



Our Ref: MF:KDJ:20110073

17 October 2011

Dr Matthew Turnour B Econ, LLB, MA (Res), PhD  
Simon Fisher LLB (Hons), Cert PLT, LLM  
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Australian Competition and Consumer Commission  
Level 24  
400 George Street  
Brisbane Qld 4000

FILE No:
DOC:
MARS/PRISM:

cc. Hew Atkin  
Assistant Director, Adjudication Branch  
Australian Competition & Consumer Commission  
By email: Hew.Atkin@acc.gov.au



To whom it may concern

**Re: Queensland Affordable Housing Consortium Ltd  
Section 93(1) Notification**


We act on behalf of Queensland Affordable Housing Consortium Ltd. Please find enclosed a section 93(1) Notification given by our client. We further enclose a cheque in the amount of \$100.00 directed to the ACCC, being in satisfaction of the applicable lodgement fee.

We request that all annexures to the Form G submission be excluded from the public register. This request would be made on the following grounds:

- a. The documents are commercially sensitive. Our client has invested significant resources into their creation. The National Rental Affordability Scheme ("NRAS") has created a burgeoning market in which such documents are key to the commercial success of an Approved Participant's business model.
- b. Various models exist within the NRAS, of which our client's model is but one. Our client is concerned by the potential loss of commercial advantage that may eventuate if the documents were to be made publically available. Several examples already exist of other entities stealing the intellectual property of another Approved Participant to further their own model.
- c. The Form G provides a sufficient description of the nature of the activity that is to be engaged in. The description of the activity within the Form G therefore provides sufficient detail to ensure the public interest in the notification is served.

We have cc-ed Mr Hew Atkin into this correspondence by email. Mr Atkin is the officer who handled our client's prior section 93 notification, given in respect of its existing model.

Yours faithfully  
NEUMANN & TURNOUR



Mark Fowler  
Director  
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# Form G

Commonwealth of Australia  
*Competition and Consumer Act 2010 — subsection 93 (1)*  
**NOTIFICATION OF EXCLUSIVE DEALING**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with subsection 93 (1) of the *Competition and Consumer Act 2010*, of particulars of conduct or of proposed conduct of a kind referred to subsections 47 (2), (3), (4), (5), (6), (7), (8) or (9) of that Act in which the person giving notice engages or proposes to engage.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

**1. Applicant**

(a) Name of person giving notice:  
*(Refer to direction 2)*

N95608 Queensland Affordable Housing Consortium Ltd (A.C.N. 132 604 552 )  
("QAHC")

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(b) Short description of business carried on by that person:  
*(Refer to direction 3)*  
Approved Participant within National Rental Affordability Scheme  
("NRAS") (enacted by *National Rental Affordability Scheme Act 2008* (Cth)  
("the Act"))

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(c) Address in Australia for service of documents on that person:

.c/- Neumann & Turnour Lawyers,  
GPO Box 649,  
Brisbane, QLD, 4001

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**2. Notified arrangement**

(a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:

- (1) Property and Tenancy Management Services;
- (2) the functions of the NRAS Approved Participant;
- (3) Repair and maintenance services;
- (4) Supply of residential accommodation;
- (5) Supply of insurance services.

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(b) Description of the conduct or proposed conduct:

Firstly a brief overview of the National Rental Affordability Scheme is necessary. The National Rental Affordability Scheme or “NRAS” commenced by the enactment of the *National Rental Affordability Scheme Act 2008* (Cth), the *National Rental Affordability Regulations 2008* (Cth) and newly inserted Division 380 of the *Income Tax Assessment Act 1997* (Cth). The Scheme’s principal aim is to stimulate the construction of 50,000 new dwellings within Australia, which dwellings are to be let to tenants for a maximum of 80% of the then current market rent, where those tenants meet means tested eligibility criteria.

With respect to the QAHC model, by way of summary, QAHC provides two methods of NRAS service delivery to investors. The first is the Head Lease model, which had already been notified to the ACCC pursuant to section 93. The second model is enshrined within the NRAS Delivery Agreement, a copy of which is annexed at Annexure A.

By entering into the NRAS Delivery Agreement with QAHC, the registered owner of a particular dwelling appoints QAHC as agent and attorney for all dealings with respect to that dwelling within the scope of NRAS. That authority includes at clause 12 the ability to appoint a Property Manager for the Owner and to enter Residential Tenancy Agreements for the Owner.

To ensure compliance with the requirements of the Act, QAHC will require an Owner to:

- (a) enter a Property Management Agreement (Annexure B) with a Property Manager (that is selected by QAHC). This Agreement is entered by QAHC exercising a power of attorney given under the NRAS Delivery

Agreement (see clause 12). The PAMDA Form 20A and the Property Management Schedule provide sample forms of information that are provided by the Real Estate Institute of Queensland. In certain cases the enclosed Appointment of Agent will be used in the place of the PAMDA Form 20A; and

- (b) enter a Residential Tenancy Agreement with a residential tenant that is selected by the Property Manager. Such agreement will be entered by the Property Manager on behalf of the Owner, but where necessary may be entered by QAHC pursuant to clause 12 of the NRAS Delivery Agreement. It will encompass standard terms and special conditions that are required by QAHC.
- (c) receive supplies from repair and maintenance contractors as may be notified by Property Managers pursuant to the Property Management Agreement (see Item H to the Property Management Schedule and special conditions 6.6 and 19.4 to the Property Management Agreement)
- (d) receive insurance from a nominated insurer (under clause 11.1(a) of the NRAS Delivery Agreement).

as a condition of entering into the NRAS Delivery Agreement.

It will also require the Property Manager to enter:

- (a) a Property Management Agreement with an Owner;
- (b) a Deed with QAHC, which is entered to ensure compliance with the NRAS (a copy of the standardised version of that Deed may be supplied upon request)

as a condition of it entering into the NRAS Delivery Agreement.

The documents annexed are for use within the Queensland jurisdiction. These documents have been amended in some regards to account for localised jurisdictional distinctions in New South Wales, Western Australia and Victoria, however the basic structure as outlined above will not be altered. The precise terms of these documents may alter at a later date, however the consent mechanism as described above will not fundamentally alter. It is also material that NRAS grants of approval are effective for a time frame of 10 years, and accordingly the provision of NRAS services by and appointment of power of attorney of QAHC under this Agreement are valid for such a time as the approval remains valid.

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Furthermore your attention is drawn to clause 11.1(a) of the NRAS Delivery Agreement by which QAHC may require the Owner to adopt an insurance policy authorised by QAHC.

*(Refer to direction 4)*

**3. Persons, or classes of persons, affected or likely to be affected by the notified conduct**

(a) Class or classes of persons to which the conduct relates:

*(Refer to direction 5)*

(1) Owners of dwellings approved under the NRAS as Approved Rental Dwellings.

(2) Property Managers appointed by QAHC, in its capacity as NRAS delivery agent for the dwelling, to conduct property and tenancy management of the dwelling.

(3) repair and maintenance suppliers supplying services to the Owner pursuant to the Property Management Agreement.

(4) Residential Tenants who have entered a Residential Tenancy Agreement with \_\_\_\_\_ an \_\_\_\_\_ Owner.

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(b) Number of those persons:

(i) At present time:

The total number of NRAS Allocations currently held by QAHC is 3,910. The number of dwellings approved may increase if Government awards further Allocations.

Number of dwellings tenanted or ready to let likely to be over 2,300 by June 2012

There are current eleven property managers who have been approved by QAHC for the provision of property management within the NRAS.

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(ii) Estimated within the next year:

*(Refer to direction 6)*

The Property Manager portfolio may increase. The eventual total number of property \_\_\_\_\_ managers \_\_\_\_\_ is \_\_\_\_\_ not \_\_\_\_\_ currently \_\_\_\_\_ known.

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- (c) Where number of persons stated in item 3 (b) (i) is less than 50, their names and addresses:

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**4. Public benefit claims**

- (a) Arguments in support of notification:  
*(Refer to direction 7)*

The *National Rental Affordability Scheme Act 2008* (Cth) ('the Act') requires the Approved Participant to perform certain functions. These are listed at Regulation 17 and include:

- (1) The approved participant must ensure that each approved rental dwelling, and the management of it, complies at all times with the landlord, tenancy, building, and health and safety laws of the State or Territory and local government area in which the dwelling is located.
- (2) The approved participant must ensure that all special conditions [to the allocation] are complied with.

In order to ensure compliance with these requirements QAHC must appoint a Property Manager selected by itself on the basis of the Property Manager's ability to assist QAHC in meeting the requirements of the NRAS. In certain circumstances the Federal and Queensland State Government have imposed a requirement that QAHC seek approval of a Property Manager for a development as a condition of QAHC's NRAS Allocation. It may then be concluded that, in the interests of the establishment of the NRAS, Approved Participants have been required, where they outsource Property and Tenancy Management, to require absolute discretion in the appointment of contractors.

Within this legislative framework, QAHC requires the ability to appoint the Property Manager in its sole discretion as QAHC must ascertain that such third party property managers are able to comply with the Act. In so acting QAHC intends to act so as to fulfil the objectives of the NRAS, which include the provision of affordable housing to 50000 low to middle income

Australians.

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.Requiring property managers to comply with the Act will have the benefit of providing additional protection to Owners, who are depending on the conduct of the property managers in order to obtain the NRAS Incentive. Owners will benefit from the selection of Property Managers who have an understanding of the unique requirements of the NRAS and a demonstrated ability to comply. Residential tenants of Approved Rental Dwellings will benefit from the greater level of compliance required of property managers by QAHC. The general standard of conduct of a property manager will be enhanced by requiring compliance with the Act.

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Such will also prevent NRAS dwellings being rented on the open market, as opposed to being rented to the middle to lower income brackets which the NRAS seeks to target.

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(b) Facts and evidence relied upon in support of these claims:

The *National Rental Affordability Scheme Act 2008* (Cth) and the *National Rental Affordability Scheme Regulations 2008* (Cth) and accompanying legislative and policy framework.

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**5. Market definition**

Provide a description of the market(s) in which the goods or services described at 2 (a) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions): *(Refer to direction 8)*

Property management within Queensland, New South Wales, Victoria and Western Australia and potentially nationally. Suppliers affected may be other property managers within those listed areas.

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**6. Public detriments**

- (a) Detriments to the public resulting or likely to result from the notification, in particular the likely effect of the notified conduct on the prices of the goods or services described at 2 (a) above and the prices of goods or services in other affected markets:  
*(Refer to direction 9)*

There is no likely effect on the price of the property management services. The Property Management services are offered at market rates. As outlined above, the requirement is likely to lead to an increase in the quality of the services provided by property managers.

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- (b) Facts and evidence relevant to these detriments:

Not applicable

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**7. Further information**

- (a) Name, postal address and contact telephone details of the person authorised to provide additional information in relation to this notification:

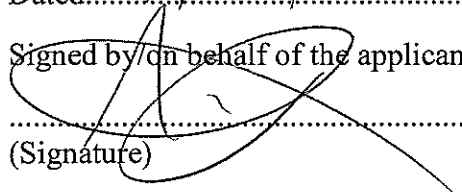
Mark Fowler  
Neumann & Turnour Lawyers  
Phone: 07 3837 3600

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Dated..... 17 October 2011 .....

Signed by/on behalf of the applicant

(Signature)



Mark Andre Gregory Fowler

(Full Name)

Neumann & Timmer Lawyers

(Organisation)

Solicitor for ZATC

(Position in Organisation)

## **DIRECTIONS**

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing their notification.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the business of the person giving the notice in the course of the which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in section 47 of the *Competition and Consumer Act 2010* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. Describe the business or consumers likely to be affected by the conduct.
6. State an estimate of the highest number of persons with whom the entity giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.
7. Provide details of those public benefits claimed to result or to be likely to result from the proposed conduct including quantification of those benefits where possible.
8. Provide details of the market(s) likely to be affected by the notified conduct, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the notification.
9. Provide details of the detriments to the public which may result from the proposed conduct including quantification of those detriments where possible.