



Submission by the
Commonwealth Ombudsman

**IMPROVING THE NATIONAL RENTAL
AFFORDABILITY SCHEME**

CONSULTATION PAPER

Submission by the Commonwealth Ombudsman, Colin Neave

INTRODUCTION

The Commonwealth Ombudsman welcomes the opportunity to respond to the Department of Social Services' consultation paper – *Improving the National Rental Affordability Scheme (NRAS)*. This submission focuses on measures to improve transparency for investors in the scheme, and measures to strengthen the integrity and compliance.

BACKGROUND

The Commonwealth Ombudsman has broad jurisdiction to investigate the administrative actions and decisions of most Commonwealth Government agencies, including the actions and decisions of private providers contracted to deliver services on behalf of those agencies.

Over the last two years our office has received 78 complaints about NRAS. Only one of those complaints was from an NRAS approved participant. The majority were made by private individuals who had invested in NRAS. The issues raised in those complaints include:

- The delay by the Department of Social Services (DSS) in making incentive payments to approved participants for the 2013-2014 NRAS year.
- DSS' refusal of a CDDA claim for loss caused by the delayed 2013-14 incentive payment.
- The lack of information DSS provided to the investor about NRAS.
- The lack of action DSS took when an incentive payment was not passed on to the investor(s).

Through the investigation of individual complaints and liaison with DSS, the Ombudsman's office has built up a picture of issues involving the administration of NRAS. These complaints inform our submission on this consultation paper. We trust this submission will assist DSS in its consideration of how to improve the administration of NRAS and simplify its processes. We look forward to further discussions with DSS about NRAS during 2017.

Improved information for NRAS investors

In our liaison with DSS about its administration of the NRAS, DSS told our office it does not have a legal relationship with the investor under the scheme. Therefore it has no obligation to engage in detailed communications with investors about the status of the approved participants' incentive payments. Our office does not share that view.

We understand it would be onerous for DSS to field individual enquiries from every investor, and to keep each individual investor informed of the details about their approved dwelling. This is because there are over 29,000 investors in the scheme. However, in our opinion the NRAS investor is one of the department's stakeholders, and as such we suggest DSS should take a more cooperative approach to providing information to the investor when asked.

Currently, DSS requires the investor to get the written permission of the approved participant to enquire about an incentive payment. This process works on the premise that the relationship between the investor and the approved participant will always remain a good working relationship. However, if the relationship breaks down, and the approved participant no longer communicates with the investor it leaves no avenue for the investor to get information about their investment. This process offers no protection for the investor if the relationship with the approved participant sours. The following case study illustrates this issue

Case Study – Mr B

Mr B contacted our office to complain that he had not received his incentive payment for the NRAS year 2014/2015 from his approved participant. His approved participant was not responding to his requests for information, and nor would DSS provide him with any information. He expressed concerns the approved participant would similarly delay payment of the 2015/2016 incentive payment. Mr B had not completed a 'consent to release information to investors' form because he believed the approved participant would not consent, as it was not in its interests to do so.

Our investigation focussed on what actions DSS had taken, or could take, to ensure the incentive payment it had made to the approved participant was passed on to Mr B as the investor. DSS responded advising of the limitations it has under the NRAS legislative framework. DSS provided information about what action it had taken to discuss with the approved participant the reason(s) it had not passed on the incentive payments, and what action the approved participant would take to make the payments. DSS advised it had no power to force the approved provider to pass on the incentive payment. As DSS' actions were in accordance with the NRAS framework we ceased investigation and wrote to Mr B advising him of our decision. However, we were prohibited from providing Mr B with the details of DSS' interactions with the approved participant. Mr B remained dissatisfied and unconvinced that DSS had taken any action.

In our view, sharing information with investors about the status of their dwelling and the related incentive is important to promote transparency and accountability in the administration of the scheme. We recommend any legislative impediment to sharing information with investors should be removed to allow for an annual statement to be provided to approved participants and investors about the status of the dwelling and the related incentive paid during the NRAS year.

Complaint process

In our view it is imperative DSS maintains and promotes a robust and effective complaints and feedback mechanism for the individual NRAS investors, not only as a mechanism for investors to resolve issues they may have with the delivery of services, from either DSS or the approved participant, but also as a fundamental component of effective government stewardship and accountability.

Complaints and feedback can deliver direct information from investors to DSS about approved participant's actions that may not come to the department's attention by

other means, and provides information about the general effectiveness of the scheme. Complaints and feedback provide early warning about faulty decisions or non-compliance with the scheme. They also create the opportunity to provide a remedy for either the approved participant or an investor, and are a way of maintaining good relations with all parties involved in the NRAS. A robust complaint process also ensures systemic problems are identified and dealt with. It is a useful tool to inform decision making about any future changes that may be required for the scheme to operate effectively, efficiently and in compliance with the legislative framework.

Our office is pleased to note that, following a complaint investigation, DSS agreed to update the investor factsheet to include a link for lodging a complaint with DSS.

Incentive payments

In many complaints to our office, investors say the reason they invested in NRAS was because they believed it was a safe investment as it was government funded. We understand that DSS has provided explicit information in its fact sheet for investors which states that ‘the Australian Government does not endorse, guarantee or secure the investment in approved dwellings in any way’. However, public perception differs.

Currently there is no requirement under the scheme for incentive payments made to approved participants to be passed on to the investor. This seems at odds with the intent of the scheme as it relies on having both approved participants and Investors, and affords certainty of payment to only one of those parties. In our view, good government stewardship means having regulations with strong measures to allow DSS to take adequate steps to ensure compliance in passing on incentive payments by the approved participant who is receiving payments from the government. In our view, the scheme should be amended to give DSS the authority to ensure government funds it is dispersing to the approved participant is passed on to the investor. After all it is the investor that is incurring a loss which is being offset by the incentive payment.

In the above case study, Mr B wrote to our office and provided his reasons why he believed the legislative framework was unfair and why he believed that DSS should take responsibility for following up on whether the incentive payment was made to the investor. His comments illustrate an opinion expressed generally by many NRAS complainants to our office.

In relation to the limitations within the NRAS framework regarding DSS’ lack of authority to ensure an incentive payment is passed on to the investor, Mr B said:

“...within the NRAS Regulations 2008, and contracts or agreements DSS has with approved participants there is nothing in those agreements and / or Terms and Conditions that compels participants to comply with their contracted obligations.

If this is true, where does it leave the good old general public who cannot afford to take on deep pocketed companies (Approved Participants) or a government department in the legal process?

The overall message is that DSS, the responsible body, has not and will not take concrete steps to regulate and correct its appointed agents (approved participants) in the discharge of their responsibilities and accountabilities to clients (investors).”

DSS is currently unable to take any action to ensure the incentive payments it has made to failed or insolvent approved participants is paid to the investors involved with that approved participant. In our view, the scheme should be amended to give DSS the authority to ensure government funds it has dispersed to a failed or insolvent approved participant can be recovered and passed on to that approved participant's investors and the allocation to the approved participant be revoked. We believe that would be in keeping with the intent of the scheme and provide a fair and reasonable outcome for the investor who has no control over the administrative actions of the approved participant.