



Review of the National Regulatory System for Community Housing

The Community Housing Industry Association (CHIA)

Submission to the Discussion Paper

Summary

CHIA is firmly of the opinion that a strong and fair national regulatory regime is a fundamental part of supporting institutions that underpin the development of the community housing industry and the confidence all stakeholders can take in its operation. Community Housing Organisations welcomed the introduction of the National Regulatory System for Community Housing (NRSCH) and were actively involved in the opportunities made for consultation during its original design. The review is seen as an opportunity to build on the current framework (and draw on the other systems) to strengthen the NRSCH and ensure that it responds well to a changing operational environment. Of most importance to CHIA is that:

- the opportunity is taken to consider best practice from other regulatory regimes
- there should be (at the very least) an integrated and consistent national approach to regulation of the community housing industry.
- the NRSCH governance arrangements ensure its independence of government
- the funding of the NRSCH should be commensurate with its duty to provide assurance that a growing and more complex industry is compliant with both consumer and prudential performance standards
- a more sophisticated risk-based approach than the current Tier system is adopted that distinguishes organisations by the degree of their regulatory engagement, not simply their size and scale
- there should be more publically available information about the role and performance of the community housing industry in meeting regulatory and community expectations
- overall regulatory burden on providers should be minimised by a requirement for mutual recognition articulated through memorandums of understanding between key regulatory bodies such as Australian Charities and Not-For-Profits Commission (ACNC), Australian Securities Investments Commission (ASIC) and the Office of the Registrar of Indigenous Corporations (ORIC) and also with contractual compliance agencies
- the system should have equally strong prudential and consumer standards.

- the system can respond well to new organisational models including affiliated entities that emerge in response to new large-scale housing programs
- the registration scheme should be inclusive of all social and affordable housing organisations e.g. public¹, not for profit (Aboriginal, specialist and mainstream) and, private sector organisations that receive any form of government investment, subsidy or planning / tax concession
- To support the community housing industry's growth and 'continuous improvement' an industry led National Community Housing development strategy should be produced and implemented, with financial support from the Commonwealth.

About CHIA and its members

This submission is made by CHIA on behalf of its members. CHIA is the industry peak for community housing providers across Australia. The industry provides one in five of Australia's social housing properties, complementing public housing. Community housing providers manage a \$30 billion-plus portfolio of more than 80,000 rental properties, which, are home to people who are on low and moderate incomes and who find it hard to access affordable or appropriate housing in the private market.

On behalf of our members, CHIA undertakes research, policy development and advocacy in relation to social and affordable housing issues.

Based on national and international evidence, CHIA's core argument is that the much needed growth and development of the Australian affordable housing system can only be achieved if the community housing industry is empowered to play a significantly expanded role.

Our members include organisations registered in all three tiers and they also provide a diverse range of housing for Aboriginal people, people with disabilities and the formerly homeless.

About this Submission

As noted at the outset, the community housing industry supports strong and fair regulation and thus our submission should be seen in that context – it is designed to be a constructive contribution to the debate. Our objective is to see the NRSCH operate across Australia and strengthened so that it responds well to a growing industry.

The CHIA response is an exercise in collaboration. We have considered the responses of the individual state community housing peak bodies and produced a concise submission that focuses on the critically important features. Where further detail and information is helpful, we have referenced the individual submissions. Our Northern Territory (NT) members have not made a

¹ The Community Housing Council of South Australia (CHCSA) believes public housing should be regulated separately given its different funding and policy settings

separate submission and thus some specific points relating to the NT are included.

The submission makes mention of issues not raised by the discussion paper but important to consider if the NRSCH is to be improved. We have made a number of recommendations about other activity to address information gaps or investigate options for the future design of the NRSCH and these, together with the main points, are identified above.

The submission also draws heavily on the paper '*National Regulation – An Outline Proposal*' produced by CHIA NSW (then the NSW Federation of Housing Associations) on behalf of the state and national community housing peaks. This paper is attached at Appendix 1 to the CHIA NSW submission. The paper was prepared with significant input from community housing organisations across Australia and remains germane to this discussion.

In addition, we have referenced the paper jointly written by CHIA NSW with the Queensland Registrar concerning options for the future 'use' of the tier classification. While the paper was prepared for the Regulatory Advisory Group (RAG) to stimulate discussion rather than propose policy, much of its content reflects our members' views on the subject. This paper is attached at Appendix 2 to the CHIA NSW submission.

The submission is confined to those parts of the NRSCH in which CHIA and its members have knowledge and expertise. In particular it does not consider in any detail whether the operation of NRSCH has conformed to a strict interpretation of the National Law and whether it has operated as envisaged. We have assumed this will be subject to a separate and targeted consultation.

The views of our members have also been sought directly via a community housing advisory panel and their responses incorporated into the submission. It was approved by the CHIA Board Thursday 4 April 2019.

Background

Although the NRSCH has been operating for just five years, there have been significant changes in the composition of the sector and its operating environment since 2014. CHIA NSW in its submission (p4) has identified many of these changes, which involve:

- growth and diversification of CHOs' businesses
- the increasing marginalisation of social housing and the impact this has on CHO income and expenditure
- new entrants into the NRSCH for whom the name 'community housing' is inappropriate
- in many jurisdictions an increase in overall regulatory and contractual compliance requirements.

In addition, the industry continues to advocate for new funding to support the construction of social and affordable housing, and looks forward to future programs being implemented which will have significant impacts on the scale and composition of the industry. Different organisational models will emerge in response to any large scale housing programs. A new NRSCH needs to be

sufficiently flexible to accommodate new structures without, we accept, compromising the system's integrity. CHIA recommends that, as part of the NRSCH review, work is undertaken to understand how the system has thus far responded to new models, consult on what the future might hold, and include proposals in the forthcoming options paper about how such structures will be treated.

These issues all need to be considered as part of the NRSCH review to ensure that the options put forward do not just address matters arising from the system's past performance but also anticipate future changes.

CHIA also agrees with CHIA NSW that a response to the discussion paper would have been assisted by additional information including a summary of the operation of the three housing regulatory schemes and comparisons and trends in regulatory action, performance standards, appeals etc. and, the amount spent on the schemes.

Purpose of Community Housing Regulation

Is regulation still required? What is the vision?

CHIA believes a well designed regulatory system is an essential part of a functioning social and affordable housing system. While the current system has its strengths, we agree with CHIA VIC in its submission that the review process provides an opportunity to 'locate and analyse the best regulatory systems that could be in our or other industries, here or overseas'. This would ensure the NRSCH is 'future proofed' i.e. designed to respond to the community housing industry's future shape and size.

CHIA views the NRSCH as part of the overall regulatory system, which also includes contractual compliance and self-regulation. As CHIA NSW argues (at greater length) in its submission 'if the NRSCH review excludes consideration of this wider system and the roles played by each component there is a risk that important issues - particularly regulatory burden and costs to both providers and government – will not be tackled. Furthermore, opportunities to explore how different parts of the system could work better together to meet the regulatory purpose will be missed'. CHIA also agrees that there is a risk that over regulation may compromise the status of CHOs as independent social organisations as occurred in the UK and which was only remedied by deregulatory steps.

In addition, a stronger role for NRSCH will allow other types of compliance monitoring to take a lighter role. This should occur as industry and public confidence in the NRSCH should grow as a result of the review.

CHIA has a diverse membership not all of whom are currently registered in the NRSCH or an equivalent scheme in WA or VIC. How the NRSCH can accommodate smaller (and frequently Indigenous) CHOs such as those in NT must be an intrinsic part of this review. Later in the submission we have drawn out some specific concerns.

There has been debate within the community housing industry about the most appropriate mechanisms for ensuring that the system assures government, private lenders, local councils, the public and, most importantly, tenants about the good governance and financial strength of the sector.

CHIA NSW's submission outlines some of the risks that have occurred elsewhere where the needs of the most vulnerable tenants have not been sufficiently prioritised. CHIA supports maintaining a strong emphasis on consumer standards whilst prudential regulation is enhanced for larger CHOs engaged in complex financing arrangements to support their business growth. CHIA NSW recommended the review is taken as an opportunity to 'explore in more depth how best the prudential and consumer roles of the NRSCH can be discharged'.

CHIA VIC highlights in its submission that the current Victorian regime has a greater emphasis than NRSCH on 'continuous improvement'. While accepting that this is an important function and requires strengthening in NRSCH, CHIA acknowledges that compliance (and risk) based regulation has its limits. As CHIA NSW highlight 'it is not sufficient in scope or depth to judge providers' relative performance, nor to assess how well individual organisations are performing.... Cultural change will succeed only if it is a sector-led, it cannot be externally imposed'.

CHIA is working with other state based community housing peak organisations to review the National Community Housing Standards (NCHS) 'to establish clear and measurable standards that articulate the not for profit community housing industry's purpose, service quality and governance aspirations. CHIA believes the NCHS will complement the NRSCH and together the two can provide the assurance all stakeholders expect.

CHIA agrees with the Community Housing Council of South Australia (CHCSA) that a National Industry Development Framework has a role to support the sector during further regulatory reform. A revised framework would be beneficial, supported by a financial commitment towards implementation and a process established for its ongoing review. CHIA believes this should be industry led. The process for a NSW State strategy which, falls within the remit of the NSW Community Housing Industry Council (CHIC), could be a model for a National Council to make real the National Law's object to support the community housing sector.

Should regulation be applied to all forms of affordable (and subsidised) housing?

CHIA believes that all forms of subsidised housing should be regulated. There should be a single clear definition of social and affordable housing that is captured by the registration scheme, so that receipt of any government investment or concession for social and affordable housing is conditional on registration in the national scheme. Currently most social and affordable housing lies outside the regulatory system. This is neither fair nor equitable and means there is insufficient oversight of how services are provided and resources used. While public housing may be periodically subject to performance audits by jurisdictional Auditor Generals and their tenants able to complain to an Ombudsman, these are not regulatory equivalents.

The NRSCH has already demonstrated its flexibility by accommodating diverse organisations including in NSW where a number of 'for profits' providing affordable housing services have been registered. All the UK regulatory regimes have successfully accommodated the equivalent of public housing in their regimes.

Whatever approach is taken, CHIA believes that it should be applied consistently across all jurisdictions. Currently some jurisdictions do not require specialist homeless '**accommodation**' providers to be registered. We can see merit in including this type of provider (as in NSW) if the regulatory requirements are proportionate.

Another issue that we believe needs to be addressed is whether the NRSCH continues to refer to all registered providers as community housing providers. The term 'community' is taken to be synonymous with the not for profit sector and as an industry we want to maintain this distinction with the for profit (and indeed the public) sector. We recommend that under NRSCH entities be referred to as simply registered housing providers; with the addition of 'community' reserved for not for profit entities only.

What is the impact of having three different regulatory systems?

We strongly support one national regulatory system and it is critical that both Victoria and Western Australia (WA) join the National Regulatory System. As the discussion paper makes clear, the differences between the schemes is minimal and the disadvantages to providers, tenants and investors (including the Commonwealth Government) far outweigh any benefits to the jurisdictions.

CHIA VIC and CHIA WA both support a single national regulatory scheme. CHIA WA notes a particular risk of continued separation 'Whilst we have had verbal assurances from NHFIC that WA's current regulatory position will not impact on their lending to WA registered CHPs, the fact the question even had to be asked and explored highlights the risk that WA might be left behind by private sector investors if they deem it too small a market to be worth their while getting their heads around a different regulatory system.'

CHIA WA outline many other risks around the separation of the regulatory systems on page 4 of its submission. Worth highlighting is the potential for what start as reasonably similar schemes to 'drift apart' over time.

Both the CHIA NSW and CHIA VIC submissions outline the costs (including the opportunity costs) to CHOs and other stakeholders – including financial institutions. With three different regimes there is no one source of comparable regulatory information about the community housing industry and indeed in WA little at all is reported.

The paper does not cite what reasons the two States have for maintaining separate schemes, but unless these are ideological, the differences identified are surely surmountable. The submissions from CHIA WA and CHIA VIC highlight that the issues to be overcome differ by state and thus need separate consideration. For example, CHIA WA notes in its submission 'the

Community Housing Regulatory Framework (Framework) is quite different in form being a policy based administrative system rather than one underpinned by legislation’.

CHIA VIC in its submission sets out sensible suggestions for alleviating concerns about state government interests not being protected.

We agree with CHIA NSW that ‘transition to the national scheme ... could be articulated through amended bilateral agreements between the Commonwealth and States’. The registration process for CHOs transitioning to the NRSCH should be confined to where there is material difference between the two schemes.

Clearly the review will need to engage separately with stakeholders in both WA and VIC to determine how to overcome hurdles to participation. As part of this process more background material will be useful as CHIA WA notes ‘it would have found it useful for the paper to have included a summary comparing how the three schemes are operating in practice. Without this we are unsighted – we know how the system is being implemented in WA but are unable to compare that with what is happening across the other States.’

We also believe that within a single National Registration System there is potential to address some jurisdictional difference in relation to policy and contractual settings where these adversely impact on a registered providers’ performance.

Design of the NRSCH

Purpose and efficient design

CHIA’s preferred option is for a single National Registrar with state based deputies located in an independent agency. Independence would be best achieved if the agency had its own board (with state representatives) which reported direct to a Minister. A minimum requirement must be that a Registrar has an arms-length relationship with government and is subject to political direction only in certain specific and limited areas. CHIA NSW cite Safe Work Australia as a model worth examining.

One National Registrar should enable more consistency of regulatory policy and practice, the latter a concern mentioned by our members and to some extent inevitable given different office configurations and resourcing. This arrangement could build scale and meet Registrars’ needs for specialist/technical expertise as the community housing industry grows (potentially quadrupling), different and more complex organisational structures emerge, and the operating environment changes.

We appreciate that there may be (as Shelter Tasmania identifies) ‘a few well-justified exceptions’ to National requirements. These may be legislative in nature. State based offices should allow scope for a National Registrar to respond sensitively to where there are compelling reasons for adjustments.

One National Registrar may also be in a better position to respond to not just incremental but also transformational change – be it a major building program or an economic shock. We can also anticipate there will be more organisations operating across state and territory boundaries with perhaps less clarity about where the ‘prime’ registrar lies. A National Registrar is more likely to be in a position to respond well. National institutions such as the NHFIC will also appreciate a National Regulatory counterpart.

At the same time, we recognise the role for state based offices with staff who understand the local context well. As our NT members have emphasised, the challenges of operating in remote areas with poor internet coverage, long distances to travel, and frequent climatic events bring regulatory as well as service challenges that Registrars’ staff need to understand.

CHIA NSW recognises that establishing one National Registrar may require further consideration and outlines alternatives to this national model either on a temporary or transitional basis.

Whatever option is chosen the NRSCH needs to be adequately funded to deliver as the sector expands and diversifies. The Commonwealth should at the very least reinstate its funding. Those states such as NSW where expenditure on contract compliance has grown significantly are likely to have scope to reallocate resources between these two forms of regulation.

Governance

As highlighted above our preference is for a National Registrar’s office with its own Board. The structure outlined in the IGA would thus require modification to accommodate this arrangement. Our concern is to ensure that the functions and powers allow the Registrar(s) to retain an appropriate degree of independence. The Ministerial Council and Advisory Council remits as set out suggest a considerable degree of control over the regulatory function – including over operational guidelines.

Members of the governance bodies should be elected on the basis of their skills, knowledge and experience of regulation and the functions and services delivered by the community housing industry. We also believe there should be representatives with sufficient familiarity with policy across the states and territories including organisations representing tenants’ interests.

Registrars also need to have a mechanism to resolve issues that impact on the sector’s performance or viability where these issues are a function of housing agency actions.

Additional Registrar Roles

CHIA shares CHIA NSW’s reservations about Registrars taking on a direct capacity building role with CHOs. It can lead to a confusion of roles and moreover is incompatible with the regulatory function. Registrars have a role to uncover systemic issues and produce guidance and targeted assessments to respond to specific capacity issues. Registrars should also have a role in an industry led national industry development strategy.

Operation of the NRSCH

As part of the review, information about the performance and costs associated with the NRSCH and the other regulatory regimes should be collected. Both CHIA NSW and CHCSA highlight issues about the operation of the scheme around consistency, comparability, applicability of performance standards, risk assessment and use of enforcement and investigative powers that are worthy of further consideration. Such an activity might also suggest what changes in practice and regulatory office competencies will be necessary to ensure the NRSCH can meet new challenges.

Risk Profiling and Regulatory Engagement

CHIA supports the case made by CHIA NSW to replace the tier classification with risk profiling that combines performance related factors with organisational context considerations. Removal of the tier classification does not preclude the development of a provider typology to distinguish organisations by size, operational locations, and main functions / resident base.

For smaller organisations (including those larger organisations whose business is predominantly something other than housing) there should be a more tailored response. As CHIA WA noted in respect of larger businesses. 'In some cases, this has been a deterrent to such organisations registering under the NRSCH system. This is a loss to the sector as these are often larger, well financed organisations, with good governance, and it would benefit the whole sector if they became bigger players in housing or serviced a niche market'.

The Registrars' T3 review provides many sensible suggestions to respond to these challenges and in particular by developing organisational typologies that would drive regulatory requirements.

The CHIA NSW submission goes into some detail about the regulatory engagement process. Our view is that there is scope to have more transparency around what constitutes regulatory engagement. There needs to be general understanding about how Registrars use the data and information they collect and arrive at a judgment on compliance – this will help convince stakeholders about the system's rigour. For individual CHOs, the Registrars should be providing additional detail about how compliance decisions and associated recommendations have been made so that organisations (including boards and more junior staff) are better able to understand and respond to an assessment.

Performance Standards

Given the changes that have occurred and are anticipated, the performance standards (and associated evidence) should be examined. Both CHCSA and CHIA NSW identify specific issues in some detail and CHIA largely supports these. Of critical importance and supported by all the state peaks is ensuring that smaller and specialist CHOs' obligations are commensurate with their risk profile. The recent T3 review conducted by Registrars provides a good basis for making

the changes. CHIA also supports work to examine whether more emphasis can be placed on value for money considerations. CHIA also sees merit in better reflecting cultural competency given the proportion of Indigenous / Aboriginal tenants residing in social and affordable housing.

CHCSA makes strong points in its submission around data harmonisation and CHIA Vic also notes that data should be required only where it is essential to form an opinion on compliance against regulatory standards. Clearly if providers are involved in, for example, more complex financial transactions this should trigger the Registrars to review the evidence and data needed. If the NRSCH is operating well, the evidence collected ought to satisfy investors. CHIA NSW highlights the advisability of assessing whether the Registrars' data collection and analytical tools are fit for 'future' purpose.

Communication

The NRSCH should have a higher public profile. There should be more public information about registered organisations' performance to encourage organisations to pro-actively make service improvements. CHIA welcomes the opportunity to work with Registrars to achieve greater transparency. Clearly ensuring data is reliable and comparable will be essential.

Indigenous and Aboriginal Community Housing Providers

CHIA NSW has been working with the sector as it builds capacity to transition to the NRSCH and is of the view that 'many I/ACHPs face similar issues to any provider and do not require 'special' considerations'.

'Others because of legacy issues around the property they own / or manage; the rent models they have been required to use and, in some instances, culturally informed practice may require temporary modifications to the performance thresholds or requirements. One specific instance from NSW is the significant impact on financial viability through the inheritance of former reserves and missions.'

In NT language barriers, intermittent broadband access, and unique service models, pose challenges to organisations that have never registered. Positively, the feedback from our NT Region Director is that many see the value if the NRSCH is flexible enough to accommodate smaller organisations. Many of the issues are not dissimilar to small T3s and recommendations made in the Registrars' review of T3s mentioned earlier address these. CHIA recommends that the issues for smaller Indigenous providers are specifically addressed and not subsumed within the overall review.

