



National Shelter

Submission to the National Regulatory
System for Community Housing (NRSCH)
Review

To NRSCHreview@facs.nsw.gov.au

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Introduction

National Shelter welcomes the opportunity to make our submission to the review of the National Regulatory System for Community Housing (NRSCH) review.

National Shelter understand the role of the review to establish or review the framework of community housing to:

- improve tenant outcomes and protect vulnerable tenants
- protect present and future government funding and equity in social and affordable housing
- enhance confidence for persons (including investors and financiers) having dealings with registered CHPs.

We observe that improving tenant outcomes and protecting vulnerable tenants is more the role of governments than that of a regulatory system. This is a poor objective of a regulatory system which, from a tenancy perspective, should be there to ensure tenant outcomes, tenant engagement in the operation of a housing system and policies which affect them and to ensure housing meets the needs of the vulnerable tenants who are housed.

It is imperative that tenant engagement remain as an outcome for CHPs within the regulatory system while considering how we strengthen the 'voice' of tenants to engage with providers and the system through an independent entity.

Protecting present and future government funding should be reworked as public investment as all government funding is an expression of public investment and would better connect the resources on which community housing is dependent, to public support.

We have no issue with the objective to enhance confidence by investors and financiers.

National Shelter argues that the objectives of the NRSCH could be stronger in supporting Community Housing to be:

- a genuinely **national** regulatory system for community housing;
- a regulatory system which is about providing high quality housing to low income and vulnerable households by providing secure, accessible, well located housing which;
- values the inputs of tenants as the highest measure of community housing meeting its objectives.

We have read the submissions from the Tenants Union of NSW, CHIA NSW and Queensland Shelter and support the well-argued views contained in those submissions. We do not intend to repeat the positions of those organisations however we do support their conclusions.

This submission will focus on 4 critical areas we believe are insufficiently robust within the current NRSCH.

1. The absence of a genuine tenant 'voice'- consumer body representing the interests of tenants. Of tenants, by tenants, for tenants.

2. The lack of a genuinely national system of regulation able to work across jurisdictional boundaries and enable national level organisations to flourish.
3. The inadequate attention, resourcing and support to Indigenous Community Housing Organisations (ICHOs) (which we will now refer to as Community Housing Organisations for First People's or (CHOPFs)
4. The scale of CHPs, their potential for growth and appropriate regulatory compliance to compliment tiers 1-3

Summary of recommendations

1. That the NRSCH consider how the Community Housing Industry could support, including financially, the provision of an independent community housing tenant organization.
 - 1.1. That a regulatory requirement of being a registered provider means signing up to a "no cause evictions commitment" and
 - 1.2. That the NRSCH consider how to establish or support a tenant/provider mediation service for tenants of community housing.
2. That the NRSCH investigate how it may complete the alignment of all states and territories into a single national regulatory framework and failing that ask the federal government to consider a regulatory role for itself covering community housing to create a single national regulatory framework.
3. That the NRSCH consider how it may promote, resource, undertake or commission a process to support CHOPFs to become registered providers by developing their capacity, governance, consolidation and development.
4. That the NRSCH reconsider the regulatory compliance framework to ensure regulation is appropriate to scale, risk and opportunities;
 - 4.1. and to ensure Tiers do not equate to perceptions of quality or (lack of) investment opportunities.
 - 4.2. To ensure the valid registration and regulation of organisations with community housing as one aspect of broader operations (Church charities, CHOPFS e.g.) who struggle to fit the regulatory framework.
 - 4.3. To consider how to develop or improve practice standards among CHPs.

About National Shelter

National Shelter is a non-government peak organisation that aims to improve housing access, affordability, appropriateness, safety and security for people on low incomes.

Since 1976, National Shelter has worked towards this goal by influencing government policy and action, and by raising public awareness about housing issues.

National Shelter's aim is to work towards every Australian having access to housing that is:

- **affordable** — people should not be left in poverty after they have met their housing costs
- **adequate** — everybody is entitled to housing that meets basic standards of decency and their own basic needs
- **secure** — people should not live under threat of loss of home and shelter
- **accessible** — access to housing should be free from discrimination
- **in the right place** — housing should be located close to transport, services and support networks, job opportunities, and social and leisure activities
- **able to meet their lifecycle needs** — people have different housing needs at different stages of their lives, and housing should be available to meet these changing needs.

National Shelter draws and is supported by the work of State Shelters in all jurisdictions (apart from Victoria) and its national member organisations, sponsors and associate members.

The Need for a Consumer Voice

There are a number of different ways of describing the level of participation in any social or public venture. One of the most widely used in recent years has been the Public Participation Spectrum developed by the International Association of Public Participation (IAP2)¹. This framework envisages five levels of participation, which we have adapted for tenancy situations as follows.

1. Inform - To provide tenants with balanced and objective information to assist them in understanding problems, alternatives, opportunities and/or solutions.
2. Consult - To obtain tenant feedback on analysis, alternatives and/or decisions.
3. Involve – To work directly with tenants to ensure that their concerns and aspirations are consistently understood and considered.
4. Collaborate – To partner with tenants in each aspect of decision-making including the development of alternatives and the identification of preferred solutions.
5. Empower - To place final decision making in the hands of the public.

CHPs in Australia foster participation at various levels.

¹ <https://www.iap2.org.au/Home>

- At a minimum the vast majority of organisations provide information to their tenants about their tenancy and other issues of interest to them (for instance, via tenant newsletters), and seek their feedback via formal tenant feedback surveys as mandated by the NRSCH.
- Most organisations also engage in some degree of consultation and involvement – for instance by having regular meetings with tenants in multi-unit complexes, conducting targeted consultation with tenants about policy or practice issues or physical changes to their housing or environment, and engaging them in “non-housing” programs aimed at addressing issues such as health, neighbourhood relations or employment. The nature and scope of these activities varies widely between organisations.
- Some take this a step further by providing some level of collaboration or empowerment with tenants – for instance housing cooperatives place the major control and governance of the organisation in the hands of tenants, while other organisations have a strong role for tenants in the oversight of the organisation through designated board positions or formalised advisory and consultation mechanisms. “Non-housing” programs may also be substantively or jointly controlled by tenants with the housing organisation acting as facilitator – for instance a housing organisation may facilitate the creation of a social enterprise which is managed by tenants, or tenants may organise their own social and neighbourhood events in space provided by the organisation.

Current Practice among CHPs

In Australia practices on tenant engagement vary widely between public and community housing organisations from state to state, and within states. Practices vary in the level of engagement, and the issues over which organisations engage with their tenants. At this point there is no documented survey of practices across the sector in Australia. However, a number of initiatives are in place in both NSW and Queensland to develop practice in this area.

The NSW Government has for a number of years funded the Tenant Participation Resource Services (TPRS), which facilitate engagement with public housing tenants across the State. It has also funded the Housing Communities Program, which funds community development activity in a number of locations with high concentrations of public housing.

A review of the TPRS in 2017 found high levels of satisfaction with the service and a number of impressive achievements, and recommended its continuation. However, it also recommended a number of changes, including being combined with the Housing Communities Program, changed boundaries to align with the current FACS regional structure, a per capita distribution of funds across regions, and retendering for the redesigned program. The review, and subsequent FACS response, also confirms the current position that community housing tenants are not covered by TPRS and community housing organisations are required to organise and resource their own tenant engagement activities. With the current stock transfers under way in NSW, this means that an increasing number of social housing tenants will fall outside the realm of TPRS.

In Queensland, Tenants Queensland is currently engaged in a project alongside a number of community housing organisations. This project, titled *Tenant Participation and Engagement*

in Social and Affordable Housing, aims to build the capacity of tenants and organisations in the Queensland community housing sector. Part 1 of this project worked with a number of groups of tenants and staff to explore their experiences of participation, and developed a framework which encapsulated the range of practices current in the sector. Part 2, which is currently under way, seeks to extend this project to build skills and practices around the sector.

Finally, a Community Housing Tenant Network has been active in NSW for a number of years, auspiced and supported by the NSW Federation of Housing Associations. This network is largely unfunded and levels of activity have fluctuated over its history, reliant on the energies and creativity of the tenants involved. This is currently the only NSW attempt to build tenant engagement across organisational boundaries in NSW.

These examples all demonstrate good practice in tenant engagement but cannot be described as of tenants, by tenants, for tenants.

The Scottish Housing Regulator² provides a good example of the role a National Regulator can play to involve tenants in the ongoing regulation of CHPS. In 2015-16 they:

- Established a new National Panel of Tenants and Service Users with over 500 members and ran two annual programmes to help understand views and priorities.
- Set up a new Registered Tenant Organisation (RTO) liaison group to help involve tenants in their regulatory approach.
- Worked with Tenant Assessors to give a tenant perspective to their scrutiny.
- Involved Regional Networks and RTOs in regulatory consultations.
- Asked for feedback from all tenant organisations.

National Shelter has long been concerned about the NRSCH in relation to tenant participation and engagement. We cannot reconcile “Landlord” organisations controlling the participation of their tenants with the principle of genuine tenant engagement which we believe can only be genuine when done independently of individual providers or their collective representative/s.

We understand and support the regulatory requirement that CHPs should inform, support, involve and collaborate with their tenants but they cannot empower them to provide independent feedback on providers and systems as they are inevitably compromised by their power “over” tenants as the providers of their housing.

In telecommunications (ACCAN), Health and Energy (Renew) we have active consumer bodies funded by their industry to operate as independent voices for consumers. We need this in housing to allow housing consumers proper engagement as CHPs prepare for significant growth.

One of the reasons National Shelter supports the growth of community housing as distinct from public housing owned and managed by state housing authorities is their ethos to alleviate poverty and support low income households. As CHPs grow they inevitably take on

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<https://www.scottishhousingregulator.gov.uk/sites/default/files/publications/Involving%20tenants%20and%20service%20users%202016-18%20publication%20version.pdf>

more 'business like' approaches, some of which makes them better managed, some of which risks losing the 'community' aspect of community housing. Another way CHPs and the community housing industry could demonstrate their commitment to the values of community would be to adopt a no eviction commitment as an industry, built into regulations. This would involve a commitment to eliminating 'no cause evictions' and developing practices which support and mediate with tenants at risk of eviction prior to using any provisions in Residential Tenancies Acts. This is common among state housing authorities and ought be adopted by CHPs who don't just operate tenancy management or housing management but are committed to principles in which the broader community entrusts them to manage public assets and provide community services.

Recommendations

1. That the NRSCH consider how the Community Housing Industry could support, including financially, the provision of an independent community housing tenant organization.
 - 1.1. That a regulatory requirement of being a registered provider means signing up to a "no cause evictions commitment" and
 - 1.2. That the NRSCH consider how to establish or support a tenant/provider mediation service for tenants of community housing.

A Single National Regulatory Framework

National Shelter supports the establishment of a genuinely national regulatory framework for providers. As we argued within our submissions to the Productivity Commission's inquiry into Human Services³, this framework should go beyond the regulation of CHPs to include the regulation of all housing providers including state housing authorities. While we recognise this is unlikely to be supported by states and territories, we believe states and territories have a compromised role in being funder, competitor and regulator of the industry. It compromises the integrity of housing provision.

We have no issue with states providing public housing, funding community housing or regulating community housing but doing all three at the same time is a conflict of interest.

One way of overcoming this would be to establish a genuinely national regulatory system separated from state governments.

The current approach to a national system has been to use a compliance model where states adopt legislation developed and consistent with other states, to date using NSW as the model. Unfortunately, WA and Victoria have different models and have opted out of the national system.

National Shelter would prefer states and territories to all have the same regulation. Ideally a single national process and mechanism could be developed to protect the assets and investments of states and territories and manage national asset transfer and management.

At present each state has its own state registrar and process for registration in that jurisdiction. This is unnecessarily complex for CHPs operating in multiple jurisdictions. A different model, even using the aligned legislation common now, would be to have a single

³ <http://shelter.org.au/site/wp-content/uploads/180410-National-Shelter-Response-to-Productivity-Commission-Final.pdf>

national registrar which then had state offices rather than completely separate state registrars.

The current system works against the aims of the National Housing and Homelessness Agreement to enable CHPs to operate nationally. A single national regulator would overcome these problems and reduce the compliance requirements for CHPs operating in multiple jurisdictions.

Recommendations

2. That the NRSCH investigate how it may complete the alignment of all states and territories into a single national regulatory framework and failing that ask the federal government to consider a regulatory role for itself covering community housing to create a single national regulatory framework.

Community Housing Organisations for First Peoples (CHOFPs)

National Shelter has long been concerned with the low registration rate of organisations formerly referred to as Indigenous Community Housing Organisations (ICHOs). National Shelter recognises that many First People's find the terms 'Indigenous', "Aboriginal" or even "Torres Strait Islander's" offensive being associated with fauna and flora, overly anthropological, or named after European explorers respectively, so has now adopted the use of First People's as used by the Congress of First People's.

Since the Howard government moved to transfer responsibility of CHOFPs to states there has been a level of neglect, confusion and exclusion of CHOFPs from the growth and development experienced by CHPs in general.

While Victoria has amalgamated housing and organisations under Aboriginal Housing Victoria and NSW has developed the Build and Grow strategy there is an appallingly low rate of registration of CHOFPs in Qld, NSW, WA and SA. While CHPs were benefitting in general from the Rudd government's NRAS and Stimulus programs many CHOFPs were left to languish in a limbo of misinformation, disinformation, confusion and neglect.

At the heart of this in some jurisdictions was the misinformation that CHOFPs could have commonwealth caveats over their properties removed while they took on state mortgages for desperately needed repairs and maintenance if they transferred to become registered providers.

In a few cases, organisations which could see the benefits of adopting a new framework have grown and developed, but far too many have been left behind and remain outside the regulatory framework and therefore ineligible to take advantage of growth and development opportunities.

The Commonwealth has now passed legislation allowing caveats to be lifted which opens new opportunities to re engage. The Department of Prime Minister and Cabinet (DPMC) has run one process to begin re engagement.

We do not intend to document the poor practices of states and the commonwealth in that process but see the need to engage, and rebuild trust with this sub-sector to help meet the very high housing need of our First People's.

There are issues where Community Controlled organisations operate multiple service arms and struggle to comply with the NRSCH. There are issues of rent policies which inhibit the

ability of CHOFPs to operate with their communities- where they may have community members housed and paying full market rents due to (high) incomes which make their compliance with rent policies difficult.

There are issues of scale, where organisations are too small to have staff, operate with cooperative practice models, or in other ways which make compliance difficult.

There is an ongoing backlog of maintenance and upgrades required and underlying this is an ongoing issue of trust and a lack of engagement.

Recommendation

3. That the NRSCH consider how it may promote, resource, undertake or commission a process to support CHOFPs to become registered providers by developing their capacity, governance, consolidation and development.

The Scale of CHPs

The community housing sector has grown from its roots in cooperative housing, as an extension of homelessness services as niche housing for specific interests or via local government and supplemental housing.

We now have CHPs with up to 5000 properties in their portfolio while still retaining the small niche providers with a dozen or 20 properties.

The tiered system has been a positive approach to recognising the appropriate regulatory requirements of the range of housing providers to now, although some adjustments to the compliance requirements may still be required.

A number of issues are apparent:

- The different ability of tiers 2 & 3 to attract investment
- The difficulties faced by providers with multiple services (not just housing)
- The approaching need to significantly increase the size of the sector
- The need to improve practice, governance and capacity in all tiers

The current 3 tiered approach of regulation is a welcome attempt at making the compliance and administrative burden appropriate to differently scaled organisations. We support this but also understand that in the eyes of investors, both government and private, there can be perceptions of 'value' and prudence associated with scale. We would encourage the NRSCH to be aware of the need to ensure investors have confidence in all aspects of community housing.

We support the NRSCH covering private for profit as well as NGO organisations. It is inevitable that private for profit entities will be part of an affordable housing spectrum and therefore regulation must cover them as well.

We are aware some providers operating broader multi-disciplinary organisations covering e.g employment services, support services, may also operate housing components. We understand many of those have compliance issues around the NRSCH. We support the involvement of broader organisations in the affordable and social housing space, the NRSCH should consider how its compliance aligns with other compliance regimes to streamline reporting and administrative requirements for multi-disciplinary providers.

The ALP has announced that if elected they will introduce a program to build 250,000 new affordable housing properties, using an NRAS type approach, where the community housing sector will be the primary industry to manage the new program.

This represents a massive upscaling of CHPs and will be reliant on attracting private equity investment to produce development at that scale. Private investors will need to have a high level of confidence in the regulatory system for CHPs to provide the scale investment to meet this growth.

It is likely that a requirement of future National Housing Agreements will involve further transfers of current public housing to the community housing sector, both as a basis for redevelopment and scaling up and as governments continue to move away from provider to funder of service provision.

To attract investment at scale will require CHPs to develop large portfolios of property at a national level in multiple jurisdictions. This would best be complemented by a single national regulatory system.

National Shelter is in the unique position of having state peak structures in all jurisdictions except Victoria, where we work with a number of organisations to provide input to our understanding and policy development. We are not representative of CHPs, while having many as members and if we seek to represent any interest it is primarily the interest of consumers. Our National Council includes the participation of tenant advocates, CHP Industry bodies, national welfare organisations and state peak bodies.

As such we are privy to observations and critiques of the system and its ability to provide assistance to low income housing consumers.

We therefore observe a need to lift practice standards among CHPs in all tiers around:

- Tenancy management
- Property management
- The interface with allied service systems (Health and Employment e.g.)
- Tenant participation and engagement
- Tenant security
- Government relations

The NRSCH should consider how it may support the improvement of practice by establishing and monitoring practice standards which are common to other service delivery systems (Specialist Homelessness Services e.g.)

Recommendation

4. That the NRSCH reconsider the regulatory compliance framework to ensure regulation is appropriate to scale, risk and opportunities;
 - 4.1. and to ensure Tiers do not equate to perceptions of quality or (lack of) investment opportunities.
 - 4.2. To ensure the valid registration and regulation of organisations with community housing as one aspect of broader operations (Church charities, CHOPFS e.g.) who struggle to fit the regulatory framework.

4.3.To consider how to develop or improve practice standards among CHPs.

Conclusion

National Shelter has been at the forefront of supporting an expanded and growing community housing sector in Australia since our establishment in 1976. We believe that future growth of and investment in community housing will eventually see it as the principle vehicle for the provision of social and affordable housing in Australia.

To ensure that it must protect the public's investment in it through a robust regulatory framework which recognizes the role of large and small providers while encouraging consolidation, niche provision and better integration of community housing with other service systems. This will ensure it fulfils its role in becoming the provider of choice for housing low and moderate or even mainstream households to enable genuine housing choice in Australia.

It must protect the consumer and establish a voice of by and for consumers to provide the high value feedback that only end users may provide as they experience the system.

It must attract the private and government investment required to fulfil the housing needs of low-income households.

An appropriate to scale, robust and highly regarded national regulatory system is a vital component of fulfilling these goals.