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Dear Assistant Secretary,

UDIA National Housing Australia Future Fund and National Housing Supply and Affordability Council Bills

Thank you for the opportunity to provide our comments 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. 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.

Necessary Amendments

UDIA National supports the Federal Government HAFF and Council initiatives but we are concerned that unless the bills are amended, the HAFF will not have the flexibility to respond to the economic environment and risk failing to provide the targeted 30,000 houses over 5 years:

- **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 barred from receiving direct s18 HAFF grants for affordable or social housing.
- Instead s33 allows transfer of HAFF moneys to the National Housing Finance and Investment Corporation (NHFIC), soon to be Housing Australia (HA), outside of HAFF grants for acute, affordable and social housing by HA. However 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.
- **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.

- **Unclear rules on how the HAFF grants will be applied** – The HAFF bill prohibits loans but contemplates "repayment of grants" without clarifying in what circumstances grants must be repaid. The HAFF also loses the opportunity to use cost effective mechanisms that preserve the HAFF funds like debt loans and borrowings for equity. This undermines the grants process as well as performance reporting.

- **Overlapping research and data functions need clarification** – The Council and HA will both undertake research into housing supply and affordability but there is no clear understanding of what each agency will do and coordinate. This confusion will undermine both institutions.

- **HAFF funding limit needs to exclude administrative costs or it will limit the HAFF early on** – The $500 million pa grant drawdown as written includes administrative costs that will likely be high initially, severely limiting funds that can be drawn down for affordable/social housing.

- **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. 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.

- **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 to CHPs and private housing providers that meet the acute housing, affordable housing or social housing definitions.

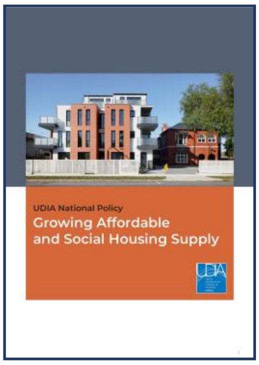
- **There is no mechanism to allow HA and the HAFF to respond flexibly to the market** – The HAFF does not contemplate a contingency clause that would allow HA and the HAFF to undertake any funding approach or grants to entities (not specifically prescribed), where a proposal would provide the same or better outcome. There is considerable risk that the HAFF cannot respond flexibly to changes in investment and housing delivery to avoid shortfalls.

- **There is no guarantee that grant payments started under the HAFF will continue –** Irrespective of who HA provides grants to, there will be a need to ensure the grants continue for the duration of the investment period, or it will be difficult to get conservative institutional and private investors to commit to affordable and social housing.

- **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) and (d) 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.

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 Affordable and Social Housing Strategy Paper, launched in November last year link here.



The critical problem is that NHFIC has determined we need 45,000 affordable and social houses a year to keep up with housing needs, but all Governments and CHP's together only build 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 provided. Separate s33 measures providing transfer of funds to HA for acute, affordable and social housing, does not give any indication of whether that will be a primary funding mechanism for housing through CHPs and private housing providers.

The Governments and CHPs together currently can only deliver 8,500 houses a year, and under the HAFF all Governments and CHPs would need to almost double this combined capacity each year to make the additional 6,000 affordable and social houses. That still means only 14,500 houses are built – 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.

Instead, the capacity of the entire development industry and CHPs should be harnessed using HAFF grants (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. The paper shows that using the $10bn Future Fund to cover the rental gap for private and not for profit housing providers, can incentivise delivery of up to 21,000 affordable houses year on year.

Irrespective of who the Federal Government and HA want to 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.

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:

- **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 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.
- **Exclude HA administrative costs from the $500 annual funding limit.**
- **Establish objective criteria to measure performance** of the fund's activities.
- **Establish a set of critical HAFF objectives,** including (as a priority), delivery of homes by grants to CHPs and private housing providers that meet the acute housing, affordable housing or social housing criteria.
- **Ensure review of the HAFF within 18 months of the date of enactment**, and thereafter on two yearly intervals.
- **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.

- **Provide a guarantee that grant payments started under the HAFF will continue,** for the duration of the investment, both under the grants power and the s33 transfer rules.

- **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".

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 Director of Policy and Government Relations - Andrew Mihno on 0406 454 549 to discuss any aspect of this submission further.

Maxwell Shifman
UDIA National President

Appendix 1: The Table of Issues and Solutions

Issue:	**Narrow scope for conferring grants under the Housing Australia Future Fund Bill (HAFF)** **The scope of the HAFF grants power is narrow, and the HA transfers power does not guarantee funds to HA for housing.** – CHPs and private housing providers, are barred from receiving direct s18 HAFF grants for affordable or social housing under the HAFF. 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.
Impact:	The Commonwealth's power to make grants to persons (as opposed to States or Territories) is limited to acute housing. 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. 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. 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.
Solution:	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. The HAFF fund presents the Commonwealth with an opportunity to: • provide direct support to Community Housing Providers and developers or other private entities developing and holding affordable housing; • 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. 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.

	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. 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.

Issue:	**Failure to define key terms** The following key terms, although critical to defining the scope of the Commonwealth's power to make grants, are not defined: • acute housing; • social housing; and • affordable housing.
Impact:	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. 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.
Solution:	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.

Issue:	**Uncertainty in relation to the manner in which HAFF grants may be mobilised** The HAFF is unclear on how HAFF grants may be mobilised. Although section 18(4) of the HAFF clarifies that a grant may be made by way of the reimbursement of costs or expenses, and section 18(5) clarifies that this is not the only manner in which a HAFF grant may be applied, there is little clarity on how grants may be applied. Further, although section 18(6) of the HAFF provides that sections 18(1) and 18(3) do not authorise the making of loans, sections 19, 20, 27 and 31 of the HAFF contemplate the repayment of grants.
Impact:	Ambiguity in relation to the manner in which HAFF grants may be applied, including whether grants may be mobilised through financing structures will

	create uncertainty in relation to scope for applying HAFF grants and may unnecessarily constrain the achievement of the Commonwealth's goals.
Solution:	We recommend: • clarifying how HAFF grants may be applied or establishing a broad power for the Commonwealth to apply grants in such form as the Commonwealth may deem necessary: • 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 Community Housing Providers and developers or other private entities developing and holding affordable housing.

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

Issue:	**Annual limit on drawdowns** Section 36 of the HAFF establishes an annual drawing limit of $500 million per annum. As drafted, this would include all administrative costs (which are likely to be high, especially at inception).
Impact:	The annual limit of $500 million per annum will be substantially impacted on by administrative costs in the beginning, thus limiting the funds that can be actively mobilised to support social and affordable housing during the initial establishment period.
Solution:	We recommend, excluding administrative costs from the annual limit of $500 million per annum or creating a separate limit for administrative costs so that the full $500 million may be mobilised from inception.

Issue:	**Absence of mechanisms for assessing effectiveness** 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.
Impact:	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.
Solution:	We recommend: • establishing criteria against which the performance of the fund's activities may be assessed; • Establish a set of objectives for the HAFF; • requiring a review within 18 months of the date of enactment, and thereafter on two yearly intervals.

Issue:	**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.
Impact:	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.
Solution:	**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.

Issue:	**No guarantee that grant payments started under the HAFF will continue** Irrespective of who HA provides grants to, there will be a need to ensure the grants continue for the duration of the investment period.
Impact:	Without adequate guarantees that the HAF (s18 grants or s33 transfers), will continue, it will be difficult to get conservative institutional and private investors to commit to affordable and social housing.
Solution:	**Provide a guarantee that grant payments started under the HAFF will continue,** for the duration of the investment, both under the s18 grants power and the s33 transfer rules.

Issue:	**The types of legal entities that HA can provide grants / loans appears limited** 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 8(1A)(c) and (d) however refers to "entities" which is defined to include companies, trusts and partnerships - although is limited in their scope. 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.
Impact:	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.
Solution:	Replace the "constitutional companies" reference in Section 8(1A)(a) with "constitutional companies or entities".