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Introduction

A key part of the National Shelter Policy Platform is the supply of social housing, directly funded by governments. Our examination of inclusionary zoning across Australia is intended to be an enhancement to traditional methods of achieving social and affordable housing, not a replacement of direct government investment in social housing. We understand that social housing is critical for people living on low incomes who require a subsidy to achieve an affordable home. The theme of the need for social and affordable housing was repeated throughout the open text answers by our survey respondents.

Aims

This project aims to examine current inclusionary planning policies that deliver affordable housing supply across Australia. It will compare state and local policies established across the country to identify the challenges and opportunities of inclusionary zoning. This document isn’t academic research but an investigation designed to inform our consideration of policy objectives.

The results and final report will be used to build a coalition of support around encouraging National leadership on inclusionary zoning, strategies and mechanisms to assist National Shelter Council members and stakeholders to lobby the Federal Government, State/Territory governments, other stakeholders and provide a call to action.

Inclusionary Zoning – definitions and key concepts

In this report, Inclusionary Zoning refers to the definition described by the Australian Housing and Urban Research Institute (AHURI), 2017.

“Inclusionary zoning is a land use planning intervention by government that either mandates or creates incentives so that a proportion of a residential development includes a number of affordable housing dwellings.”

Affordable housing: Housing is generally considered to be ‘affordable’ if the household members are not in housing stress after they have paid for their housing, irrespective of whether they are renting or buying. There are a number of measures of affordability. One of the most widely used is that a low-income or moderate-income household should not pay more than 30% of their gross income on housing.

Housing affordability: A general term, used in reference to the whole housing system, expressing the relationship between housing costs (prices, mortgage payments or rents) and household incomes.

Housing stress: A household is considered to be in ‘housing stress’ if its income is in the bottom 40% of incomes and it is paying more than 30% of its income on housing. This may also be referred to as ‘housing unaffordability’. See also ‘Affordable housing’.
Community housing: Housing that is managed and sometimes owned by a not-for-profit organisation.

Homelessness: The Australian Bureau of Statistics definition states that when a person does not have suitable accommodation alternatives they are considered homeless if their current living arrangement: is in a dwelling that is inadequate has no tenure, or if their initial tenure is short and not extendable does not allow them to have control of, and access to space for social relations.

NRAS: National Rental Affordability Scheme seeks to address the shortage of affordable rental housing by offering financial incentives to the persons or entities to build and rent dwellings to low- and moderate-income households at below-market rates for 10 years.

Value capture: Value capture is when governments enforce a tax on the increase in value of a parcel of land when it increases because of an action by government, such as the land being rezoned to a higher value use (e.g. from farmland to residential housing); the building of more efficient local transport access; or the building of local amenities such as schools or cultural centres.

Inclusionary zoning is one planning mechanisms which can be developed to increase affordable housing. Others include:

- ‘Planning concessions’ – planning rules are relaxed for affordable housing development or to enable low-cost market housing
- ‘Density bonuses’ – additional development potential is offered in return for an affordable housing contribution
- ‘Negotiated agreements’ – in Australia often termed Voluntary Planning Agreements (VPAs), these involve affordable housing contributions being negotiated on a case-by-case basis (possibly under a broader policy framework)

This project is principally concerned with inclusionary zoning and the role it may play to provide for, subsidise or complement the development of affordable housing.

Methods

This project uses a variety of methods to examine the current challenges and opportunities, and tools for improvement for inclusionary zoning across the country. A review of current approaches to Inclusionary Zoning was conducted in each of the states and territories, drawing on local knowledge and published research.

Primary research was collected through the development and collection of a national survey, developed by a focus group of stakeholders. The aim of the survey is to identify how to overcome the barriers from different stakeholder perspectives.

The results were analysed and discussed and used to form a series of recommendations.

Temporary or In Perpetuity

Across Australia there are few mechanisms to ensure that the benefits of inclusionary zoning are ongoing or in perpetuity, and in most circumstances, affordability is only available to the first

purchaser. The arrangement for City West in NSW provides a perpetual rental housing supply at a relatively small scale.

Supporters and detractors

The issue of Inclusionary zoning has been contentious in many jurisdictions. We wanted to identify groups who supported and those who oppose inclusionary zoning. The picture emerging is complex with inconsistencies.

Local government agencies across Australia each have a differing view of Inclusionary zoning. Whilst many support the development of inclusionary zoning it isn’t a unified position across local councils or LGA peak bodies.

Inclusionary zoning is often but not always opposed by property councils and developers with some prominent developers being strong supporters of inclusionary zoning. As an industry peak bodies have mixed views about inclusionary zoning the property Council of Australia, responding to an AHURI report on Inclusionary Zoning said “The plans recently finalised by the Greater Sydney Commission included an affordable rental housing target for new residential development of between 5 and 10 per cent where financially viable and this seems a measured response to a difficult problem.”

The Housing Industry Association has a clear opposition to inclusionary zoning stating “Inclusionary zoning policies and affordable housing quotas add costs to an already over-taxed and over-regulated housing industry.”

In discussions National Shelter has had over the past 15 years the most reported finding from developers is the need for certainty over time to enable accurate costing. There is a sense that industry will oppose inclusionary zoning in principle but accept it as a condition if it provides certainty, is clear in its objective and provides options for the delivery of affordable housing rather than mandating its inclusion in every development.

Government housing bodies have tended to be neutral on the role of inclusionary zoning as a contributor to affordable housing highlighting the narrow role of most State Housing Authorities which has been restricted to providing “welfare” housing to lowest income highest need households and therefore less interested in mechanisms which might intervene in markets and housing production.

National Shelter and its member organisations, NGO’s, academics, and most community housing providers support the development of inclusionary zoning in planning legislation. We see planning mechanisms as recognising affordable and social housing as essential infrastructure required to ensure productivity in the workforce and economic, cultural and social participation by lower income households.

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3 https://hia.com.au/-/media/HIA-Website/Files/Media-Centre/Policies/Subsidised-Affordable-Housing.ashx
Our Project Surveys

In conducting this project National Shelter asked its members organisations and partners to complete a template on the various state and territory approaches to inclusionary zoning.

Table 1 describes responses from a template developed to elicit the varied approaches across jurisdictions in Australia.

<table>
<thead>
<tr>
<th>State/Territory</th>
<th>Voluntary or Legislated</th>
<th>Rental or Purchase</th>
<th>Designated areas or general</th>
<th>Temp or in perpetuity</th>
<th>Target</th>
</tr>
</thead>
<tbody>
<tr>
<td>SA</td>
<td>Legislated</td>
<td>Mainly purchase</td>
<td>New Developments</td>
<td>First purchase</td>
<td>General population</td>
</tr>
<tr>
<td>ACT</td>
<td>Legislated</td>
<td>Both</td>
<td>General</td>
<td>In Perpetuity</td>
<td>General population</td>
</tr>
<tr>
<td>VIC</td>
<td>None</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>NT</td>
<td>None</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>QLD</td>
<td>Occasional (2007-13)</td>
<td>Both</td>
<td>Designated areas (ULDA)</td>
<td>Temporary</td>
<td></td>
</tr>
<tr>
<td>WA</td>
<td>Voluntary</td>
<td>Mainly purchase</td>
<td>Designated areas</td>
<td>In perpetuity</td>
<td>Mix of Low-moderate income home owners</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TAS</td>
<td>None</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>NSW</td>
<td>Occasional (SEPP 70)</td>
<td>Rental</td>
<td>Specific to LGA</td>
<td>In Perpetuity</td>
<td>City West low-moderate income renters</td>
</tr>
</tbody>
</table>
**Current Research**

Gurran has looked at the range of planning instruments used across Australia to prepare this table of the various jurisdictional differences:

<table>
<thead>
<tr>
<th>State/territory</th>
<th>Inclusionary zoning</th>
<th>Density bonus/planning concessions/negotiated agreements</th>
<th>Govt. land able to support affordable housing schemes*</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACT</td>
<td>15–25 per cent target, new land release</td>
<td>Yes, applying to affordable home ownership</td>
<td>Yes</td>
</tr>
<tr>
<td>NSW</td>
<td>In designated parts of inner Sydney</td>
<td>Statewide policy, to encourage affordable rental housing</td>
<td>On an ad hoc basis</td>
</tr>
<tr>
<td>NT</td>
<td>No</td>
<td>Smaller lot sizes in Multiple Dwelling Residential zones</td>
<td>Yes</td>
</tr>
<tr>
<td>QLD</td>
<td>No</td>
<td>Small lots able to support more diverse / affordable housing supply</td>
<td>Limited</td>
</tr>
<tr>
<td>SA</td>
<td>15 per cent target for residential zones (applied on rezoning)</td>
<td>Incentives and concessions to support achievement of target</td>
<td>Yes</td>
</tr>
<tr>
<td>TAS</td>
<td></td>
<td></td>
<td>Limited</td>
</tr>
<tr>
<td>VIC</td>
<td>Pilot to be introduced (2017)</td>
<td>Negotiated agreements used to deliver affordable housing in some areas of inner Melbourne</td>
<td>Limited</td>
</tr>
<tr>
<td>WA</td>
<td>No</td>
<td>Local authorities enabled to introduce planning concessions and incentives; for example, Density Bonus included in Fremantle Planning Scheme (2017)</td>
<td>Yes</td>
</tr>
</tbody>
</table>

*including via government land development organisations

Source: adapted from Gurran and Bramley 2017

In a policy brief by AHURI a snapshot of the most significant inclusionary zoning programs looks like

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Full State and Territory Responses

South Australia

Currently, South Australia has the most significant inclusionary zoning targets with a 15% inclusionary housing target that has been in action for 14 years. In South Australia, 15% of new dwellings in all significant development projects are to be affordable, including at least 5% for high-needs groups (AHURI, 2017). This was introduced in The Housing Plan for South Australia when South Australia’s Development Act 1993 was amended to enable provisions for affordable housing.

The commitment to provide affordable housing is made through a legally binding Land Management Agreement (LMA), and the criteria are re-assessed annually to ensure these are met. They do not establish a requirement to produce quotas but a process to facilitate affordable housing so are not mandated affordable housing requirements in practice.

The Development Act 1993 and Regulations include explicit references to affordable housing. The Objects of the Act include an objective ‘to promote or support initiatives to improve housing choice and access to affordable housing within the community’ (section 3(a)). Affordable housing (as set out in the Planning Strategy) is specifically highlighted for consideration in Strategic Directions Reports and Development Plans (sections 30(1) (c) (iiia), 101A (2) (b) (iiia) and 23(3) (a) (vii)).

Affordable housing is designed and priced to cost people on a low or moderate income no more than 30% of their gross income in repayments. Otherwise priced at $354,000 or less (if key criteria are met, the price can be up to $407,100 - the criteria are published in the government gazette) (South Australian Government, 2018).

This legislation reinforces affordable housing as a planning issue and councils should address how the affordable housing targets set out in the Planning Strategy will be implemented.

The Regulations under the Development Act 1993 facilitate a process where affordable housing development proposals are referred to the Minister for Housing to determine that the development

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South Australia

15% of new dwellings in all significant development projects to be affordable

including at least 5% for high-needs groups.

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New South Wales

2% of housing in specified zones to comprise of affordable housing.

Developers include affordable housing within developments or pay an affordable housing levy.

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Australian Capital Territory

20% of all new estates include affordable housing

along with the provision of affordable house and land packages, and a land rent scheme to reduce upfront costs for purchasers.

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meets the affordable housing criteria under the South Australian Housing Trust Act 1995 as described above.

Inclusionary zoning is to be included in SA if a significant development is within a designated affordable housing zone in a council development plan.

Only 17% of total dwelling approvals within major new residential development areas of SA (2005–15) have been dedicated affordable homes, 63% of which have been on government land or supported by other government incentive or subsidy (Australian Housing and Urban Research Institute, 2015).

Some of the implementation issues found by researchers from AHURI include the wording of the policy states that developers “should” provide affordable housing rather than stating “must”. As a result, developers are able to contest this policy and that it is inconsistently enforced by local planning authorities. The second factor mentioned by the researchers from AHURI is that many of the infill demonstration projects are developed on government land, with grants or support from schemes such as NRAS. Without financial incentives or subsidies, it is difficult for a developer to replicate an affordable housing project on private land.

Eligible buyers are able to purchase affordable dwellings for the purpose of affordable rental housing. Affordable housing providers, such as the South Australian Housing Trust, a registered housing association, or a registered housing co-operative under the South Australian Co-operative and Community Housing Act 1991 (SA) and persons (natural or corporate) approved to provide affordable rental under the ‘National Rental Affordability Scheme can be considered eligible. (AHURI 2015). If a house is rented out by a community housing provider or bought by a provider for affordable rent, there is a rent threshold that applied and recalculated annually.

As far as we know, there is no mechanism to ensure benefits are ongoing for home purchasers – the first purchaser of new construction receives the affordability benefit. For NRAS properties, the rental affordability is ongoing, however, NRAS is currently discontinued.
Some examples of affordable housing projects in South Australia can be found in the tables below.

Table 9: Urban renewal projects and affordable housing, South Australia

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Description</th>
<th>AH Target</th>
<th>Total AH dwellings (estimated)</th>
<th>Outcomes to date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bowden</td>
<td>Higher density urban infill project located on 16.4 hectares of former industrial land adjacent to the city's western parklands—2,400 dwellings, over 3,500 residents</td>
<td>15 per cent</td>
<td>360</td>
<td>Two affordable housing projects underway, aiming to provide accommodation for city workers in both rental and purchaser markets (rent to buy)</td>
</tr>
<tr>
<td>Lightsview</td>
<td>Inner-city land development covers approximately 100 hectares—2,200 allotments; approximately 2,700 dwellings accommodating 5,000 residents</td>
<td>15 per cent</td>
<td>405</td>
<td>250 affordable homes sold by 2016</td>
</tr>
<tr>
<td>Playford Alive</td>
<td>500+ hectares; 40,000 + residents</td>
<td>15–25 per cent</td>
<td>2,600 (approx.)</td>
<td>37 affordable dwellings for sale</td>
</tr>
<tr>
<td>Tonsley</td>
<td>61 hectares; 1,200 residents</td>
<td>15 per cent</td>
<td>78 (approx.)</td>
<td>N/A</td>
</tr>
<tr>
<td>The Square at Woodville West</td>
<td>13 hectares—approximately 425 new dwellings</td>
<td>35 per cent</td>
<td>170</td>
<td>N/A</td>
</tr>
<tr>
<td>Port Adelaide Renewal Project</td>
<td>2,000–4,000 additional dwellings and 4,000–8,000 residents</td>
<td>15 per cent</td>
<td>600</td>
<td>N/A</td>
</tr>
</tbody>
</table>

(Australian Housing and Research Institute, 2018)

Inclusionary zoning is limited in scope – it rarely includes social housing and numbers too low to make a dent in the need for affordable housing, especially for people living on low incomes.

263 affordable homes were delivered during the 2017-18. This includes home ownership, and social rental including community housing.
Western Australia

At present, voluntary approaches to inclusionary zoning can and have occurred in WA, as local governments have the ability to vary their development standards. The incentives in the WA Apartment Design policy could be considered a form of voluntary inclusionary zoning.

The Metropolitan Redevelopment Authority (MRA) has a policy (DP9) that proposes that 12% of all new residential dwellings in developments of over 10 dwellings should be affordable. The affordable housing can be shared equity or social housing but to date has been shared equity. The developer sells the affordable housing to the government (generally the Housing Authority) at construction cost according to an agreed cost chart and the Housing Authority then sells a share of the (market) value of the dwelling to an income restricted eligible buyer to recoup their cost outlay. Dwellings are retained as affordable in perpetuity through a restrictive covenant on title and through partial state ownership. Resale must be to another income eligible buyer.

Some 99 affordable dwellings have been obtained through this policy. MRA has also delivered affordable housing through a peppercorn land lease to St Barts in East Perth for 148 bed homeless accommodation.

The Western Australian Government’s land and development agency, Landcorp, also has an inclusionary zoning approach. Landcorp has a policy to dedicate at least 15% of land and housing to supply affordable housing outcomes. In 2016/17 it supplied 29% of lots at or below the Real Estate Institute WA metropolitan lower quartile lot price of $200,000.

Under the MRA and Landcorp policy, inclusionary zoning is implemented in Specific areas. The developed dwellings built under the policy is mostly for purchase.

There is early work underway for a concept called ‘Restricted Resale Affordable Housing’ policy at the MRA that proposes to keep housing as affordable in perpetuity.

Other opportunities in WA include the soon to be included leasehold strata arrangements that should create up to 99 year long leases for affordable ownership and rental opportunities. Draft regulations are currently out for consultation. The policies outline the requirement for ongoing benefits and perpetuity.

Inclusionary zoning in Western Australia is mostly limited in scope and hasn’t been rolled out across the state more widely.
Northern Territory

There is no inclusionary zoning in the Northern Territory per se. The Northern Territory system is somewhat unique insofar as the Northern Territory Government is responsible for planning policy and development consent, rather than local government authorities.

The Northern Territory Government has significant tracts of Crown Land across the NT. While there are some parcels of vacant Crown land in CBD locations, the majority is in outlying suburbs or on the fringe of urban areas. Most of the CBD area is freehold title and the absence of inclusionary zoning legislation means that there are limited opportunities (such as head leasing) to incentivise social and/or affordable housing component.

Given the vast majority of new development in the NT occurs through crown land release on urban fringe, it’s reasonable to look at whether similar outcomes to those sought under IZ schemes can be achieved without IZ. In other words, affordable and social housing developments mandated for greenfield developments within reasonable proximity of the CBD, given the relatively small size of NT urban communities. The use of crown land has been subject to mandated conditions around housing affordability. For example, the release of crown land in Zuccoli required proponents to provide a minimum of 34 diverse dwellings for eligible first home buyer initiatives and a minimum of 17 dwellings for social housing purposes as part of a “salt and pepper” mix.


For the present time, given substantial crown land reserves available for new development over the coming 40 years, the NT Government is well placed to achieve de facto IZ outcomes through leveraging crown land releases for prescribed purposes, including achievement of a proportion of low-cost housing outcomes. These initiatives are overseen by Crown Land Estate (CLE), a unit within the Department of Infrastructure, Planning and Logistics in consultation with NT Government agencies such as Housing. CLE administers land releases via calls for expressions of interest. The EOI stipulates the objectives (including social objectives) that the release of land for lease or sale is seeking to achieve, having regard to strategic land use plans, community infrastructure, and plans for community &/or or commercial purposes. In the case of Zuccoli stage 5, an average price point for new lots has been set. These have been developed as typically smaller dwellings and subsidized via mix.

IZ is not legislated in the NT. There are mechanisms for the NT Government to achieve outcomes in social and affordable housing but these are through administration of Crown Lands, generally outside of CBD limits. There have also been some public housing redevelopments which have achieved similar outcomes. Occasional social housing head leasing programs of dwellings in private sector developments in the CBD and other suburban areas are used from time to time. Most recently, agreement in principle has been reached for 172 head-leased dwellings, consisting of 128 new builds, for social housing purposes including people with disability and seniors.

There are several significant parcels of crown land in and around Darwin and other urban areas that will meet demand for decades to come (e.g. Holtze and Kowandi). The NT Government does not have the same urban development pressures as other capital cities given crown land it can leverage.

There are also significant new developments on freehold title e.g. Muirhead (Defence Housing Australia), The Heights, Durack (Peet). Incentives such as NRAS or NTG head leasing programs could encourage further development of social and affordable housing where required.
In Darwin, recent media house price falls of up to 25% have been interpreted by many as alleviation of affordability issues. There is little or no discussion of IZ in the NT.

Only as set down by the Crown Lands Estate or CEO of Housing (in some circumstances) when releasing land for development or seeking renewal of public housing estates under the Request for Proposals process.

There are no regulations for urban infill development in terms of providing a proportion of social and affordable housing. With stubbornly lengthy public housing wait lists and only a small affordable housing supply, more ambitious objectives in future land releases should be considered by Government (i.e. increased proportion of social and affordable housing in RFP objectives). In practice, requirements for handing back a proportion (e.g. 5%) of dwellings to the Department of Housing for public housing is included as a commercial factor in the consideration of purchase price. The commercial value of the land is generally reduced accordingly i.e. it is priced in.

Where consent to developments in rural areas has been given by Crown Lands Estate, the developer has supplied new stock for purchase. The involvement of CLE comes to an end once development is completed (i.e. dwellings sold). There is no further liability or obligation on the part of the developer thereafter.

In Darwin, recent median house price falls of up to 25% have been interpreted by many as alleviation of affordability issues. IZ is a concept that receives little attention or public discussion in the Northern Territory. There’s a good argument to say it isn’t needed at the moment. It is expected that any attempt to implement IZ may be vehemently opposed by property developers and their peak bodies. The fragility of the NT economy, the large commercial and residential vacancy rates in Darwin, and concerns around investment and business confidence being hit by any new tax, levies or DA conditions would be cited as main reasons. There would be a lot of noise in the public arena and little likelihood the NT Government would consider IZ at this point in time with the current oversupply of rental stock (albeit still unaffordable for low to moderate income earners).

Queensland

Inclusionary zoning is not legislated in Queensland. The Queensland Department of Housing attempted to introduce inclusionary zoning in the early 2000’s as part of a broader State Planning Policy on Affordable Housing, Residential Development and Community Wellbeing but it was not endorsed by government. There was also a separate attempt by the Brisbane City Council to include inclusionary zoning in the draft West-End Woolloongabba Local Area Plan in the early 2000’s but this was not endorsed by the Queensland Government.

In 2007 the Urban Land Development Authority (ULDA) was established as a supply side response to housing affordability. A statutory authority, the ULDA, was governed by its own legislation had a specific remit to explicitly deliver affordable housing outcomes for low- and moderate-income households. The ULDA was only active in areas declared by the Minister (Urban Development Areas (UDAs)) and development schemes relevant to UDAs included targets for the delivery of affordable housing. This housing could be provided by the private market in some areas, and in other areas was delivered directly by the ULDA. This was generally housing, both rental and purchase, that was affordable for households on the median household income for that local area. The approach of the ULDA was to provide more affordable housing supply into the market without a subsidy. The housing provided by the ULDA was not specifically targeted to those in need and could be purchased or
rented by households on any income. Additionally, there was no retention mechanism because no explicit subsidy was provided by government. In 2013 the ULDA became Economic Development Queensland (EDQ) and resulted in a change of powers and functions including the removal of the main purpose being housing affordability and affordable housing.

The Queensland Housing Strategy (2017-2027) Action Plan identifies that ‘Where surplus state land is developed for residential purposes, introduce inclusionary requirements so a proportion (5–25%) of new dwellings will be designated for social and affordable housing. This will include Priority Development Areas and Economic and Community Development zones. There is current little outward facing progress on this action.

This action from the housing strategy is also included as key commitment by Queensland in the National Housing and Homelessness Agreement (NHHA) (Queensland). An agreed approach to implement inclusionary requirements is also included the National Housing and Homelessness Agreement (Queensland), with a further key commitment for Queensland to deliver ‘An agreed approach to implement inclusionary requirements’ to be ‘developed with Economic Development Queensland and Properties Queensland in 2018-19’.

The Queensland State Infrastructure Plan (SIP) (2016) includes an outcome that ‘Where large surplus state land sites are disposed in the market for residential purposes, 15 per cent of new dwellings are designated for social/affordable housing’.

The approach utilised by the Queensland State Government through the ULDA and subsequently EDQ was not inclusionary zoning in the proper use of the term. While there were targets for affordable housing for low to moderate income households, there were no measures in place to ensure that was housing was affordable for the target group was made specifically available to them. The approach increased the supply of more affordable housing into the overall market. This housing was generally smaller (1 bedroom) and did not have a carpark. No subsidy was attached to the delivery of this housing.

There appears to be no outward facing progress of the inclusionary requirement for affordable housing outcomes on surplus government land as stated in the Housing Strategy and State Infrastructure Plan.

Under the ULDA model more affordable housing was for both rent or purchase. There was no mechanism to identify that housing was more affordable or was targeted, it was more affordable because no subsidy attached to the product.

Previous attempts by the Queensland Government to implement inclusionary zoning (circa 2002) were part of a larger policy initiatives by the Department of Housing to implement a State Planning Policy for Affordable Housing, Residential Development and Community Wellbeing.
New South Wales

There is a growing push to expand Inclusionary Zoning in NSW. This is community driven and the Berejiklian Government has pursued it in a way that may not produce the strongest outcomes. Government can claim to be supportive of Inclusionary Zoning however it has left all the technical work and implementation of relevant schemes to local councils. Implementation will happen on an ad hoc basis where it happens at all.

The Greater Sydney Commission’s (GSC) Regional and District plans (2018) recommended the implementation of Affordable Rental Housing Targets of approximately 5%-10% of uplift in new developments allowed by rezoning in the Greater Metro region, “subject to viability”.

There is no specific planning mechanism to achieve this, however there are provisions in the Environmental Planning and Assessments Act 1979 that allow conditions to be attached to development consent enabling a council to levy for affordable housing contributions (funds) or dedications (dwellings) where the affected area is identified in Statewide Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) – aka SEPP 70. Prior to March 2018 only two metropolitan based LGAs were listed in SEPP 70, and this was then expanded to seven.

In March 2019 the Berejiklian Government extended coverage of SEPP 70 to all local government areas in New South Wales, both metropolitan and regional. A Guideline for the Development of an Affordable Housing Contribution Scheme was also published, and this sets out a preferred methodology for determining the viability of a contribution rate. It also specifies that a contribution scheme may apply where uplift is produced by rezoning, making it unclear how the policy could apply in precincts where some capacity for uplift remains under current the zoning because not all land has been redeveloped yet.

The extension of SEPP 70 does not mean councils are required to implement an Affordable Rental Housing Target, but it appears it will be the only mechanism available to those who wish to do so. Those councils will need to produce precinct based Affordable Housing Contribution Schemes, based on the published guideline, for approval in their Local Environmental Plans. It is evident that the GSC’s recommended target of 5-10% of uplift subject to viability will be applied by Government in considering proposed schemes for approval.

SEPP 70 does not specify whether a contribution or a dedication is preferred. A relevant scheme is currently only in use in the City of Sydney LGA, where the preference is for monetary contributions in lieu of dedicated affordable housing. Other schemes are in development and it is clear that not all councils will follow City of Sydney’s model, resulting in an unnecessarily diverse and complex system.

This complexity is likely to see a number of proposed schemes challenged on “viability” grounds.

Section 7.32 of the Environmental Planning and Assessments Act 1979 (NSW) allows a consent authority to apply IZ conditions as part of a development approval, as long as the affected land is identified in SEPP 70 and the local council has made provision for such a scheme in their Local Environment Plan.

These will be set out in local councils’ Local Environment Plans. Currently only one local council has schemes in their LEP, and several others are in the process of developing schemes for approval and inclusion in their LEPs. This is very much a live policy area in NSW.
Developers need to comply with schemes that are approved and included in LEPs. Approval is likely to be subject to the GSC's recommended target of 5-10% of uplift and subject to viability. There is to be a tool for determining liability.

An example of the effectiveness of inclusionary zoning in NSW is the relationship between City West Housing and the City of Sydney. However, it is likely that other schemes will be developed in the coming years.

Inclusionary zoning can technically apply to both purchase and rental of properties but in practice it applies to rental housing. There are particular barriers to affordability of housing in Sydney that make IZ for home purchase an unlikely prospect.

Some other councils have existing relationships with CHPs through their Voluntary Planning Agreement policies, and these will translate well to IZ schemes once developed and approved.

Strictly speaking there is not, however the involvement of CHPs as either asset owners or tenancy managers means in practice most assets are subject to ongoing affordability until/unless they are divested.

Inclusionary zoning is limited in scope in New South Wales, but an important part of the equation.

**Victoria**

There is no mandatory Inclusionary Zoning for affordable housing in Victoria.

However, development contributions for affordable housing may be secured via the planning system through four routes:

1. **Floor Area Uplift (or density bonus schemes)**, whereby developers can pay for additional height / density by transferring some of the additional units to a registered housing agency (like a Housing Association) at zero consideration. These relatively recent schemes are in place in Fishermans Bend (late 2018) and the Central City area (2017) but are yet deliver any social housing.

2. **Non mandatory Affordable Housing Targets.** These are in place in major brownfield areas (Fishermans Bend (operating in tandem with the FAU scheme) and Arden Macaulay). Proponents are not obliged to meet targets but (supposedly) must show good cause if they are not going to fulfil these objectives. The targets in both Fishermans Bend and Arden Macaulay are set at 6% covering the span of housing types from homeless through to affordable housing for key workers. ‘Affordable housing’ is defined in the planning legislation.

3. **Contributions secured through ad hoc negotiations** and confirmed in binding planning agreements (under Section 173 of the planning legislation). These routinely get quashed at appeal if the developer is resistant to making a contribution. However, some developers are happy to make voluntary contributions in various forms.

4. **Value sharing at rezoning stage**, when, say, industrial land is up-zoned to residential or mixed use. The planning authorities can build in a value sharing obligation delivered in the form of transferred affordable housing or housing made available at a discount to registered providers. This approach has been applied in a handful of locations including the Amcor site at Alphington and the Don site at Altona North. These have yielded very low affordable
housing outcomes – less than 1.5%. However, there is scope to increase these requirements in future rezonings as stakeholders become better educated about the scale of value uplift involved.

Inclusionary zoning in Victoria has had negligible outcomes to date. The Government has focussed on a voluntary agreements approach. There is lots of talk and lots of training about how to negotiate agreements. But in the absence of mandatory requirements, progress is slow.

Affordable housing for so called inclusionary zoning purposes is defined in the planning legislation. It can cover purchase, but most policy discussion is around rental. In FAU arrangements, stock is expected to be transferred at zero consideration to registered providers. Other agreements can feature a blend of permanent and time limited affordable housing contributions.

Ad hoc mechanisms have been used sporadically to secure permanent affordability for owner occupancy. But such instances are so rare in Victoria as to be inconsequential.

IZ if applied in the orthodox way – as per Ultimo Pyrmont and Green Square in NSW – one might expect that it could generate a substantial but minority contribution – say around one third of an overall requirement of 10% - 15% social housing across a city or region.

Value sharing is also warranted on top of what this Ultimo Pyrmont style IZ scheme might generate. However, in principle, Value Sharing should be able to be applied to a broad range of public benefits, not just affordable housing.

**Australian Capital Territory**

The ACT Government has set housing targets for both in-fill (urban renewal) and Greenfields sites but there is no set, consistent inclusionary zoning mechanism in place to support their achievement.

The targets are to be set annually by an interdepartmental group comprised of staff from the following Directorates:

- Chief Ministers’ Treasury and Economic Development (Land Release)
- Environment, Planning & Sustainable Development
- Housing and Community Services
- City Renewal Authority
- Suburban Land Agency

ACT Shelter and the Property Council (ACT) have asked for Industry representatives to be invited to join this group to provide external input and oversight.

The housing targets are prescribed in a regulation which requires that they be tabled annually and published on the following website as part of the ACT Government’s Land Release Program:

The ACT Govt is reviewing the [Territory Plan](https://www.planning.act.gov.au/topics/land-release) and public consultation on this is anticipated to

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commence in late March. This will provide an opportunity for sweeping Residential Zoning reform and we will recommend that Industry be invited to work with Government to design and enshrine consistent IZ mechanisms in both the Territory Plan and Planning and Development Act 2007.

Inclusionary zoning is general (In-fill and Greenfields) rather than specific to designated to areas. Though there is no mechanism or incentive.

Requirements for projects to qualify are not yet specified but the Territory is examining ‘Value Uplift Recapture’ and waivers of its Lease Variation Charge in exchange for affordable housing quotas.

It is too early to tell if inclusionary zoning is effective. To date, social housing targets have resulted in a net reduction of social housing in new developments relative to total stock. This is particularly pertinent in the inner north and south close to jobs and transport corridors. 1288 tenants were ‘decanted’ with zero social housing going back into these urban renewal sites.

This may change when the next 1000 public housing sites slated for demolition are replaced and blocks of land commence being sold in the new suburb of Whitlam (500 blocks are slated for allocation to public and community housing – including shared equity purchase in a touching tribute to the PM after which the new suburb is named).

Economic Development Directorate data suggests the previous scheme of up to 20% of homes in greenfields sites being affordable to purchase by people earning <$150K per year (Price thresholds set per square metre dwelling) did ensure more Canberrans were able to purchase during a time of record high home-purchase prices in developments subject to this target than across the Territory generally.

The ACT has published its indicative Land Release Program for 2018/19 – 2021/22


The document outlines targets for social and affordable housing over forward estimates.

As of October 2018, the new social and affordable housing target (minimum of 15% of blocks/dwellings in Greenfields and Urban Renewal sites) includes rental housing.

This supersedes the previous scheme (up to 20% of sites in Greenfields Developments) available for purchase below specified price thresholds based on square metres of the dwelling.

ACT Shelter raised concerns with the Chief Minister about properties purchased under the previous Affordable Home Purchase Program being on-sold to investors and let at Median Area Market Rent (12 months and 1 day after purchase) and Treasury and Economic Development Directorate Data demonstrated that home purchase incentives (2007/08 – 2014/15) had generally been going to households in income quintile 3 when the intended target was households in income quintile 2.

In response, the ACT Government has established the following central register for applicants for Territory Level Home Purchase Assistance and Shared Equity Schemes. This is designed to prevent nepotistic double-dipping and on-selling:

As the targets were adopted by Cabinet in October 2018 it is too early to cite specific examples. Unfortunately, the urban renewal sites where 1288 public homes once stood would have provided an ideal opportunity for inclusionary zoning as height restrictions were relaxed allowing density to triple the anticipated number of replacement dwellings – but the social housing target in these sites is zero.

ACT Shelter notes a further 1000 properties (9% of the current portfolio) are slated for demolition and ‘asset recycling’ through the 2nd tranche of urban renewal overseen by the Public Housing
Taskforce.
We are working with the Property Council and Community Housing Industry Association to lobby for a consistent Inclusionary Zoning mechanism to be designed with industry input to ensure this lost opportunity is not repeated over the next five years during the second tranche of ‘Renewal and Revitalisation’.
Three developers have told ACT Shelter they are willing to work within an Inclusionary Zoning framework to achieve quality affordable housing outcomes, including through a Build-to-Rent model – what they require from Government is tripartisanship, a consistent incentive or mechanism that is transparent at the time Development Applications are publicly notarised - so they can price the requirements into their Development Assessments.

The ACT Government has committed to investigating caveats on title deeds to ensure affordable and social rentals are not on-sold and let at Median Area Market Rent. There is no specific mechanism in place other than the aforementioned database. Proposed actions are outlined in Goals 1 & 5 of the ACT Housing Strategy. The ACT Government has acknowledged the need to track affordability across time and believes the database will be a starting point from which future tracking can expand.

The ACT Government has committed $101 million over four years (2018/19 – 2022/23) to fund construction of 400 new public housing dwellings and support the refurbishment or renewal of a further 1000.
There will also be assistance provided to the Community Housing Industry to incentivise expanding its role to support the achievement of the 15% affordable and social housing targets going forward.
We will have more clarity around the specific role IZ will play when the Territory Plan and Zoning reforms are progressed in 2019 and 2020.

**Tasmania**

Tasmania’s planning system is silent about affordable housing, which is typically seen as outside the scope of our planning system. Tasmania’s planning system needs to play its part in meeting our housing needs by encouraging affordable housing in our cities and towns. As yet, this has not happened. In spite of Tasmania’s current housing crisis, there continues to be a deep seated resistance to using planning mechanisms such as inclusionary zoning to address the chronic shortage of affordable housing.

Tasmania has seen little policy development in the area of inclusionary zoning. We have historically relied on public housing to deliver at the least affordable end of the market. Until recent years the private market remained relatively affordable (especially in comparison to some mainland cities) for both renters and purchasers, although people on the lowest incomes always struggled with the costs of housing and other living expenses.

Until recent years, housing development in Tasmania moved slowly. Demand was not expanding, turnover of properties was low, broad acre land supply was good, and house prices were low. This meant low margins for developers, so there were low levels of housing release and what occurred was typically small scale.

Successive state governments tended to avoid interventions, such as inclusionary zoning, that might (or be perceived to) reduce the commercial margins on housing development.
This neglect of the planning system to address the chronic and critical shortage of affordable housing in Tasmania is no longer appropriate. There have been seismic shifts in Tasmania’s housing market over the last five years with, for example, Tasmania’s revenue from stamp duty increasing by one hundred million dollars. Rents are outpacing people’s incomes, and rental stress is at an all time high, affecting over 8000 households across the State.

Tasmania now has a buoyant housing market, with increased opportunity for developer gain, so larger scale developers who previously had focused on commercial sector are increasingly looking to move back into residential development. This new profitability means developers can arguably afford to deliver on social obligations if an appropriate legislative framework to allow this is established.

Shelter Tas sees an opportunity to leverage from the increased investment in residential development to deliver inclusionary zoning. Inclusionary zoning is a way for private development to make an effective and important community contribution as a shared partner in the development of our towns and cities. While the planning system cannot solve the entire housing crisis in Tasmania, it is part of the range of tools that should be deployed to increase appropriate supply in appropriate locations.

Inclusionary Zoning is not legislated in Tasmania. The Housing Land Supply Act 2018 – allows the Minister to fast track rezoning of public land to make it available to the Director of Housing. This is purely an expedited process, the rezoning and development of government owned land for public or social housing can take place under the existing planning system, but was significantly slower prior to this legislation. This pathway is open to Crown land, it does not capitalize on opportunities through private developments.

There has not yet been a substantial debate about specific models of inclusionary zoning in Tasmania. Shelter Tas looks forward to a more extensive discussion when the findings of this Report are available. Shelter Tas supports inclusionary zoning and have argued for it our budget submissions. We are aware of support from the Community Housing sector and other experts and stakeholders.

While there are some local initiatives around master planning in relation to new affordable housing developments, this is not part of any formal inclusionary zoning within the Tasmanian planning system.

There have been some investigations around ‘shop top’ accommodation, but no outcomes as yet.

In Tasmania, inclusionary zoning is a mechanism that could be used within the planning system to increase supply of affordable housing. Planning plays an important role in guiding and shaping our communities. Other States have adopted progressive approaches to addressing their housing needs through their planning systems. It is time to modernize Tasmania’s planning system to help deliver much needed affordable housing for Tasmanians.
Results – survey

1. Select the category that best describes you

The respondents represent a range of professions resulting in a variety of perspectives and industry views. Interestingly, many private citizens completed the survey, which shows that housing policy and inclusionary zoning issues are of interest and concern to the wider community.
2. and 3. State and location

Respondents provide insight from across Australia, representing each State and Territory and metro and regional locations.

4. Do you think that action needs to be taken to improve housing affordability in your State/Territory?

97% of respondents think that action needs to be taken to improve housing affordability across Australia.
5. Is inclusionary zoning included in your state?

The results show that many respondents were unsure if inclusionary zoning was included in their state. This may be due to the high number of private citizens who completed the survey who may not be aware of current housing policies, or due to models like inclusionary zoning not directly referred to as such.

6. How effective is it? (1 being not effective and 5 being very effective)

In areas where inclusionary zoning is included, results show that respondents don’t believe it is effective for encouraging the development of affordable dwellings. Results may be skewed as more people said its ineffective than people who said its included in their state.
7. Inclusionary zoning policies should provide the following types of housing (rank options with 1 most important and 4 least important)

(This graph shows weighed averaged results)

Social Housing to rent (25% of household income) is the most important inclusionary zoning policy according to respondents.
8. If you agree that governments should create or improve their inclusionary zoning policies, please rank the following mechanisms from 1 being the most important to 5 being the least important.

It is evident that voluntary inclusionary zoning is the least important mechanism for inclusionary zoning policies. The most popular option being mandatory inclusionary zoning.

9. Should incentives be provided to developers/builders to achieve inclusionary zoning requirements for the supply of social and affordable housing?

81% of respondents agree that incentives should be provided to developers to achieve inclusionary zoning requirements for the supply of social and affordable housing.
10. If yes, who should provide the incentives? Please rank in order of preference)

Federal Government is the first preference to provide incentives for 66% of respondents. Followed by State Government then Local Government.

11. What incentives are required to improve the supply of social and affordable housing?

Respondents had the option of choosing multiple options to answer the question. It’s clear to see that local government rates holidays were the least popular choice.

There was an open text option available in addition to the above responses. Changes to land tax, tax incentives, use of land, reduction of government fees and charges and stamp duty were reoccurring themes that emerged in the responses.
12. Other comments

The open text answers to Question 12 were analysed thematically to produce key themes, listed in order of strength of the responses, from strongest to weakest as follows:

1. **National Leadership**

Respondents are calling for strong, consistent support by Federal Government as a pre-cursor to coordinate improved measures by State/Territory Governments and local governments to achieve more affordable housing outcomes for all household income levels. Strong National leadership and a National Housing Strategy are required to ensure the right housing system policy settings are in place and can be implemented and evaluated. One respondent said that “all levels of government must step up to achieve better social and affordable housing outcomes in new construction”.

2. **Mandatory Inclusionary Zoning**

There was strong support by respondents to introduce mandatory inclusionary zoning measures, rather than voluntary measures.

3. **Retention of Affordability & Data**

Respondents said that affordability should be retained over time when affordable home ownership properties are bought and sold. A smaller number of respondents added to this theme, stating that they did not want to disadvantage people who purchased an affordable property by disallowing any capital growth on their investment. Many respondents agreed that we should collect and keep data on housing outcomes for evaluation of any new policy measures.

4. **Public Education**

Respondents said that the public require education and lay-person language information about inclusionary zoning so that they can understand the issues that are relevant to them on this topic and form a view on any new or proposed government policies that emerge from this work.

5. **Value Capture**

Respondents said that when land is rezoned to include residential construction, any uplift in its value should be applied as an incentive for developers to achieve mandated social and affordable housing outcomes or it should be contributed to a fund that community housing providers can access to build social housing.

6. **Build to Rent**

Respondents said that inclusionary zoning measures should include build to rent products, so that renting affordably, whether at 80% of market rate or as a percentage of household income, are both included in future residential construction.
National Shelter Policy Position

Current National Shelter Policy re planning systems

Government Owned Land Release

Any government owned land release for development that is well located should achieve a minimum 30% affordable housing.

City Deals and other specific measures

National Shelter welcomes the land release from the Commonwealth provided by City Deals and other land releases announced in the 2017 Federal budget. Unlocking land and negotiating planning and financing reforms combined with the creation of the National Housing Infrastructure Facility (NHIF) are welcome reforms which will help to improve the land and financing available for affordable housing.

National Shelter recommends that in any City Deal or Commonwealth land release and/or development drawing on the NHIF, that 30% of all housing developed be affordable housing with one third to be social housing, one third discounted (at least 20%) market rental and one third be affordable home purchase. Home purchases under such schemes should retain affordability for the lifespan of the house and not just be a windfall for the first purchaser.

City deals should establish an affordable housing target that is supported by two measures:

- Funding as one-off grant to help subsidise affordable housing (as NHIF and/or city deals dollars)
- Government owned land as additional measure to subsidise affordable housing

Value Capture

An important component of planning is the creation of additional land value through rezoning or the development of new transport corridors, or value released through developments drawing on the NHIF. It is important that when the value of land is increased that a proportion of that increased value be captured for public use rather than being a windfall gain for land owners or developers.

National Shelter recommends that up to 50% of increased value and no less than 30% be captured to fund affordable housing development. Revenue raised via value capture to be held in a trust fund to be administered through the NHFIC and distributed to CHPs.

Inclusionary Zoning

Inclusionary zoning is a feature of planning systems in some Australian jurisdictions including South Australia and to a lesser extent, New South Wales, and reports varied success. In South Australia
some new developments are required to include 15% affordable housing with one third of that percentage for social housing. Inclusionary Zoning may also operate to relax or provide incentives to developers to include levels of affordable housing in developments\textsuperscript{iii}. The literature on inclusionary zoning refers to the need for a simultaneous density bonus and other concessions to ensure this policy measure has a positive impact on the supply of affordable housing, but these are not currently available in South Australia. The majority of projects that achieve the 15% measure in South Australia are located on government land and it is difficult to ascertain evidence about how inclusionary zoning affects the capacity of industry participants to build affordable housing. The price point of some of the new builds in Adelaide is out of reach for people living on low incomes ($330,000+). So inclusionary zoning is important, but a range of other complementary measures are needed to better serve people living on low incomes and reduce homelessness.

\textbf{National Shelter} recommends that the Commonwealth encourages and provide incentives to State and Territory governments to include inclusionary zoning provisions in planning legislation, mandating 30% affordable housing requirements in all new developments, with a range of complementary measures.

\textbf{Inclusionary Zoning Project}

Following the survey conducted by National Shelter over Jan/Feb 2019 and templates on the current status of Inclusionary Zoning in states and territories the following trends have been identified:

- Strong support for inclusionary zoning and mandated requirements over voluntary ones
- A lack of proper understanding among many about what IZ is and how it may be used
- A really strong concern about affordable housing and the need to improve affordability for renters as well as owners
- Concerns about the benefits of affordability being lost after the first purchase in ownership approaches
- Inconsistency between jurisdictions and approaches to IZ
- Strongest support for social and discounted market rental housing

This presents us with the following options to amend our policy:

- National Shelter promote all jurisdictions to mandate inclusionary zoning
• National Shelter promote a federal role in developing an inclusionary zoning element to national housing policy
• National Shelter promote opportunities to educate on the meaning and purpose of inclusionary zoning
• Inclusionary Zoning must include options for rental housing in all states and territories
• Inclusionary zoning must include mandated levels of social housing in redeveloped social housing estates
• Properties provided under inclusionary zoning must be at a standard making them indistinguishable from other property in their local area
• State/Territory Shelters to promote Inclusionary Zoning be mandated within their jurisdictions

References


i https://www.budget.gov.au/2017-18/content/glossies/factsheets.htm
