inadequate level of funding in the system.

There can be no expectation that funds provided under the NHHA will increase available responses – particularly the supply of social and affordable housing – until this is addressed.

### Homelessness funding

In the case of homelessness funding, it cannot be expected that homelessness will be reduced unless,

- improvements in the service system are funded, and
- there is substantially increased access to social and affordable housing for vulnerable households.

The decision to roll the NPAH into the new NAHA and to index it, together with the requirements that States match this, will provide some limited additional resources. But the adequacy of the funds available for homelessness will remain obscure since the new NHHA does not separately identify the other source of homelessness funding which was part of the NAHA as a result of previous SAAP funding being rolled into the NAHA. In effect, this arrangement potentially allows States to use Commonwealth homelessness funding (unidentified) to meet their matching requirements for the (identified) NPAH component.

In making this observation, we do not believe that jurisdictions do seek to avoid providing additional state resources to fund homelessness. Based on our reading of NSW FACS annual reports, in 2016 NSW provided \$138 million above their required NPAH matching and above the level of NAHA funding attributable to SAAP<sup>1</sup>. However, the mixture of identified and unidentified homelessness funding does not help to address the issue of responsibility for increasing the adequacy of homelessness funding.

### Social and affordable housing funding

The new NHHA does nothing to address the fact that there has been no capital funding stream in the NAHA. While some funding from the NAHA may be used by States (together with their own resources) to fund housing assistance programs, such as community building on estates or assistance to social housing eligible renters in the private market, the majority of NAHA funds went to part fund what would otherwise be a very substantial operating deficit.<sup>2</sup>

Once again drawing on our analysis of the 2016 NSW FACS annual reports, we estimate that the funding operating deficit for the NSW social housing portfolio was around \$626 million<sup>3</sup>. NAHA funding provided \$309 million of this, while the remaining \$317 million can be imputed to the State.<sup>4</sup> Whatever the accuracy of these precise figures, they illustrate the general point that there is no capital funding stream from either the NAHA or the new NHHA.

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<sup>1</sup> Based on the last year that identified SAAP funding was provided

<sup>2</sup> Created for the reasons identified in the background to this submission

<sup>3</sup> This is less than the estimate by the recent NSW Independent Pricing and Regulatory Tribunal (IPART) inquiry

<sup>4</sup> We stress that these estimates are based on our own interpretation of the FACS Annual Report data, and have not been examined or confirmed by NSW FACS

To meet any objectives apart from maintaining the current social housing portfolio, using NHHA funding, funding of the operating deficit for social housing portfolios across the country would have to first be separately funded.

There is clearly scope for discussion about where the responsibility lies – with the Commonwealth or the States. Given the policy decisions that drove the creation of social housing operating deficits were partly driven by shared CSHA decisions, by Commonwealth CSHA funding decisions, and by State asset management performance, it seems appropriate that it be a shared responsibility. But in any case, should be the subject of negotiations around the new NHHA.

Until agreement about additional funding to the social housing system to ensure that a capital funding stream is again available, no additional outcomes can realistically be expected of the States.

It should be noted that the existence of a separate additional capital funding stream has been identified as a prerequisite for the new NHFIC to leverage additional funding.

### **3.4 Delay the date for commencement to December 2018**

Given the unresolved issues with the current Bill and the desirability of further negotiation between Commonwealth and the States, we believe that the commencement date of July 2018 is too soon. If housing and homelessness strategies are to have been negotiated in this timeframe, it will be impossible to undertake the appropriate level of consultation to deliver a bottom up plan which has the confidence of stakeholders.

The risk of delays impacting on the continuity of funding – particularly for service providers such as specialist homelessness services – is also far too great.

We therefore recommend that the timeframe be delayed and the current agreements (both NAHA and the NPAH) be extended until December 2018.