

**Federal Housing
Legislative Package
2023**

**Homes Tasmania
Submission**

**Homes
Tasmania**

Building homes,
creating communities.

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Executive Summary

Homes Tasmania welcomes the opportunity to make a submission regarding the Federal Housing Legislative Package, comprised of the Housing Australia Future Fund Bill 2023, the National Housing Supply and Affordability Council Bill 2023 and the Treasury Laws Amendment (Housing Measures No 1) Bill 2023, as accompanied by the Exposure Draft Explanatory Materials. Homes Tasmania is committed to working together with the Commonwealth to achieve sustainable housing solutions for our communities and we note our broad support for the Housing Legislative Package as a whole. However, we have identified a number of issues in each of the draft Bills, which we would like to raise or seek clarification on. Among other things, these issues relate to:

- proposed governance structures for the National Housing Supply and Affordability Council
- the research to be undertaken by the National Housing Supply and Affordability Council, its relevance to states and territories, and the distribution of research reports produced
- the revised functions of Housing Australia
- payment disbursement mechanisms for the Housing Australia Future Fund
- the relationship between the Housing Legislative Package and the pending National Housing and Homelessness Plan
- apparent inconsistencies between some provisions in the Bills.

Homes Tasmania welcomes further discussion in relation to the Federal Housing Legislative Package and looks forward to further consultation on the implementation of housing reforms.

Homes Tasmania Context

In February 2022, the Tasmanian Government announced that a new housing authority, Homes Tasmania, would be established to deliver Government's 10-year, \$1.5 billion housing package – building on existing initiatives and taking further action to improve access to safe, secure and affordable housing.

Homes Tasmania commenced operations on 1 December 2022, following passage of the *Homes Tasmania Act 2022*. Homes Tasmania is governed by a skills-based Board, which reports directly to the Minister for State Development, Construction and Housing. Homes Tasmania's work addresses the whole continuum of housing and homelessness services, including social housing, homelessness accommodation, supported accommodation, affordable private rentals and affordable home ownership.

Our strategic directions will be supported by a new Tasmanian Housing Strategy. The Tasmanian Housing Strategy will set a 20-year vision for housing in Tasmania and will address issues such as future growth, affordability, accessibility, ageing, planning and construction, and sustainability. It will help ensure housing can meet the needs of all Tasmanians, including the most disadvantaged, those in the workforce and people as they age.

The Federal Housing Legislative Package holds implications for Homes Tasmania as an intergovernmental partner which is committed to delivering appropriate and sustainable housing solutions across our State.

Comment on the Federal Housing Legislative Package

Housing Australia Future Fund Bill 2023

Summary

Homes Tasmania supports the establishment of the Housing Australia Future Fund (HAFF) to create a funding stream to support and increase social and affordable housing, and to address acute housing needs. We are particularly interested in the pending Investment Mandate in relation to the HAFF and highlight our interest in being consulted on its drafting. We also support the proposal in the Exposure Draft Explanatory Materials that the adequacy of the \$500 million annual disbursement cap be considered periodically as part of legislated reviews.

Homes Tasmania generally supports the construction of the HAFF Bill and the flexibility it permits regarding disbursements. However, there are several issues we would like to raise and matters on which we seek clarification, as detailed below.

Comments from Homes Tasmania

- We appreciate that the various Australian jurisdictions rely on different definitions of 'social housing' and 'affordable housing', which renders it problematic to include fixed definitions in the HAFF Bill itself, however providing broad definitions of each type of housing would be useful to ensure that all housing types are considered and not excluded from the Act. We also note that the Exposure Draft Explanatory Materials provide guidance on the meaning of these terms, as well as the meaning of 'acute housing'. Homes Tasmania supports the guidance provided in these materials, particularly the guidance regarding the meaning of 'affordable housing' which notes that housing stress is typically defined as spending more than 30 per cent of household income on housing costs.
- The objects of the proposed HAFF Act, in section 2A, mention the specific cohorts of Indigenous persons, women, children and veterans. Homes Tasmania considers the reference to specific cohorts to be potentially problematic and notes that a key cohort, people with disability, is not mentioned.
- Homes Tasmania seeks to ensure that the HAFF Act is broad enough to allow for the provision of homeless and/or transitional housing. Providing accommodation for people who are homeless, as well as options for transitioning to longer term, sustainable housing is a critical issue in providing the range of housing options across the housing spectrum. Clarity is also sought on whether the reference to 'specialist services in relation to housing' at 1.66 of the Exposure Draft Explanatory Materials means disbursements from the HAFF Special Account to address acute housing needs may be used to fund support services which help transition people out of homelessness and support them to remain in appropriate housing.
- Homes Tasmania notes an apparent inconsistency between section 18(2) of the HAFF Bill, which provides that section 18(1) *does not* authorise the making of a grant of financial assistance to a state or territory, and section 22(a), which provides that a designated Minister *may* exercise a power conferred by subsection 18(1) with respect to a territory.
- Homes Tasmania is concerned to ensure no provisions in the final draft of the HAFF Bill will require Community Housing Providers to own the social and affordable housing assets they manage in order to receive funding grants. Additionally, it should be ensured that there are no provisions that prevent states and territories (including government and statutory authorities) from directly accessing funds, rather than disbursements only being made to Community Housing Providers.

- The HAFF Bill provides that disbursements from the HAFF Special Account may be made to: (1) the HAFF Payments Special Account, (2) the COAG Reform Fund and (3) the Housing Australia Special Account. Regarding payments to accounts (2) and (3), it seems both avenues will ultimately allow grants to be made to states and territories for the purpose of addressing acute housing needs or for providing social or affordable housing.¹ We seek to clarify whether the only real difference between disbursements to accounts (2) and (3) relates to which Minister may request the disbursement. That is, for disbursements to the Housing Australia Special Account, it seems only the Housing Minister may make the request, whereas any of the four ‘designated’ Ministers may request a disbursement to the COAG Reform Account. We seek confirmation that the main purpose of permitting disbursements to the COAG Reform Fund is to ensure flexibility as to how payments to the states and territories may be provided.
- Homes Tasmania acknowledges that section 22 of the HAFF Bill reflects the limits on the Commonwealth’s legislative powers as provided by the Australian Constitution and that the limits in section 22 do not apply to grants to states and territories under section 18(3) which are supported by sections 96 and 122 of the Constitution. However, the wording in section 22, perhaps by necessity, reflects the language used in the Constitution, which is somewhat outdated (such as reference to ‘aliens’ and ‘sickness benefits’). We query the extent to which strict adherence to the Constitutional language is necessary and ask the Commonwealth to consider whether terms like ‘alien’ in section 22(f) might possibly be replaced with more contemporary language. However, if this is not possible for Constitutional reasons, we recommend that the Explanatory Materials accompanying the HAFF Bill provide some clear examples of the types people groups captured by section 22.
- Homes Tasmania also considers that it may be possible to expand the list in section 22 of the HAFF Bill while remaining compliant with the Constitution. For example, we recognise that the international Conventions listed in section 22(b) rely on the external affairs power in section 51(xxix) of the Constitution, but suggest that section 22(b) could possibly be expanded to include other conventions to which Australia is a party, such as the 1951 Refugee Convention. Including the Refugee Convention in section 22(b) of the HAFF Bill may potentially allow a designated Minister to make a grant under section 18(1) to address acute housing needs of refugees in Australia. Alternatively, section 22 could adopt the same approach to Constitutional limits as seen in the proposed section 8(1A)(d)(ii) of the *Housing Australia Act* which simply refers to achievement of Australia’s obligations under an international agreement.
- Homes Tasmania notes that the Future Fund Board will be required, pursuant to section 42 of the HAFF Bill, to maximise long-term returns of the HAFF. Consideration might also be given to the appropriateness or otherwise of including a mandate to grow the \$10 billion fund in real terms over time.
- There appears to be an inconsistency between sections 26(6) and 29(7) of the HAFF Bill. That is, pursuant to section 26(6), where a transfer is made to the HAFF Payments Special Account, the Housing Minister would not necessarily receive a copy of the Finance Minister’s direction to transfer if they were not the designated Minister who made the transfer request.

¹ We note that section 33(1)(b) of the HAFF Bill will allow payments to be made under section 47C(1)(b) of the *Housing Australia Act*, and that such payments may be applied for the purposes of s 47C(2A) – that is, to meet acute housing need and to provide social housing and affordable housing.

This differs from section 29(7)(c) where a copy of the Finance Minister's direction to transfer funds to the COAG Reform Fund must be given to the Housing Minister even if they were not the designated Minister who requested the transfer.

Recommendations

1. Provide broad definitions of social, affordable and acute housing to ensure that the full spectrum of housing programs is considered.
2. Remove any reference to specific cohorts in section 2A of the HAFF Bill.
3. Ensure that the HAFF Bill includes the ability to provide funding towards homeless and transitional accommodation as well as services which help transition people out of homelessness and support them to remain in appropriate housing.
4. Amend any inconsistency as between sections 18(2) and 22(a) of the HAFF Bill.
5. Ensure no provisions in the final draft of the HAFF Bill will require Community Housing Providers to own the social and affordable housing assets they manage in order to receive funding grants, and that no provision will prevent states and territories (including government and statutory authorities) from directly accessing funds.
6. Clarify the main purpose of allowing disbursements to the COAG Reform Fund.
7. Review and contemporise, if appropriate, the terminology in section 22 of the HAFF Bill to aid readability and comprehension while remaining consistent with the Australian Constitution. If revision is deemed problematic, consider providing further clarification regarding section 22 through the Explanatory Materials.
8. Review and revise, as appropriate, the scope of section 22 of the HAFF Bill within Constitutional limits. For example, by including reference to the 1951 Refugee Convention in section 22(b) or by adopting similar wording to that used in the proposed section 8(1A)(d)(ii) of the *Housing Australia Act*.
9. Consider the appropriateness of including a statutory mandate for the Future Fund Board to grow the HAFF in real terms over time.
10. Review and revise, if necessary, section 26(6) to ensure that the Housing Minister receives a copy of the Finance Minister's direction to transfer, where funds are transferred to the HAFF Payments Special Account in circumstances where the Housing Minister was not the designated Minister who requested the transfer.

National Housing Supply and Affordability Council Bill 2023

Summary

Homes Tasmania supports the establishment of the National Housing Supply and Affordability Council (Supply Council). We generally support the purpose and functions of the Supply Council and the requirement in section 34 of the Supply Council Bill for the Minister to cause a review of the *Supply Council Act* to be conducted after 1 July 2026. However, we are concerned that the Supply Council Bill and the Treasury Laws Amendment (Housing Measures No 1) Bill do not sufficiently streamline, consolidate or improve the coordination of national policy, or make clear which entity is accountable for delivering the Housing Accord and the National Housing and Homelessness Plan. There are several other issues we would like to raise and matters on which we seek clarification, as detailed below.

Comments from Homes Tasmania

- Homes Tasmania is concerned to ensure that the research and reports undertaken and produced by the Supply Council are relevant to the states and territories and that there is a mechanism within the *Supply Council Act* to provide Supply Council reports to members of the Housing and Homelessness Ministerial Council within an appropriate timeframe.
- Homes Tasmania notes that the governance structure in the Supply Council Bill differs from the structure previously recommended by Homes Tasmania, which was for a separate and independent statutory body, supported by a secretariat. We are concerned that the Deputy Secretary responsible for housing will be a member of the Supply Council, albeit not an 'appointed' member,² and that staff assisting the Supply Council will be departmental employees. We consider that these arrangements may diminish the independence of the Supply Council.
- Homes Tasmania considers the functions in section 9(1) of the Supply Council Bill to be appropriate, but notes the absence of any reference to 'homelessness', despite the fact that expertise in housing and homelessness policy is listed as one of the fields of expertise of Supply Council members in section 22(2). Reference to 'homelessness' is also absent in the data provisions in sections 9(2)(d) and 9(2)(e).
- Section 9(2) of the Supply Council Bill lists issues that the Supply Council may consider when exercising its functions including, in paragraph (c), factors that may impact housing supply and affordability and demand for affordable housing. Homes Tasmania notes that two key factors may be missing from paragraph (c) – namely, supply constraints and workforce capacity. Further, paragraph (f) in section 9(2) uses the term 'vulnerable groups'. It is unclear what groups this term is intended to capture and we note that this terminology may be considered inappropriate and disempowering. Terms such as 'disadvantaged' or 'marginalised' or 'groups in housing need' may be more appropriate.
- Section 14 of the Supply Council Bill relates to the independence of the Supply Council. The wording of this provision, particularly use of the phrases 'complete discretion' and 'not subject to direction' appear to be at odds with section 11, pursuant to which the Supply Council must comply with the Minister's request to undertake research and report on a specific matter. While a note has been inserted after section 14 which mentions section 11, it may be more

² We note that the Deputy Secretary will not be considered an 'appointed' member, and that questions considered by the Supply Council are to be determined by a majority of appointed members who are voting and present.

appropriate to refer to this limitation on the Supply Council's independence in the text of section 14 itself.

- Section 22 of the Supply Council Bill refers to the expertise of Supply Council members. Homes Tasmania queries the emphasis on *urban* planning and *urban* development and considers it vital that a member of the Supply Council also has expertise in regional and remote planning and development issues.
- Regarding disclosure of interests, as provided by section 28 of the Supply Council Bill, Homes Tasmania seeks advice as to whether the whole of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) will apply to Supply Council members (not just section 29), such that duties regarding use of position and use of information in sections 27 and 28 of the PGPA Act will apply. It appears that this is not the case and, as such, we suggest the Supply Council Bill be amended to ensure the duties in sections 27 and 28 of the PGPA Act apply.

Recommendations

11. Ensure that research undertaken by the Supply Council is relevant to states and territories and that the *Supply Council Act* includes a requirement for the Federal Minister for Housing to supply, within an appropriate timeframe, any finalised Supply Council reports to members of the Housing and Homelessness Ministerial Council.
12. Ensure the Secretariat for the Supply Council is independent.
13. Include references to 'homelessness' alongside references to 'housing supply and affordability' throughout section 9(1), and in the data provisions in sections 9(2)(d)-(e).
14. Consider adding the factors of supply constraints and workforce capacity to section 9(2)(c).
15. Consider replacing the term 'vulnerable' in section 9(2)(f) with another term, such as 'disadvantaged' or 'marginalised' or 'groups in housing need'.
16. Remove the note following section 14 and mention, in the text of section 14 itself, the limitation on the Supply Council's independence that exists due to section 11.
17. Amend paragraphs (d) and (f) in section 22(2) to refer to 'urban and regional development' and 'urban and regional planning' respectively.
18. Ensure that sections 27 and 28 of the PGPA Act apply to Supply Council members.

Treasury Laws Amendment (Housing Measures No 1) Bill 2023

Summary

Homes Tasmania notes that the proposed Treasury Laws Amendment (Housing Measures No 1) Bill 2023 (Treasury Laws Amendment Bill), primarily contains consequential amendments, such as amending any reference to the National Housing Finance and Investment Corporation (NHFIC) in the *NHFIC Act 2018* (and other legislation) to 'Housing Australia'. However, we also note that functions of Housing Australia under the proposed *Housing Australia Act* will differ from NHFIC's functions under the current legislation. There are several minor issues we would like to raise and matters on which we seek clarification. These comments primarily relate to clauses in Schedule 2 and Schedule 4 of the Treasury Laws Amendment Bill.

Comments from Homes Tasmania

- The functions of Housing Australia, as revised by Schedule 2 of the Treasury Laws Amendment Bill, appear to be much more prescriptive than the functions of NHFIC in the current Act, given the detail in the proposed subsections (1A)-(1D) of section 8 of the *Housing Australia Act*. We seek to clarify whether this new level of detail is included due to Constitutional limits on the Commonwealth's legislative powers which currently feature in section 10 of the *NHFIC Act* – a provision which is to be repealed and replaced pursuant to Schedule 2, Part 1 of the Treasury Laws Amendment Bill.
- If the above understanding is correct, we note that section 22 of the HAFF Bill serves a similar purpose. However, the Constitutional limits in section 22 of the HAFF Bill differ slightly from the limits in the new sections 8(1A)-(1D) of the *Housing Australia Act*. For example, section 22(g) of the HAFF Bill mentions housing provided by way of an unemployment benefit, sickness benefit or benefit to students. These categories are not listed in sections 8(1A) or 8(1C). Further, some of the terms used in the proposed sections 8(1A)-(1D) of the *Housing Australia Act* differ to those used in section 22 of the HAFF Bill, as detailed in the table below. We suggest consistent terminology be adopted.

HAFF Bill – section 22	Housing Australia Bill – sections 8(1A)-(1D)
'Indigenous persons' 22(d)	'Aboriginal or Torres Strait Islander people' 8(1A)(c)(ii) and 8(1C)(b)(ii)
'Veterans' 22(e)	'members of the Australian Defence Force' 8(1A)(c)(iii) and 8(1C)(b)(ii)

- Homes Tasmania also notes that the current section 8(1)(ca) of the *NHFIC Act* outlines NHFIC's function to 'issue guarantees to improve housing outcomes'. It seems this may have allowed NHFIC to provide a guarantee to a state or territory by virtue of section 8(2)(a) of the *NHFIC Act*. However, under the Treasury Laws Amendment Bill, section 8(2) of the *NHFIC Act* is to be repealed and the new section 8(1B) of the *Housing Australia Act* limits the application of the guarantee function to 'constitutional corporations'. Homes Tasmania seeks advice as to whether NHFIC is currently able to provide a guarantee to a state or territory under the *NHFIC Act* and the reason for including the limitation in proposed section 8(1B).
- Homes Tasmania requests a diagrammatic representation be provided to states and territories outlining how funds in the Housing Australia Special Account, and other disbursement accounts related to the HAFF Special Account, will operate. That is, how the

funds will ultimately be provided to those meeting acute housing need and delivering social and affordable housing.

- Homes Tasmania notes that the proposed section 47C(2A) of the *Housing Australia Act* (see – Schedule 4 of the Treasury Laws Amendment Bill) refers to ‘functions mentioned in paragraphs 8(1)(a) and (2)(a) ...’. Homes Tasmania understands the reference to ‘(2)(a)’ in this clause to mean paragraph (a) of subsection (2) of section 8. However, pursuant to clause 4 in Schedule 2, Part 1 of the Treasury Laws Amendment Bill, section 8(2) of the current *NHFIC Act* is to be repealed. If section 8(2)(a) will not exist, it should not be referred to in the proposed section 47C(2A).

Recommendations

19. Clarify whether the prescriptive nature of the new sections 8(1A)-(1D) of the *Housing Australia Act* is necessary by virtue of Constitutional limitations on the legislative powers of the Commonwealth.
20. Consider amending the proposed sections 8(1A)(c) and 8(1C)(b) of the *Housing Australia Act* to capture other Constitutional legislative powers that have been captured by section 22 in the HAFF Bill.
21. Ensure consistent terminology is used in the Constitutional limitations provisions in the *HAFF Act* and the *Housing Australia Act*, including with respect to Indigenous persons and veterans.
22. Clarify why the new *Housing Australia Act* appears to limit the application of the guarantee function to a greater extent than the current *NHFIC Act*.
23. Provide to states and territories a diagrammatic representation outlining how funds in the Housing Australia Special Account, and other disbursement accounts related to the HAFF Special Account, will operate.
24. Review and revise, as necessary, clause 42 in Schedule 4 of the Treasury Laws Amendment Bill, to ensure that the proposed section 47C(2A) of the *Housing Australia Act* does not refer to a provision that is to be repealed.

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