

CHCWA Affordable Housing Series Forum 1
Background Paper
What is Regulation and Accreditation?
What will it mean for Community Housing in WA?
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What is regulation?

In their 2003 paper titled *Stakeholder requirements for enabling regulatory arrangements for community housing in Australia*¹ The Australian Housing and Urban Research Institute (AHURI) loosely define regulation as ...”the implementation of a set of rules or processes achieved through various instruments to ensure social and/or economic outcomes”

Regulation can be considered on a spectrum ranging from self-regulation, where there is no government involvement, through various regulatory arrangements with increasing degrees of government influence and involvement, to explicit government regulation (often referred to as “black-letter” or “prescriptive”)². See Figure 1.

The instruments or tools available to regulators include, but are not limited to: legislation, codes of conduct, standards, registration, accreditation, licensing, negative licensing, funding agreements and performance management frameworks.

The purpose of regulation

In relation to the community housing sector in Australia the need for regulation has primarily come from a risk management perspective arising from a change in government focus from providing direct financial support to organizations to increased endorsement of private partnerships leading to rapid growth of the sector.

The Australian Housing and Research Institute (AHURI) in their bulletin, *Could regulating community housing make a difference to affordable housing*³ state:

“A regulatory framework will not meet all preconditions for private investment or other partnerships but it could meet private investors’ need for assurance/a risk management framework without requiring governmental financial guarantee....Key functions of regulation that would pave the way for private investment include protecting against community housing organisation failure, bringing down the cost of finance, creating a market for community housing, enabling better risk management and providing assurance about management capacity and processes”.

¹ The Australian Housing and Urban Research Institute (2003). Stakeholder requirements for enabling regulatory arrangements for community housing in Australia.

² Commonwealth Interdepartmental Committee on Quasi-regulation (1997) Grey letter law.

³ Australian Housing and Research Institute (2004) Could regulating community housing make a difference to affordable housing. Issue 34

However, it does not necessarily follow that ‘prescriptive’ government regulation is the only alternative. The form that regulation should take is dependent upon a number of factors including; the size of the industry, the risks associated with the industry and the nature or business of the industry.

Forms of regulation

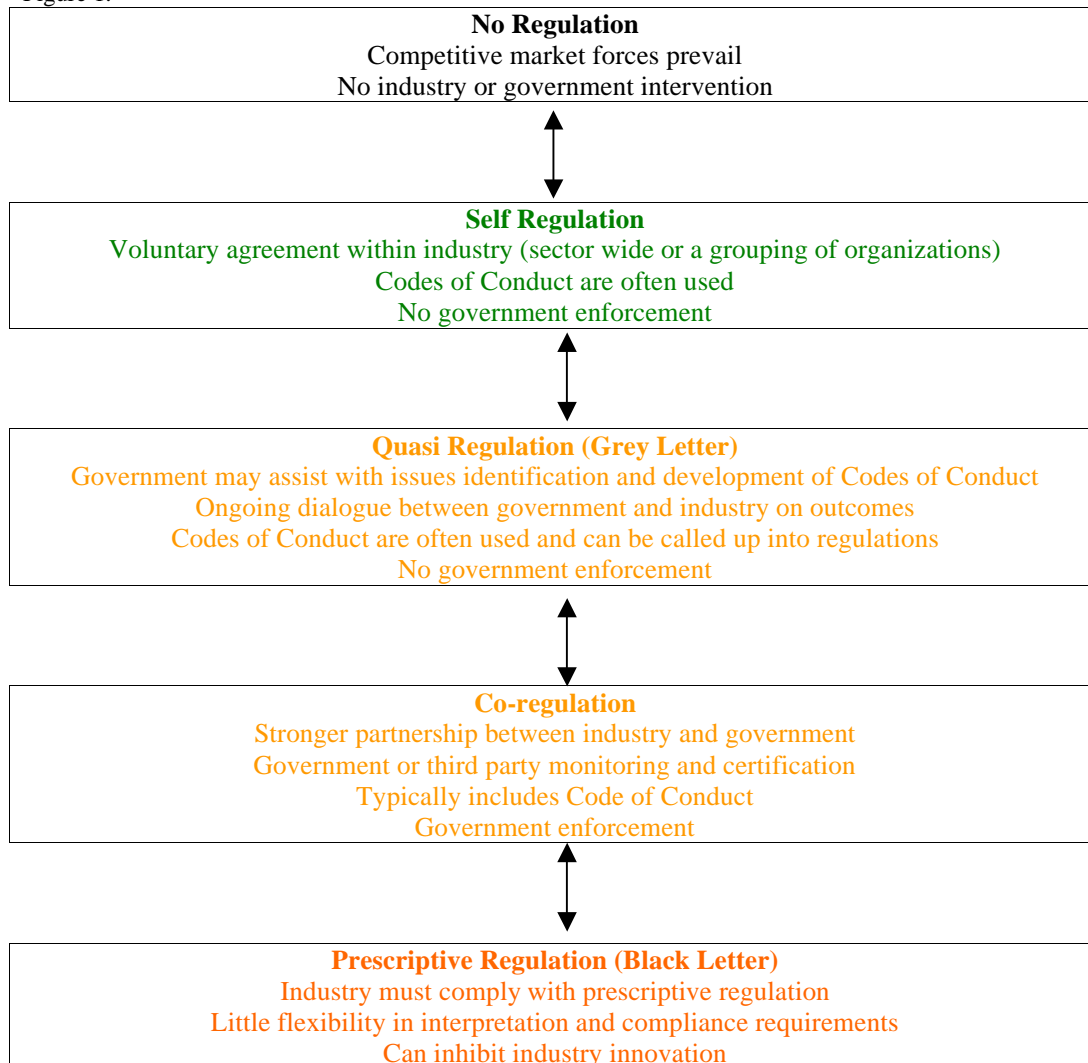
Over the last two decades, governments in developed countries including Australia have moved away from prescriptive regulation. It is claimed this type of regulation can have the effect of inhibiting healthy competition, increasing business costs and prices, and constraining growth.⁴

Regulatory frameworks operate on a continuum between self regulation and prescriptive regulation and contain combinations of voluntary and enforced components. Figure 1 gives a diagrammatic representation of this continuum.⁵

⁴ Office of Regulation Review, Australian Government Productivity Commission (webpage)

⁵ Department of State Development (n. da) Guidelines on alternatives to prescriptive regulation. Queensland Government

Figure 1.



Self-regulation

Self-regulation is most often used to describe systems where an industry or profession regulates its own affairs.

There are many kinds of self-regulatory arrangements. However, virtually all forms of self-regulation have, as a primary instrument, a code of practice setting out the rules or standards members adhere to.⁶

Industry bodies play a crucial role in the self-regulation process as they are in an ideal position to determine which operations need to be regulated and where regulatory pressure should be applied.⁶

⁶ National Consumer Council UK (2003) Self-regulation: the National Consumer Council's Position

Quasi-Regulation

Quasi-regulation refers to the range of rules, instruments and standards where government influences industry to comply, but which does not form part of explicit government regulations.

Quasi-regulation can take many forms such as codes of practice, advisory notes, and guidelines, issued by either non-government or government bodies.⁷

Co-regulation

Co-regulation occurs when the regulatory role is shared between the government and an industry body or occupational representative. Typically, it involves a code of practice (formulated in consultation with the government), breaches of which are enforced by sanctions imposed by the relevant industry or professional organisation.⁸

Co-regulation is very similar to quasi regulation as it is a cooperative approach to industry regulation involving both government and industry and may similarly involve the use of codes of practice. However, co-regulation involves a stronger partnership between industry and government. Here, codes of practice are more frequently called up into government regulation and are typically monitored and enforced by government or third party.

Prescriptive Regulation

Prescriptive regulation is the most interventionist of the regulatory scenarios. This type of regulation is primarily government developed (sometimes drawing on consultations). As the term suggests, regulation is usually legislated in detailed terms and the obligations of organisations complying with regulation are made explicit. With this type of regulatory framework legislated rules are closely monitored and enforced by government directly of a government appointed authority.⁹

To give a working definition of how the systems interrelate it is useful to look at the Code of Practice for community housing in WA. In Western Australia the community housing sector is self-regulated. CHCWA has developed a Code of Practice to establish a set of standards for service delivery and management practices.

Many of the standards outlined in the code reflect legislation, however the code of practice is not a legal instrument, but a voluntary agreement on the part of each community housing provider to conduct their affairs in accordance with agreed principles.

If the sector had developed and implemented the Code of Practice in response to government suggestion that there was a need for such a code and with government

⁷ Commonwealth Interdepartmental Committee on Quasi-regulation (1997) Grey Letter Law

⁸ Law Reform Committee (Discussion Paper May 1997) Regulatory Efficiency Legislation. Parliament of Victoria

⁹ Department of State Development (n. da) Guidelines on alternatives to prescriptive regulation. Queensland Government

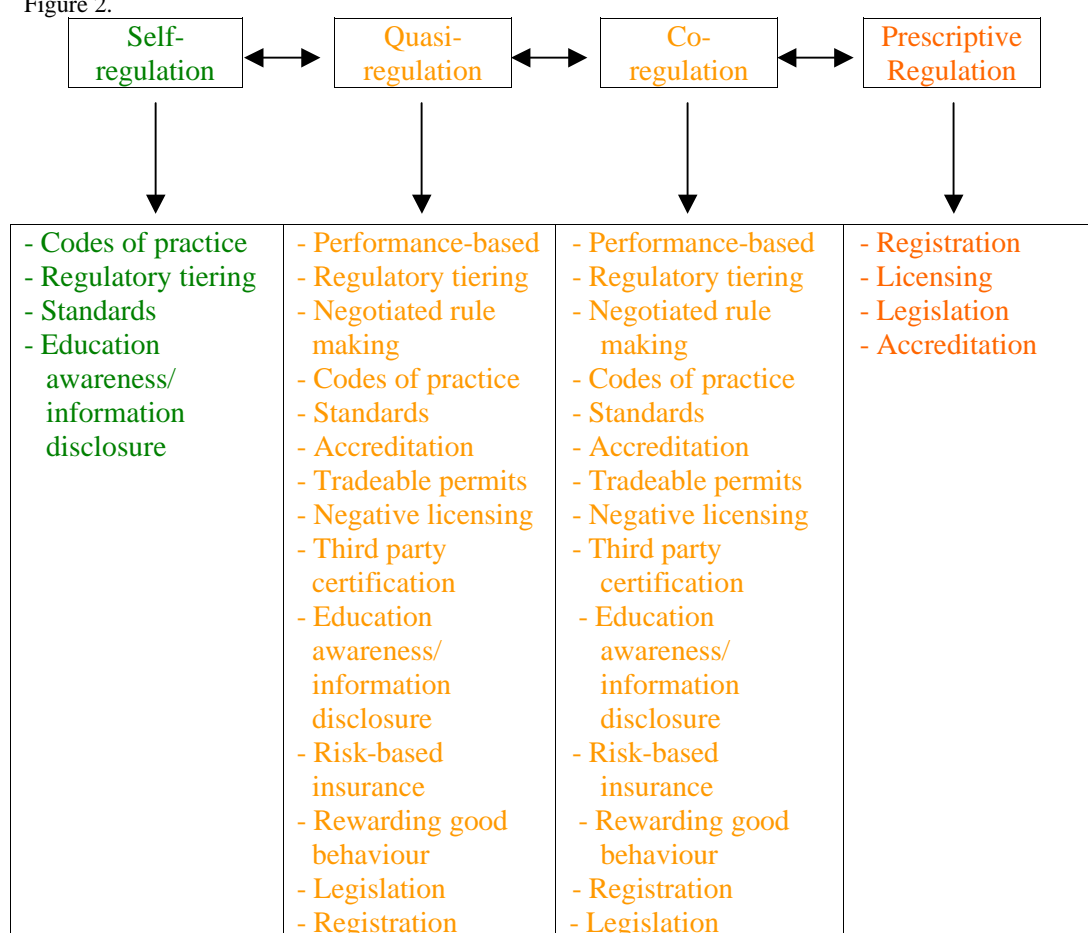
consultation into code principles, its essential characteristics move away from self-regulation towards quasi-regulation.

If the State government were to legislate the code and mandate that organizations register, its character would become less quasi-regulatory and closer to explicit government regulation.

From this, it is evident that these principal forms of regulation should not be regarded as mutually exclusive groups. It is better to consider them as lying on a continuous regulatory spectrum, ranging from no government involvement to complete government control, with quasi-regulation occupying the middle ground.¹⁰

Tool/Instruments in a Regulatory Continuum

Figure 2.



¹⁰ Department of State Development (n. da) Guidelines on alternatives to prescriptive regulation. Queensland Government

Regulatory Options for Community Housing

Community housing organizations are subject to a wide range of regulations that affect businesses generally such as the Associations Incorporations Act, the Residential Tenancies Act and the Disability Services Act, to name but a few. However, this section is primarily concerned with regulation as it could be applied to the specific business of community housing.

As depicted in Figure 2 there are range of instruments or tools of regulation that can be used in a regulatory framework. These are described in detail in the attached document sourced from the Queensland Government¹¹ and AHURI¹².

Of these mechanisms the Kennedy Report (Barbato et al, 2003: 17) identifies the following tools as being the most applicable regulatory options for community housing in Australia.

Legislation - was proposed as the core of a regulatory framework for community housing. It was suggested that expansion and amendment of existing Housing Acts, rather than development of new legislation, would be a more cost and time-effective approach.

Registration – The report proposed that legislation would establish the process for registration of CHOs. In the case of serious breaches of the Act and/or funding agreement, an organisation could be de-registered (negative licensing).

Standards – Compliance with service delivery and performance standards could be linked to registration criteria and/or funding agreements. However the National Community Housing Standards would not be appropriate as they are geared towards quality improvement rather than simply providing benchmark standards. The Kennedy Report suggested a sub-set of the existing service standards could be used – these will be further explained when we get to specific state frameworks.

Accreditation - The Kennedy Report recommended that accreditation of CHOs remain voluntary with its current emphasis on quality improvement. Introduction of a mandatory system for community housing could result in the costs outweighing the benefits. However, it was suggested that the accreditation system's value to a regulatory framework could be strengthened by linking accreditation to a registration system and/or funding agreements.

Codes of practice – The Kennedy Report proposed that existing Codes of Practice continue to be implemented as voluntary tools for quality improvement.

Funding agreements – The Kennedy Report proposed a regulatory framework that extends beyond funding/service agreements. However (flexible) agreements would

¹¹ Department of State Development, Queensland Government (nd. a) Alternatives to Prescriptive Regulation: Instruments/tools Guidelines on Alternatives to Prescriptive Regulation

¹² Barbato et al (2003) Stakeholder requirements for enabling regulatory arrangements for community housing in Australia. AHURI

continue to delineate individual arrangements in areas such as payments, reporting, monitoring and performance requirements.

Regulatory Tiering – The Kennedy report proposed a tiered approach to regulation for community housing. This would be designed to accommodate the vast differences that characterise the community housing sector – differences in size, location, management models and client-bases.

Accreditory and Regulatory frameworks currently in use in community housing in Australia

The purpose of this section is to explore different community housing regulatory and accreditory frameworks throughout Australia, reasons for their development and some evaluation from the sector regarding their effectiveness.

Currently regulatory frameworks are in place in Victoria, South Australia and Queensland. New South Wales is in the process of creating legislation.

Queensland and NSW have adopted an accreditation system based on the National Community Housing Standards, and SA is exploring the possibility of modifying its existing quality assurance system to bring it into line with the Standards. The ACT accesses the NSW Standards and Accreditation Unit due to the size of the sector and one organization has been fully accredited.

Victoria is in the process of developing an accreditation system and WA has a Code of Practice, an industry based quality improvement tool. Currently, Tasmania and the NT have no accreditory systems in place.

Accreditation through the National Community Housing Standards

The National Community Housing Standards were initially developed in NSW and were expanded in a Commonwealth funded project to develop nationally agreed service standards for CHOs, in 1997-98. The project involved consultation in every state and territory.

The project undertaken to develop the national service standards for community housing also piloted methods to evaluate services using these standards, and to identify options for accrediting services on the basis of such evaluations. A system was recommended that establishes an overall framework for accreditation at the national level, to be administered at the state level.

A national accreditation council was established in January 2000, to assist in shaping nationally consistent accreditation systems for CHOs. Accreditation for community housing currently operates within a (voluntary) framework of continuous quality improvement rather than as a mandatory mechanism of regulation.

NSW

The NSW Federation of Housing Associations identified four main purposes for the introduction of regulation of the sector in their paper *Regulation of Community Housing in NSW* (2002). These being:

- Encouraging community housing organizations to deliver high quality and value for money services through continuous improvement;
- Promoting high quality governance, accountability and the reputation of the community housing sector;
- Maintaining a viable community housing sector; and
- Managing risk for tenants, applicants, communities and funding agencies

The NSW government is currently in the process of drafting regulatory legislation for the sector with the intention of introducing it early next year.

The proposed regulatory framework in NSW takes a legislative approach. It will be designed to provide assurance for government that it has appropriate regulatory powers to ensure that its social, economic and other objectives are met whilst managing the risks inherent in community housing and to provide the sector with certainty as to its rights and responsibilities via legislative recognition.

It is proposed that legislation will integrate community housing into the existing Housing Act 2001, both due to the size of the sector not warranting its own Act and to integrate community housing into the broader context of housing in NSW. The legislation will sit alongside other Acts that are in operation such as the Residential Tenancies Act 1987 and the Incorporations Act 1984.

The incorporation of community housing into the Housing Act will seek to define community housing both as it exists now and all possible future roles including, but not limited, to the parts directly funded by the Department of Housing in NSW. It is envisaged that this will ensure quality client outcomes across the business of community housing regardless of funding sources and ensure more coverage in other Acts that rely on the definition (i.e. Residential Tenancies Act).

It is proposed that the role of the regulator should be to monitor the performance of community housing organizations and intervene in organizations that are significantly underperforming. NCHF (2003) identified that for intervention to work effectively in a risk management framework not only should regulators have the power to intervene when an organization is having major problems that need to be resolved but, that any intervention system needs to support organizations when emerging problems are identified before they become major problems¹³.

It is envisaged that the creation of a Community Housing Administrator will provide a formal mechanism to manage funding programs and asset transfers. This role is currently

¹³ NCHF (2003). Community housing regulation: Manage the risks , develop the industry

managed by the Land and Housing Corporation and not specifically related to community housing. Furthermore, the legislation should also set out the names, objectives and principles of funding programs, as it is likely that each funding program will have different objectives (i.e. supported housing or affordable housing programs).

NSW currently operates an accreditory system based on the National Standards and a performance based registration system was introduced this year.

In the proposed regulatory framework registration is the link between regulation and accreditation. Organisations achieve different levels of registration dependent upon their successful accreditation or other quality improvement reports. Therefore, level of registration reflects the risk profile of the organization. Organisations with higher levels of registration will be offered greater opportunity to take up more housing delivery options.

It is envisaged that the accreditation system in NSW will not be a core part of the regulatory system, but will be linked. Organisations that have met or exceeded the standards are deemed as representing a lower risk to government. Therefore, the level of scrutiny applied within the regulatory environment may be lower.

In discussions with various stakeholders over current and possible future issues that may arise as a result of this particular regulatory framework a number of key issues were identified.

Firstly, there is currently no system in place in the registration system to appeal decisions of the Performance Management and Review Unit, such as level of registration given to an organization. It has been argued that a system of appeal that allows organizations to ask for independent review of decisions is crucial to resolving disputes between the regulator and organizations.

Additionally, registration has been identified as a very resource intensive task. One community provider identified that their organizations CEO had dedicated the best part of a year to gaining registration. As yet no resources have been allocated to the sector to assist organizations to meet the demands of registration.

This leads into the likelihood that smaller organizations unable to resource registration will have their future funding cut and will not be able to sustain service delivery. Which further indicates that smaller organizations will be merged with larger organizations leading to a lack of diversity within the sector.

Victoria

In Victoria, the *Housing (Agencies) Bill 2004* amended the *Housing Act 1983* to mandate the registration of community housing organizations that have complied with a range of standards and rules. The Act states that its main purpose is to:

“...amend the Housing Act 1983 to provide a regulatory framework for non-profit rental housing agencies serving the needs of low-income tenants...a regulatory framework [will] encourage the development of rental housing agencies serving the needs of low-income tenants by providing for the registration of those rental housing agencies and the regulation and monitoring of registered agencies”

The Office of Housing in their *Consultation document – Strategy for Growth in Housing for Low Income Victorians*(2004)¹⁴ state that regulation is important:

“...to ensure that the Government’s social housing objectives are met and that any financial risks are suitably managed and monitored. The existing *Housing Act 1983* does not provide the necessary powers to regulate the provision of housing by non-government providers, other than by contract”.

Registration is a key feature of this regulatory framework and, like the NSW system, the nuts and bolts of how the framework is to be operationalised is still under development. It is proposed that registered organizations will have successfully met 9 Performance Standards¹⁵ relating to:

1. Governance of the agency
2. Management of the agency
3. Probity
4. Financial viability
5. Tenancy management
6. Housing management and maintenance
7. Allocation of housing
8. Affordability of rents
9. Risk management

An organizations annual business plan will be the principal ongoing mechanism for measuring performance and improvement. However, dependent on the level of registration not all performance standards may be relevant.

A tiered system of registration is proposed, in that while performance standards apply to all organizations, measures of performance will be assessed with reference to the organizations size, complexity of operation, associated risks and the extent to which it has achieved improvement over the previous years performance against its business plan¹⁶.

Organisations will be registered either as Housing Associations (company limited by shares or guarantee) or Housing Providers (company limited by shares or guarantee or by a cooperative or an incorporated status).¹⁶ However, only a small number of providers

¹⁴ Office of Housing. Queensland Government (2004) Consultation document – Strategy for Growth in Housing for Low Income Victorians

¹⁵ Community housing Federation of Victoria (2005) Standards and Operations Fact Sheet

¹⁶ Department of Human Services (2005). Performance Standards and Guidance

will be registered as Housing Associations and this will be determined by specific criteria.

It is envisaged that the Office of Housing will then support these organizations to build their capacity to take on a larger proportion of the affordable housing market¹⁷.

For those organizations that are registered as Housing Providers, the Office of Housing has stated that it “will also consider ways to help smaller providers to operate within the broader housing assistance system...[using strategies such as] the development of local housing networks to link smaller providers with larger Housing Associations and encourage referral and other arrangements (formal and informal consortia); and opportunities for participation in community building and neighborhood renewal initiatives”⁵.

However, whilst the Office of Housing has indicated that there will be no forced amalgamation of smaller providers, as in NSW, their capacity to grow will be severely limited, as predominantly, government funding will be targeted to Housing Associations. Once again there is the strong likelihood that diversity within the sector will be sacrificed in this framework.

Once again the National Community Housing Standards may be used as a pathway to registration – making the task of registration less onerous for already accredited organizations. However, there is currently no formal method for accreditation against the Standards in Victoria.

The Act will be enforced by the Registrar of Housing Agencies whose office will sit under Housing Sector Development in the Office of Housing. Like NSW, the Registrar will have broad powers. If it is found that an organization is not operating in a satisfactory manner and presents a risk to government and/or other stakeholders, these powers include; deregistration, appointment of members to an organizations board, instructing a merger between organizations, appointment of an administrator and winding up an agency.

Unlike the proposed NSW framework, agencies will have the option to apply to Victorian Civil and administrative Tribunal (VCAT) for a review of decisions made by the Registrar.

A Housing Provider Framework will sit alongside the regulatory framework in Victoria. Organisations will need to demonstrate that they operate within the Housing Provider Framework, formerly the Funding and Administrative Framework, a rent retention model which ensures that organizations maximize the amount of CRA they are getting without increasing the post rent income of their tenants. This income from rent is retained as the organizations funding base to be used for responsive maintenance, asset management, tenancy management and community capacity building

¹⁷ Office of Housing (2005) Consultation document – Strategy for Growth in Housing for Low Income Victorians

Feedback from the sector is limited at this time. Once again there is concern over the lack of resourcing provided to assist organizations to meet the rigorous registration process.

Housing (Agencies) Bill has raised concerns within the sector regarding its effect on charitable status for organisations registering under the Act. Legal and taxation advice suggest that because the intervention powers are so controlling (including the power for the Registrar to appoint directors to the governing bodies of agencies), organisations could be considered ‘arms of government’¹⁸.

There is skepticism within the sector as to whether organizations registered as Housing Associations will be able to attract the level of private finance necessary to remain viable once initial government seed funding has been expended.

A representative from the sector indicated that some aspects of the legislation were quite draconian in nature however, whether or not the legislation had a negative impact on the sector would come down to how it was implemented.

South Australia

South Australia was the first state to establish a legislative framework specific to Community Housing, the Co-operative and Community Housing Act 1991, and has the most prescriptive regulatory framework in operation. Under the Act, community housing organizations are subject to registration, a Funding Agreement, and various regulatory controls over organizational functioning and property.

The Act was developed to include a number of functions:

- provision of a regulatory framework for the community housing Sector;
- to facilitate the sectors continued growth;
- to ensure adequate controls were in place on the use of public funds by all CHOs;
- to ensure that that early warning signals of problems were provided to government;
- to provide support to CHOs to develop and improve performance, while also having a range of remedial mechanisms in place which are aimed at improving poor performance¹⁹.

Similar to the proposed regulatory framework in NSW, the Act provides a legislative framework for the establishment, development, regulation and administration of community housing.

The Act is administered by the South Australian Community Housing Authority (SACHA) on behalf of the Minister for Housing and sits within the Department of Families and Communities. SACHA is responsible for, amongst other things, the funding and regulation of all CHO’s registered under the Act. There are three elements that

¹⁸ CHFV (2005)

¹⁹ SACHA (n. da) Guide to Regulation of the Community Housing Sector in South Australia.

constitute the regulatory framework, these being legislation, funding agreements and good practice evaluations²⁰.

The Act provides a legislative structure to enable government to implement regulatory functions in respect to corporate governance. The Act also gives SACHA the ability to enter into contracts, determine rents, prescribe accounting and record keeping standards and audit requirements and intervene in organizational functioning.

Both housing cooperatives and housing associations are registered under the Act to enable them to receive government funding. Registration is provided to organizations on the condition that they meet a given set of standards and this registration then establishes eligibility for funding.

The Funding Agreement that exists between SACHA and each registered CHO covers the financial, legal and management roles and responsibilities of CHOs and SACHA. The agreement also outlines the administrative and financial arrangements that are central to the successful functioning of CHOs, it is from these performance standards that assessments of organizational performance are then made 2.

The scope of the Funding Agreement is summarized under the following provisions:

- Program guidelines – covers the legal framework of the program.
- Financial arrangements - rent determination, outgoings payable by CHO's, recovery of amounts due to SACHA and insurance arrangements.
- Tenancy management – including information of assessment of tenant income, tenant eligibility criteria, tenant selection procedures and management of waiting lists.
- CHO management – arrears management by CHO's and education and training of office bearers.
- Property management – details as to the funding of the construction and purchase of dwellings, sale of property, maintenance requirements and management of vacant properties.
- Reporting – requirements outlined in the Funding Agreement including data collection statistics, annual reports, asset management plans and budgets.
- General – relate to breaches, review, termination and alteration of Funding Agreements.²⁰

Under the Act SACHA has the responsibility to ensure good practice amongst registered CHO's. This is done through an assessment known as the "Good Practice Evaluation" made up of financial and management assessment tools used to assist CHO's in meeting their various legal, financial and management requirements.

When operationalised the regulatory framework functions in the following manner;

- Set standards of performance

²⁰ Peter Stojanovich (2003). The funding agreement in a community housing framework. SACHA

- Confirmation that these standards are being attained (including review of budgets, annual reports and asset management reports)
- Investigation where there is concern about the performance being achieved
- Provision advice/recommendations to rectify issues of concern
- Initiation of remedial action to address performance issues supported by statutory action (e.g. appointment of an administrator or other intervention methods) where necessary
- Funding service providers to provide the necessary training and education (apart from introductory courses in community housing, the training is provided by contractors contracted to SACHA).

Unlike NSW and Queensland, South Australia does not have an accreditation system, the creation of the regulatory framework in NSW came purely from a risk management perspective primarily concerned with monitoring the performance of CHOs through an increased emphasis on reporting and compliance. Currently, South Australia is exploring either adoption of the National Standards or the creation of its own accreditory system.

Other human services agencies in South Australia are gradually signing onto what is known as the Service Excellence Framework and this may be introduced into the community housing sector. Some CHOs are arguing for adoption of the National Community Housing Standards instead as these are tailored to the needs of community housing.

As in Western Australia, concern has been expressed over the work that meeting standards may entail and what this may mean for understaffed organizations if sufficient resourcing is not attached.

There has been mixed feedback from the sector as to the functioning of the regulatory framework in South Australia. It has been highlighted that a mechanism that protects public assets and increasingly private assets that are invested into the sector is a necessary structure, particularly given that many CHO boards do not have a strong property development or business management background and the increasing expectation that boards will take on risk associated with property development.

The Act has been credited with protecting the sector from the ambiguity of some government initiatives and providing a clear outline of the rights and responsibilities of CHO's.

However, it has also been observed that since the creation of the Act in 1991 the government has accreted roles to themselves over time that weren't originally envisioned to sit within government, including various training and management support roles. The view has been expressed that regulation in South Australia has gone too far and that community sector is now an 'extension of government'. The peak body had its staffing severely reduced in the late 1990's and can no longer offer either comprehensive training or ongoing management support to CHOs. The CHCSA believes this has been one of

several critical factors which has lead to the decline of the co-operative sector and to a degree the small association sector in recent years.

The role of SACHA as funder, regulator and training body for the sector has severely limited the autonomy and innovation of providers that are seeking to grow and diversify their products and services. It has been argued that, the governments powers of intervention, that have been used a number of times since conception, may not have been necessary if the sector had been given more responsibility for identifying training and resourcing concerns within the sector and instituting appropriate structures to deal with these. The message is that in creating a regulatory framework the roles and responsibilities of various players need to be clearly defined and placed into the framework either in legislation or contracts.

It has also been suggested that the framework is not sufficiently enabling of CHO development as it is a 'one-size-fits-all' approach to what is now a highly diverse Sector and that it generates undue complexity in CHO management and reporting while failing to encourage quality improvement.

Queensland

The new Housing Act 2003 and regulation of community housing providers commenced in Queensland in January 2004. The Act asserts that the main objectives of the Act are to improve the access of Queenslanders to safe, secure, appropriate and affordable housing and to help build sustainable communities²¹.

It is stated that this will be achieved by making provision regarding;

- housing-related activities carried out by the State, including—
 - (i) providing public housing and other housing services; and
 - (ii) developing, undertaking or supporting other housing programs and initiatives;
- a system, for supporting and regulating certain types of entities providing housing services, that includes—
 - (i) registering the entities; and
 - (ii) giving them financial assistance, making land available to them or giving them other types of assistance; and
- regulating how they provide housing services using the assistance.²²

Under the Act community housing providers are defined as 'funded services' which is a housing service provided by a registered provider using assistance from the Chief Executive of the Department of Housing. This definition explicitly links providers both to a registration system, as well as funding agreements with the Department of Housing.

²¹ Office of the Queensland Parliamentary Counsel. Housing Act 2003

²²Community Housing Standards and Accreditation Unit (n. da) So you want to be accredited?

The Housing Act 2003 allows for registration of entities including not for profit corporations, local governments, aboriginal and islander councils and coordinating councils on the condition that they comply with prescribed requirements in relation to the provision of a funded service. Regulation may be used to prescribe requirements in relation to the following functions:

- How a registered provider conducts its operations while providing a funded service,
- How a registered provider delivers services to clients,
- Other matters about providing a funded service,

- A requirement may include provision about—
 - (i) preparing, maintaining, publishing or implementing a policy; or
 - (ii) reporting to the chief executive; or
 - (iii) maintaining accreditation on the basis of meeting national community housing standards or other relevant standards²³.

Similar to Acts operating in other states, the Chief Executive holds broad powers, not only in regard to the functioning of registered organizations, but also powers to intervene, appoint an administrator and/or deregister organizations deemed not to be operating within their stipulated funding agreement.

Up until earlier this year Queensland also had an accreditory system in place based on the National Standards. Two bodies were designated the responsibility to oversee and implement the accreditation system in Queensland, the Queensland Community Housing Standards and Accreditation Council and the Queensland Community Housing Standards and Accreditation Unit.²⁴ The Unit was funded and auspiced by the Queensland Department of Housing, Community Housing, and was answerable to the Council. The Council was comprised of people appointed either on the basis of expertise or their representation of key stakeholders.

The Council has recently been disbanded following a review conducted by the Department of Housing and very limited information on the operation of the two systems was available to inform this report.

A representative from the Queensland Community Housing Coalition indicated that several reviews of the accreditory framework had been commissioned by the Queensland Government but as yet none had been released. The representative was able to provide some comment for the purpose of this report.

The representative acknowledged that originally the two systems were envisaged to operate separately and that accreditation was to be a voluntary procedure. However, the Queensland Government was reinstating a Council and was intending to make accreditation compulsory for initially 2 programs (transitional accommodation and

²³ Office of the Queensland Parliamentary Counsel. Housing Act 2003

²⁴ Community Housing Standards and Accreditation Unit (n. da) So you want to be accredited?

boarding houses) and possibly more in the future and that this had been done without consultation with the sector.

The representative stated that the current accreditory system was too focused on administrative process and quality improvement was forgotten. It was also highlighted that the sector had agreed to accreditation as a 3 pronged approach to sector development featuring performance monitoring, quality improvement and incentives for accredited providers via the reduction of regulatory burden. However, only 26 organisations had been accredited since 1999 at a cost of \$2 million dollars, which could have been better spent dedicated to a quality improvement program run by the sector.

As one of the original members to pioneer an accreditory framework for community housing the representative urged caution for other states following in Queensland's footsteps. It was emphasized that the Queensland community housing sector had gone from a sector with no regulation and no accreditation to a sector that was more highly regulated than both the public and private rental sectors despite the fact that providers were socially motivated in the provision of service.

It can be seen from the above synopsis that the majority of regulatory frameworks that apply to community housing throughout Australia are either in the process of drafting or still in their infancy. While there appears to be the potential for significant risk management benefits to government and other relevant stakeholders, particularly in relation to the monitoring of organizations with a strong growth emphasis, the current and proposed frameworks have not been operational for a lengthy enough period of time to evaluate their performances. Albeit with the exception of South Australia, however this system appears to create a strangle hold on the sector preventing those organizations wishing to expand and diversify no ability to do so.

It has become clear that if State government is seeking to impose a regulatory framework on community housing in Western Australia detailed exploration of available models should be conducted in consultation with the sector before determining the best option.

The Department of Housing in NSW²⁵ commissioned a scoping paper into the requirements for community housing legislation in July 2005 and consultation with the sector defined 7 key principles that should underpin the framework:

- **Autonomy of community housing providers**
Providers of community housing are autonomous organisations that operate at arms-length from government. The legislation should respect the right of these organisations to make their own choices about their form of incorporation, their priorities for involvement in different types of community housing and the extent to which they wish to partner with government or others in undertaking these community housing functions.

²⁵ Department of Housing (2005.) Requirements for community housing legislation. NSW Government

- Risk-based approach to regulation
 Regulation should be used as a tool to better manage risks associated with the delivery of community housing functions – particularly in relation to protecting government and private investments and protecting tenants. However, the regulatory mechanisms used need to be proportional to the risks faced and be targeted to areas of greatest risk. This contrasts with an approach that attempts to apply the same level of regulation to all community housing providers, regardless of the level of risks.

- Outcomes-based regulatory code
 Where performance and compliance requirements need to be specified in areas of high risk, these requirements should be expressed as high-level outcomes rather than prescriptive processes. The focus of the regulatory code should be on the required results, not the process for getting there.

- Procedural fairness and transparency
 Regulation needs to be undertaken in an open, transparent manner with regulatory judgments based on systematic evidence rather than anecdotes. The system needs to have clear mechanisms to ensure procedural fairness including an independent appeals process.

- Co-regulation
 While government has the lead role in regulation, many areas of risk management are best undertaken in partnership with the community housing industry. Two examples might be: in planning for and supporting organisations where performance or compliance failures are identified; and in the undertaking of sector-wide studies of approach to managing risk in priority areas.

- Innovation and growth
 Regulatory arrangements to manage risk need to be counter-balanced with other arrangements for capacity building and promoting innovation and growth.

- Flexibility to adapt to change
 It is envisaged that new delivery and business models for community housing will continue to evolve over the next 10 years. This means that the legislation should not assume current configurations based on historical funding programs and providers, but allow flexibility for new models and partnerships for delivering community housing.²⁶

This report suggests a number of recommendations based on the regulatory systems in operation in other States and feedback from the sector. It is apparent that satisfactory research has not been conducted to explore whether regulatory frameworks currently in place are achieving the objectives outlined prior to their implementation. The research that is available is piece meal and does not comprise a state by state analysis.

²⁶ Department of Housing (2005.) Requirements for community housing legislation. NSW Government

Any framework that is drafted must be done so in consultation with the sector and similar mechanisms such as the scoping paper outlined above must be commissioned gain adequate sector input.

A regulatory framework must maximise the flexibility of regulations imposed while still meeting the desired outcomes. This includes a high level of industry involvement to ensure that regulatory systems are designed effectively.

A regulatory should be subjected to cost-benefit analyses and regular independent review processes to ensure it remains effective and efficient.

Any method of regulatory enforcement should not dwell too much on issues of deterrence and punishment, and should concentrate on positive incentives for exemplary corporate conduct.

Any regulatory or accreditory framework should not be too cumbersome in it's reporting requirements and should include sector support infrastructure such as training and resources to enable compliance.

REFERENCE

- Australian Housing and Research Institute (2004) Could regulating community housing make a difference to affordable housing. Issue 34
- Barbarto C, Clough R, Farrar A & Phibbs P(2003) Stakeholder requirements for enabling regulatory arrangements for community housing in Australia. AHURI. Sydney
- Commonwealth Interdepartmental Committee on Quasi-regulation (1997) Grey letter law.
- Department of Housing (2005.) Requirements for community housing legislation. NSW Government
- Community Housing Federation of Victoria (2005) Response from telephone discussion
- Community Housing Federation of Victoria (2005) Standards and Operations Fact Sheet
- Department of Human Services (2005). Performance Standards and Guidance. Victorian Government
- Department of State Development (n. da) Guidelines on Alternatives to Prescriptive Regulation. Queensland Government
- Law Reform Committee (Discussion Paper May 1997) Regulatory Efficiency Legislation. Parliament of Victoria
- National Consumer Council UK (2003) Self-regulation: the National Consumer Council's Position
- NCHF (2003). Community housing regulation: Manage the risks , develop the industry
- Office of Housing (2004) Consultation document – Strategy for Growth in Housing for Low Income Victorians. Queensland Government
- Office of the Queensland Parliamentary Counsel. (2003) Housing Act .
- Office of Regulation Review, Australian Government Productivity Commission:
<http://www.pc.gov.au/research/annrpt/reglnrev0405/keypoints.html>
- Community Housing Standards and Accreditation Unit (n. da) So you want to be accredited? Queensland Government
- Peter Stojanovich (2003). The funding agreement in a community housing framework. SACHA.

SACHA (n. da) *Guide to Regulation of the Community Housing Sector in South Australia.*