



# National Affordable Housing Providers Ltd.

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**TO:** ACT Justice and Community Safety Directorate, Civil and Regulatory Law Branch  
**FROM:** Carol Croce, NAHP Project Officer  
**DATE:** 15 October 2021

**RE: Feedback on Consultation Paper *Ending no cause evictions and other measures: proposed reforms to the Residential Tenancies Act 1997***

The National Affordable Housing Providers (NAHP) appreciates this opportunity to comment on proposed reforms to the ACT Residential Tenancies Act 1997 on 'no cause' terminations.

NAHP is the representative peak body representing National Rental Affordability Scheme (NRAS) Approved Participants' collective interests to deliver affordable housing across Australia. Our members hold responsibility for delivering over 11,000 NRAS properties, housing over 30,000 low income tenants, and include the largest NRAS providers across the country, including providers in the ACT. NAHP members are a mix of not for profit housing providers, commercial and ASX listed entities, representing the broad interests of companies engaged in providing private, affordable housing in Australia through NRAS and other State and Federal Government housing initiatives.

Our submission focuses on the proposed reforms to the no cause provision and the inclusion of termination grounds based on eligibility for accommodation assistance; and situations where the tenant is unwilling to provide evidence to support their ongoing eligibility.

- We support these reforms to provide NRAS providers with the ability to terminate a tenancy if the tenant is no longer eligible as well as situations where the tenants are unwilling to provide the necessary evidence to demonstrate their ongoing eligibility. Specifically, tenants are required annually to provide documentation of income and household composition. Tenants are advised of this obligation when they apply for NRAS housing and are further advised in writing that it is required for assessment each year.

Establishing reasonable time frames for providing evidential documentation is critical for NRAS providers to meet strict NRAS compliance requirements. Current practice among NRAS providers considers 30 days a reasonable amount of time for tenants to provide the necessary evidence for eligibility assessment. This time frame allows sufficient time to process the information before the assessment cutoff date, to advise tenants if there are changes to their eligibility status and to meet NRAS reporting requirements.

- NAHP assumes that NRAS constitutes an 'accommodation assistance' program under these regulations and the proposed termination clauses when a tenant is ineligible or unwilling to provide evidence of eligibility is applicable. NAHP suggests that a definition be included, perhaps as part of an explanatory document, that clarifies NRAS is considered an accommodation assistance program for the purpose of these measures. NAHP feels this is necessary to avoid ambiguity about NRAS's ability to rely on these regulations to issue notices to vacate where appropriate.

- The 26 week notice period for termination with grounds is problematic for NRAS providers. There is no financial penalty to the private rental owner during the notice period as they will continue to collect rent until the tenant vacates. However, an ineligible tenant in an NRAS property breaches NRAS regulations and results in the loss of the subsidy to the provider or owner for the notice period. One possible outcome from a lengthy non-compliant period is the withdrawal of the property from the Scheme, reducing the limited amount of stock in the affordable housing sector. A second unwanted outcome is an ineligible tenant continues to occupy the dwelling, denying an eligible tenant accommodation in an affordable home. NRAS regulations are unambiguous that no incentive can be paid for a period when an ineligible tenant rents the dwelling.<sup>1</sup>

As the notice to vacate cannot be given until the tenant's eligibility ceases, a shorter period is necessary to avoid significant financial loss to the NRAS investor/landlord. One solution is to provide a pre-emptive notice to vacate 26 weeks out from the end of the tenancy in cases where the tenant is likely to be over the income threshold in the current year based on their income from the previous year<sup>2</sup>. If, after assessment, the income is below the threshold, the NTV is rescinded. This process gives the tenant a 'head's up' six months out from the end of their tenancy that they may be ineligible and provides time for them to seek other accommodation.

However, that process does not work when the ineligibility results from a tenant failing to provide the necessary evidence to assess their eligibility. But an unwillingness to provide documentation cannot be foreseen and will likely occur closer to the end of the tenancy period. The financial impact on the investor of lost incentive is the same if a 26 week NTV is in place.

- NAHP proposes a 60 day notice period. This option seeks a balance between the impost on tenants to find accommodation in the ACT's tight rental market; the financial consequences on owners losing a portion of their subsidy; and the impact on the eligible tenants in the community who cannot access a much-needed affordable housing option.

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<sup>1</sup> National Rental Affordability Scheme Regulation 2020, Part 2, Section 11, Eligible Tenants

<sup>2</sup> NRAS allows tenants income to be over the income threshold for two consecutive years before they are deemed ineligible. During the second year, NRAS providers carefully scrutinise income ahead of the end of the tenancy to ensure the tenant is not over income and therefore ineligible.