

Review of the National Regulatory System for Community Housing – Comments on the Discussion Paper

CHIA NSW welcomes the review of the National Regulatory System for Community Housing (NRSCH) and sees it as an opportunity to strengthen and reframe the focus of the NRSCH, based on learnings from its operation to date. In particular, CHIA NSW believes that the review should reflect some key principles, including that:

- the NRSCH should operate independently of the government agency the commissions/funds community housing organisations and have new governance arrangements that reflect and reinforce that independence
- there should be an integrated and consistent national approach to regulation of the community housing industry
- there should be adequate resourcing of regulation and registrars offices assisted by the redirection of resources from the rationalization of other regulatory functions such as contract regulation
- any reform to the system should look to reduce the regulatory burden and to redistribute resources currently used
- the classification of community housing providers under any new arrangements reflect a more nuanced approach to risk
- the system should deliver improved information about the role and performance of the community housing industry in meeting regulatory and community expectations

Summary of the Main Points of the CHIA NSW Submission

- The NRSCH review must ensure that the options put forward do not just address issues arising from the system's past performance but anticipates future change in the sector; particularly in light of the NSW State and Federal elections taking place 2019.
- The system needs to be truly national applying to community housing providers across all jurisdictions
- While the overarching vision, objectives, regulatory principles, and philosophy of the NRSCH should be set by government, the operation of the system needs to be independent of policy and funding agencies and have transparent and accountable governance arrangements.

- There should be a single clear definition of social and affordable housing that is captured by the registration scheme, so that participation in any program for social and affordable housing is conditional on registration in the national scheme.
- The NRSCH must be flexible enough to accommodate (in the future) other forms of subsidised housing, including public housing and specialist disability accommodation.
- The review should encompass a comprehensive independent analysis of the financing, operation and performance of the NRSCH which should include the role of the housing agencies.
- The NRSCH is part of the overall regulatory system which also includes contractual compliance and self-regulation. The review must include consideration of this wider system and the roles played by each component. The regulatory system should be relied upon to a greater extent by state governments to reduce the increased regulatory burden that has arisen from an expansion in contractual compliance.
- The CHIA NSW Board recommends that the term ‘registered community housing provider’ should be used solely for the not for profit community housing industry. Other registered entities should be referred to as ‘registered housing providers’.
- The current NRSCH ‘wind up clause’ eligibility criterion should be reviewed to allow exceptions where the organisation providing social and affordable housing is unable on legal grounds to satisfy this requirement.
- A risk based approach to compliance should be adopted that recognises both impact and probability and the current NRSCH tier breakdown should be replaced with a system that identifies organisations by their regulatory engagement.
- Both prudential and consumer protection regulation are equally necessary. The two aspects are for the most part inextricably linked and can be combined in a well- resourced regulatory body. That said there is an opportunity for this review to examine different models to give assurance that the most appropriate option for the future NRSCH is selected.
- There should be more public information about both the overall sector and, over time, of registered organisation performance.
- The review presents an opportunity to consider what staffing and resourcing is required by Registrars’ offices to regulate a more diverse sector.

About CHIA NSW and its members

This submission is made by CHIA NSW on behalf of its members. CHIA NSW is the industry peak for community housing providers in NSW. We represent over 90 providers including many Aboriginal Community Housing Providers. Aboriginal members have also been working to establish the Aboriginal Community Housing Industry Association (ACHIA) NSW. It currently is overseen by an interim committee pending its first elections in March 2019. CHIA NSW is also an associate member of the industry’s national peak body – CHIA.

Registered community housing providers manage around 39,000 tenancies across NSW and own \$1.7b worth of social and affordable housing assets. Community housing providers manage the tenancies of a diverse group of households, most of who are on very low incomes. The non-Aboriginal sector is set to grow further with the transfer of around 14,000 properties from public housing management to be completed by late 2019. Aboriginal community housing providers (ACHPs) manage 4845 homes in NSW.

Our members include organisations registered in all three tiers, though predominantly in tier 1 and tier 2. We have a relatively small number of members who are specialist disability or homelessness organisations who also provide accommodation. Most members were previously registered under the NSW regulatory scheme and have considerable experience of regulation. All of these providers are also subject to additional contractual obligations and are well positioned to contribute to the NRSCH review.

CHIA NSW's ACHP membership is for the most part not yet registered in the National Regulatory System for Community Housing (NRSCH) or the equivalent NSW Local Registration scheme. Many of the organisations are registered in the Aboriginal Housing Office's regulatory scheme, PARS, or have been approved by the NSW Aboriginal Land Council for their operation of a community benefits scheme for the provision of residential accommodation.

CHIA NSW is providing information, support and advice to ACHPs preparing to register in the NRSCH. ACHPs are also able to offer valuable insights into the NRSCH from the perspective of potential new entrants.

About this Submission

CHIA NSW has structured the submission to respond to the relevant questions in the discussion paper, combining our responses to some questions where this makes sense. In some cases the order we wanted to respond in did not correspond with the discussion paper so we have referenced the question to which our comment corresponds where appropriate.

We have also made comment on other matters not addressed 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 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 is attached at Appendix 1. The paper was prepared with significant input from CHIA NSW's membership 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.

The submission is confined to those parts of the NRSCH in which CHIA NSW and its members have knowledge and expertise. There are two areas where we have not made significant comment:

- How Victoria and WA can be facilitated to join the NRSCH
- 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 been sought and incorporated into the submission. A regulatory sounding board composed of 5 organisations led the input of 'mainstream' members. We also used feedback from members provided at sessions leading up to the review's announcement. Feedback from ACHPs was collected during NRSCH introductory sessions and capacity building events held throughout 2018. The new Aboriginal peak, Aboriginal Community Housing Industry Association (ACHIA) also provided its views to CHIA NSW. The CHIA NSW Board signed off a final draft at its 22 February Board meeting.

A workshop at the CHIA Exchange on 6 March was held with the NRSCH review team and the submission finalised after this discussion.

Background

CHIA NSW welcomes the NRSCH review. 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. More change can also be anticipated. Furthermore events elsewhere - particularly in the UK - suggest that a review is timely. Of particular relevance are the following:

- the not for profit community housing sector has grown in size and diversified its business in response to the opportunities presented by (in particular) state governments
- property development has been undertaken by a significant number of providers - in the light of public concerns about development, both the amount and its quality (the recent incident concerning Opal tower being an extreme example), adherence to asset standards is likely to become of more concern
- more providers are accessing (or are seeking to access) private finance at a level and in forms that were not contemplated in 2014
- increasing numbers of providers have diversified into other forms of business - including specialist disability accommodation, fee for service arrangements with non- government actors , and market housing for sale
- in 2014, the affordable rental model was still in its infancy and while the future of NRAS properties remains uncertain it is likely that this form of tenure will expand
- the forthcoming NSW state and federal elections may see the introduction of new funding to support the construction of social and affordable housing - this will, over time, impact on the tenant profile and potentially the services tenants expect and the involvement they want in the running of their homes
- in NSW contractual compliance for registered community housing providers has become significantly more burdensome¹
- as social housing has become more marginalised and allocations targeted at the most disadvantaged households, provider income streams are being affected - in addition more tenants require individualised support services which the sector is increasingly obligated to provide, these services also being generally funded from rental income
- new types of providers have increasingly sought registration including specialist disability organisations and 'for profit' providers whose main business may not include social housing
- while there has been concern in Australia that the NRSCH has been insufficiently targeted at financial and governance issues the Grenfell Tower fire in London highlighted that 'consumer' regulation - tenancy management and health and safety issues need effective scrutiny too
- as overall regulatory burden and control increases so does the risk that as in the UK providers will be classified as 'public' entities. This review is an opportunity to ensure that the relationship between the state and providers remains at the correct distance.

¹ Societal December 2018 (unpublished), Community Housing Review of Sectoral Viability p27

These issues all need to be considered as part of the NRSCH review to ensure that the options put forward do not just address issues arising from the systems past performance but anticipates future change in the sector; particularly in light of both a NSW State and a federal election taking place in 2019. For this reason CHIA NSW recommends that while the regulation of public housing and SDA properties have been excluded from the review, the NRS is structured so as to facilitate the addition of these two types of housing. In NSW there has already been open discussion about public housing being subject to similar oversight to community housing. *National Regulation – An Outline Proposal*, page 6 contains further detail on how the system could accommodate different provider types (Q8 – role).

We appreciate that the discussion paper is designed to prompt feedback that will inform future activity and deliberately excludes analysis of the system's current operation to avoid focusing responses on a limited number of features. CHIA NSW would, however, have found it useful for the paper to have included a summary of the operation of the three schemes and comparisons and trends in regulatory action, performance standards, appeals etc and the amount spent on the schemes. A number of the questions posed in the discussion paper - Q 19, 22, 26 – require further investigation and analysis.

Purpose of Community Housing Regulation

Is regulation still required? What is the vision?

CHIA NSW remains convinced about the value regulation can bring and believes the current system forms a sound basis from which to build an improved system.

CHIA NSW members' prime business is to develop and manage homes for social and affordable rent. They are independent not-for-profit organisations. While they represent a very diverse sector, all are driven by social purpose, and their mission to ensure everyone has a good quality, safe place to live that they can afford. In CHIA NSW's view, the role of regulation is to create a framework within which providers can deliver on this purpose as effectively as possible. This is the test against which any regulatory proposals should be judged.

CHIA NSW believes the regulatory purpose as defined in the Inter Government Agreement (IGA) remains relevant. We would also draw attention to the objects of the Act which add two significant purposes important to consider as these require the regulatory system to 'support' the growth and viability of the sector i.e.:

- to ensure that registered community housing is developed as a viable and diversified component of the social housing sector
- to support the provision of registered community housing for people on a very low, low or moderate income.

We view the NRSCH as part of the overall regulatory system which also includes contractual compliance and self-regulation. 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.

Going forward we believe it is important that the regulatory system recognises community housing providers status as independent social organisations pursuing public benefit, but not as state agencies. This is essential if they are not to ‘suffer’ the same fate as the [classification](#) as part of the public sector experienced by housing associations in the UK. This issue has now been addressed but only after the regulatory system was revised to reduce what was assessed as over control of the sector. There should be no changes to regulation (even those ostensibly to remove contractual burden) that seek to direct the overall activities or policies of community housing providers.

The vision going forward must be that the system gives assurance to government, private lenders, local councils, the public and most importantly to tenants about the good governance and financial strength of the sector, and that it provides a clear mechanism where regulatory intervention is required.

In the light of the recent Financial Services Royal Commission and its findings on the governance and regulation of Australia’s financial services which highlighted the need for appropriately resourced and independent regulatory bodies, it is crucial that other areas of activity dealing both with vulnerable consumers of services, and with significant amounts of public and private finance, are also ‘adequately regulated’. As identified in the Financial Services Commission, the review also needs to consider the balance of the role of the regulator in enforcement and supporting performance improvement.

We also support regulatory underpinning of service standards, requiring community housing to provide effective recourse if they fall short of appropriate standards, and allowing the regulator to take action in the most serious cases. We also support the current risk based approach that targets regulatory action where there is a risk of non-compliance.

While preparing this submission, CHIA NSW has been mindful of the debate around the future of England’s social housing regulation system. Their current regime has been criticised for its almost exclusive focus on prudential regulation with suggestions being made that a separate consumer regulator should also be established.

CHIA NSW supports strong consumer regulation and is against a future form of NRSCH that increases prudential oversight at the expense of consumer protections. Whether two separate regulatory systems are desirable is however, moot; the Scottish regulatory system is an example of where the two roles have been successfully combined, albeit with specialist teams undertaking specific roles.

One of the strengths of this ‘combined’ approach is that in reality it is often difficult to separate the prudential (including governance), and tenant and property service aspects of providers’ organisations in an overall organisational assessment. That said there are clearly some individual consumer protections that are not well served by regulators that focus on overall organisational compliance. The need for all tenants to be able to access for example an ombudsman should be considered.

The consultation with our members revealed some appetite for using the opportunity of the NRSCH review to explore in more depth how best the prudential and consumer roles of the NRSCH can be discharged.

The discussion paper also draws attention to the Victorian regime’s administration of a ‘complaints process for tenants (or prospective tenants) affected by an agency’s decision on a rental housing matter’. We do not believe that the current regulatory system has sufficient resources to operate effective individual consumer protection type ‘regulation’ i.e. to resolve complaints. We do however support the introduction of nationally consistent Tenant Advice Services and as mentioned earlier in our submission we believe that tenants should have access to a strong consumer protection (which could include an ombudsman).

We also believe that there is scope to give tenant representative organisations more prominence within the regulatory governance framework. This will require government support for the development of appropriate structures to facilitate this.

We also want to call attention to the limits of compliance based regulation as an administrative tool. It is not sufficient in scope or depth to judge providers’ relative performance, nor to assess how well individual organisations are performing. It is not the same as a more rigorous (and expensive) on-site inspection regime which for example operated across the UK until the mid-2000s.

Cultural change will succeed only if it is a sector-led, it cannot be externally imposed. This is why we are committed to work with other state peaks and CHIA National to revitalise 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 and encourage a culture of continuous improvement and responsiveness to tenants and other stakeholder needs and requirements.

The standards will complement the NRSCH by providing service users, Government, and private investors with a credible and robust assessment of organisational performance and capability that extends significantly beyond compliance with regulatory standards and establishes the role and importance of industry led quality assurance as a key pillar of a well-functioning regulatory regime. We are also exploring how tenants might take a role in looking at appropriate aspects of provider performance management system and, potentially, the NCHS assurance process, through a project that involves training tenants to become assessors.

The National Industry Development Framework has not - as far as we are aware – been used to guide the sector’s development. Hardly surprising given that the strategy was not resourced. By way of contrast in NSW, the State Industry Development Strategy has been extremely useful in supporting CHIA NSW to undertake projects to support the growth of the sector.

In future the Industry Development Strategy will fall within the remit of the NSW Community Housing Industry Council (CHIC), which has a broader role to support the growth of the sector. This 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?

We support the NRSCH encompassing ‘for profit’ and affordable housing providers. It is important for reasons of probity, transparency and accountability that all forms of affordable housing are subject to regulation. There have been accusations that the NSW Affordable Housing State Environmental Planning Policy (AHSEPP) has ‘allowed’ unaffordable housing, and that NRAS has been ‘rorted’ by some unscrupulous providers. These instances have had an adverse impact on affordable housing’s reputation and contributed to reluctance by different levels of governments to fund and / or support development applications. Regulatory oversight can help overcome these issues.

We believe that the NRSCH can accommodate providers who solely let affordable housing by requiring compliance against core performance standards such as governance, financial viability, asset management and probity and introducing customised standards for tenancy management. A similar principle can be adopted for other specialist and small providers. (Q11)

One 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 sector. Should ‘for profit’ housing entities continue to be registered we recommend that they are referred to as simply registered housing providers; with the addition of ‘community’ reserved for not for profit entities only. This would also allow for other sectors to be included.

We also support a phased introduction to extending the NRSCH to other organisations (such as public housing) and to other forms of subsidised housing types which could be included in a definition of social and affordable housing, such as (in NSW) new generation boarding houses.

We believe it is possible to design a registration and compliance system that can accommodate multiple provider types (such as public housing), by careful targeting of the requirements to meet performance standards and the amount of regulatory engagement. All the UK regulatory regimes have successfully accommodated the equivalent of public housing in their regimes.

While there may be a concern about broadening the registration scheme from a resourcing angle, there is an alternate argument that expanding the Registrars' scope to incorporate allied regulation such as of specialist disability accommodation, boarding houses etc. could in fact bring additional resources into the system and allow for more specialisation to occur in their offices.

Whatever approach is taken, CHIA NSW 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, but it should not be at the discretion of the individual state or territory.

What is the impact of having three different regulatory systems?

We strongly support one national regulatory system and it is critical that whichever structural model is adopted 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.

The costs associated with three systems include the opportunity cost (which for NSW based community housing providers wanting to operate in Victoria includes them setting up a separate subsidiary), less investment in the system as a whole, and an absence of comprehensive information about the sector. For investors such as the NHFIC, one single registration scheme will simplify administration and any future Commonwealth funding would be more straightforward if a consistent regulatory regime was in place.

NSW providers have advised that, in particular, dealing with the Victorian registration system adds significantly to their costs. This is not just because of the difference between the Victorian system and other jurisdictions, but also, it is understood, because the Victorian regulator does not accept other jurisdictional Registrar assessments. Providers who wish to operate in Victoria face additional costs from meeting two sets of regulatory requirements for essentially the same activities. This is resource that could otherwise be spent on delivering improved services.

The paper does not cite what reasons the two States have for maintaining separate schemes, but unless these are about retaining complete control, the differences identified are surely surmountable. For example the jurisdictions that have joined all expressed concerns around leakage of investment to others states and as a consequence have introduced mechanisms to protect against this.

Transition to the national scheme ought to be relatively straightforward and could be articulated through an amended bilateral agreement between the Commonwealth and States and Territories. There is probably scope to avoid the process used for the first jurisdictions to transition to the NRSCH and confine the registration assessment to points of material difference between state and national schemes.

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. If the review proposes the continuation of state based registration with the participation of all jurisdictions then, as with the current participating jurisdictions, the primary regulator must ensure they are regulating the whole business of a provider, not just the part of the business in their jurisdiction.

Design of the NRSCH

Purpose and efficient design

CHIA NSW has previously made known that our preferred option is for a single National Registrar with state based deputies in an independent agency. As long as the function is autonomous and has its own Board that reports to a Federal Minister we are agnostic about whether this is a free standing agency or part of a larger housing agency. Our main concern is to ensure that the registrar has an arms-length relationship with government and is subject to political direction only in certain specific and limited areas.

The model can draw on existing regulatory bodies such as Safe Work Australia. Our support for this option is that it best meets the fundamental principles of consistency, accountability and independence required.

In the absence of independent oversight of the NRSCH there is only anecdotal evidence that practice and approaches vary between jurisdictions and we accept that registrars, through for example communities of practice, have attempted to minimise divergence. One National Registrar would however enable and support more consistency in:

- the definition of property assets that are part of the regulatory regime including those delivered as an outcome of planning mechanisms, such as inclusionary zoning and as a result of land contributions
- the types of organisations that are required to be registered

- the approach to assessments including investigations and allowing more scope to select an independent investigator
- the interpretation of compliance and use of enforcement action by, for example, enabling moderation of assessments by different offices.

There are potentially other more 'constructive' advantages:

- it also builds scale and offers scope for meeting Registrars' needs for specialist/technical expertise
- it is likely to lead to more responsiveness to changes in the operating environment by streamlining the change process.

We recognised in our earlier paper that this is a longer term option – not least because the funding of such an office will need to be agreed. An alternative approach in the short term is to improve consistency and co-ordination through:

- establishing the National Regulatory Council as set out in the 2012 Inter Government Agreement but with its remit strengthened so that it is empowered to propose changes to the legislation and regulatory policy, and to make changes to practice related matters
- requiring state Registrars' offices to harmonise practice and strengthen capacity possibly through sharing specialist and technical functions
- appointing (possibly on a rotational basis) a lead Registrar with a remit to drive agreed changes
- introducing a mechanism for registered organisations and other stakeholders (tenants and investors in particular) to be consulted on the system's operation and proposals for change.

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

CHIA NSW supports the introduction of the governance structure set out in the IGA, duly modified if a National Registrar's office with its own Board is established. 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.

All members of the National Regulatory Council should be elected on the basis of their skills, knowledge and experience of regulation and the functions and services community housing industry. We also believe there should be representatives with sufficient familiarity with policy across the states and territories.

Collectively they should demonstrate competence across the full range of performance standards. We envisage a representative tenant organisation will be amongst the membership.

The role and remit of the Council should be open to more detailed consultation. It should be accorded sufficient independence and status that its reports (which should include an annual state of the sector report) and recommendations are not ignored. We anticipate that the Council will consider systemic issues affecting the sector as a whole.

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.

Other Regulators

For most CHIA NSW members the NRSCH is their prime regulator.

The principle for us is the overall regulatory burden on providers should be minimised by a requirement that memorandums of understanding are negotiated between key regulatory bodies such as Australian Charities and Not-For-Profits Commission (ACNC) and Australian Securities Investments Commission (ASIC). There should also be consideration of mutual recognition between other regulatory and assurance schemes where appropriate, for example for assurance processes for specialist homelessness services and disability service providers.

Of most significance though is the need to ensure that contractual compliance agencies are persuaded to avoid duplication and encourage reliance on relevant aspects of the registrar's work. So important is this issue that we recommend that the review specifically commissions a study to identify where there is scope to reduce regulatory and compliance costs to Government and CHPs without compromising the integrity of these schemes.

Additional Roles

Earlier in the submission we mentioned the potential to broaden the remit of the regulatory scheme to include all social housing and some other forms of subsidised housing.

We do not support the NRSCH taking on a sector capacity building role whether for individual providers or for a part of the sector. This has to some extent been trialed with the ACHPs in NSW and leads to a confusion of roles and moreover is incompatible with the regulatory function. (Q24)

The Registrars should issue guidance where systemic issues are uncovered and identify where sector development may be required via channels such as the NSW CHIC mentioned earlier.

Operation of the NRSCH

As noted earlier there is little independently generated information about the performance and costs associated with the NRSCH. While the Registrars collect feedback from providers concerning individual assessments we caution against placing too much reliance on these as indicative of provider views about the NRSCH as a whole. What they do suggest is that Registrar staff are capable, accessible and polite, and that most compliance assessments are conducted properly.

The information on which we based our regulatory paper and which has also fed into this submission comes from questioning members at forums that are designed to probe beyond their individual organisational assessments. Our views are also influenced by our observations from participation in the Registrars Advisory Group.

There has been no indication at the Registrars Advisory Group that their enforcement and investigative powers are insufficient and we would not support an extension without independent corroboration that the existing wide ranging powers are insufficient (q13).

The design and operational features we believe need to be examined during the review concern:

- the assessment of risk (which encompasses the tier question)
- a revision of the performance standards
- a review of regulatory office competencies.

Risk Profiling and Regulatory Engagement

The tier classification should be replaced. As used in the NRSCH it is only a partial indication of a provider's risk of non- compliance and is often misunderstood as synonymous with capability/performance.

We believe risk profiling should combine performance related factors such as poor outcomes for tenants, sub- standard asset management and development activity, and financial, governance and management concerns with organisational context considerations. Contextual factors could include an organisation's property portfolio (numbers and quality), tenancy turnover, the amount of public funding and private finance it is servicing or has committed by lenders, organisational complexity, the degree of local community dependence on the organisation, and the nature of its overall business. Significant changes to an organisation might also warrant a higher risk profile.

CHIA NSW believes that benchmarks and thresholds need to be just one part of a performance measurement system that also encompasses consideration of a provider's performance against its stated aims and objectives as well as analysis of performance trends.

The peak's paper *National Regulation – An Outline Proposal* and the one jointly produced with the QLD registrar outline our preferred approach in more detail.

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.

Performance Standards

A clear objective in relation to the Regulatory Systems performance is its role in promoting confidence for the general public, government and private sector investors. The NRSCH performance standards should be re-examined to reflect the changing operating environment and context for community housing providers and also to allow for other organisations and housing types to be included in future.

We believe there is scope for:

- Reducing the requirements for smaller and specialist organisations to reflect their risk profiles and other regulatory obligations – the recent review commissioned by registrars into T3 regulation contains many sensible suggestions. We can see merit in reducing and targeting evidence requirements. We are not convinced that assessments should be less frequent than for T1 and T2 providers. Apart from the fact that much can occur between assessments that are two years apart, it means the information collected by the Registrars about the sector is partial and contains gaps (q11).
- Harmonising some of the current standards – there is overlap between the governance, probity and management standards.
- Enhancing/revising standards to reflect more complex corporate structures, arrangements and business diversification amongst larger providers.
- Placing more emphasis on value for money within the financial performance standard – recognising that its assessment needs to accommodate the diversity of operations – within businesses as well as between different organisations. A NSW Industry Development Strategy funded project is currently examining how this might be measured drawing on the long and chequered history of similar initiatives in the UK.
- Community Engagement - Standard 3 has proved difficult for a compliance based system to assess and the utility of its continued inclusion is questionable.
- Including a more demanding requirement on tenant engagement.

- Cultural competency being better reflected in the standards given the proportion of Aboriginal tenants residing in social and affordable housing.

The sector is also open to regular review of the compliance thresholds and also to variations to accommodate jurisdictional issues and/or organisational type.

There have been general improvements in data quality over time - an observation we make from operating HouseKeys. The inclusion of peak bodies in the Registrars' process to improve reporting is welcome. Housing agencies should be required to harmonise their data requirements with the NRSCH where these cover the same ground as the performance standards. The principle of collect once and share many times must be adopted.

As part of the review of the standards there should be consideration of whether the evidence and data required should be varied. The principle should be to meet the requirements for assessment - not to satisfy a particular stakeholder. 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.

Close attention during the review should be on asset definitions and improving development information. CHIA NSW has carried out substantial work on establishing data definitions to report on the sectors' property activity that we can share.

Our impression is that the data collection and analytical tools available to Registrars may need to be upgraded. The financial performance report remains an excel spreadsheet. In Scotland providers are able to transfer financial data direct from their systems to the Scottish Housing Regulator – see [here](#). A similar streamlined approach should be planned here.

We also accept there may be merit in undertaking occasional thematic based compliance assessments where sector systemic matters of interest are identified – whether through compliance assessments or triggered by external events. The NSW Registrar has undertaken a number of 'campaigns' to investigate areas of concern. Typically these have focused on organisations where performance has been less good and thus while resulting in guidance have not represented a sector wide overview. What we have in mind is more akin to those carried out by the Scottish Housing Regulator – see [here](#).

Regulatory Office Competencies

As the sector has changed the nature of the job of regulation has also changed. In NSW at least, we have not observed a review of the resourcing (including staffing) required to meet these new demands. The NSW Registrar's Office has drawn on external help to carry out more complex investigations, but as routine work also becomes more complex and diverse, different and more specialist and technical skills are required. These include a comprehensive understanding of the community housing business.

Registrar's staff that are engaging with senior management and governing body members need to be able to command respect and exercise authority. Trust in the capacity and competence of Registrars offices is critical in ensuring the confidence of all stakeholders in the regulatory system - the public, governments, and finance providers, and would also provide the pre-requisite conditions to enable State governments to reduce the contract-based compliance. The review presents an opportunity to consider what staffing and resourcing is required to regulate a more diverse and growing sector.

Communication

The NRSCH should be more visible i.e. it 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. The provision of more public information should be based on improvements in data collection and the consistent application of data definitions.

As noted earlier in our response there is work to do to ensure that data is reliable. Over time and in full consultation with the sector, the system could:

- adopt a form of traffic lighting used by English Social Housing Regulator to more easily distinguish full compliance from where providers need to make improvements - see [here](#).
- present information about individual organisations as in Scotland - see [here](#).

The Registrars are taking action to provide more information on the sector including an environmental scan. The [examples](#) from the English Social Housing Regulator are a model to consider.

Aboriginal Community Housing Providers

CHIA NSW has been working with the sector as it builds capacity to transition to the NRSCH. Many 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.

The current NRSCH 'wind up clause' eligibility criterion should be reviewed to allow exceptions where the organisation (as is the case of NSW Local Aboriginal Land Councils) providing social and affordable housing is unable on legal grounds to satisfy this requirement. We accept NSW has introduced a local scheme but this does not fit well with the principle of one system.

Many ACHPs have raised concerns about a loss of identity in joining what is perceived as a mainstream regulatory regime. ACHPs have said that they believe that joining the NRSCH means that they lose the "'A' in ACHP". This reflects on their perception of the Aboriginal cultural competence of the system as a whole – including the system's capacity to reflect and acknowledge and Aboriginal service delivery model that supports and values families as well as traditional landlord functions. The review is an opportunity to address the issues of cultural competency in the regulatory system and to build additional cultural competency in the registrar's office and staff teams.

A linked concern is the NRSCH's ability to recognize alternative models of governance which include cultural obligations.

ACHPs and indeed many mainstream CHPs would like to see the NRSCH recognise and foster Aboriginal cultural competence amongst all providers as part of its core purpose and we strongly encourage the introduction of an Aboriginal cultural competence Performance Outcome within the revised NRSCH.

ACHPs in NSW also asked for mutual recognition between the different regulatory regimes in operation in the sector, for example those maintained by the Office of the Registrar of Indigenous Corporations (ORIC) or the NSW Aboriginal Land Council's Community Benefits Scheme.

Joint Community Housing Peaks

National Regulation – An Outline Proposal



Joint Community Housing Peaks

National Regulation – Outline Proposal

Introduction

The community housing sector (the sector) is supportive of a strong and fair regulatory regime but recognises that the current system is not optimal and needs reform¹. The findings of the 2017 AHURI Affordable Housing Capacity Study expresses concerns that are shared by community housing providers, i.e. that the regulatory system² is fragmented and while burdensome, is not currently ‘adding sufficient value’. The sector is also eager to see the system extended to WA and Victoria.

The Commonwealth Government’s Bond aggregator is a major impetus for regulatory reform and a real opportunity to deliver change to support the operation of the new National Housing Finance and Investment Corporation (NHFIC). The National Housing and Homeless Agreement (NHHA) negotiations and the intention that the new agreement will have transparent outcomes also offer an opportunity for reform of the National Regulatory System for Community Housing (NRSCH)³ and to leverage the re/engagement of states and territories.

This short paper outlines the sector’s initial proposals to inform a long term strategy for the NRS. We accept that some elements (such as broadening its scope to include organisations other than community housing) are a longer term project. Developing a vision for the system’s long term future is necessary and should be part of the planned evaluation. Implementation which includes consultation on the more potentially contentious issues can be phased in.

The proposal was prepared by the national and state peaks and represents the consensus reached by organisations that represent providers operating in different jurisdictions, with different characteristics and facing different challenges. Together the peaks have members that range from the larger national providers including all Tier 1 and Tier 2 (and equivalents) to small Aboriginal providers and some specialist homelessness and disability organisations. Understandably individual organisations may not subscribe to the entirety of this document.

About the Proposal

The proposal is informed by observation of current practice, experience of other jurisdictions and consideration of future requirements.

We have not made recommendations on funding but assume that what we are proposing will be co-funded by the Commonwealth and state governments given that both will derive benefits from the scheme.

We appreciate that additional detailed design work will be necessary as part of the reform but are confident that this can be phased in, and in any case the NRSCH and VIC registration schemes contain many elements that can be retained and / or enhanced. Both schemes offer a solid foundation on which to build improvements.

¹ See table at end of document for breakdown

² The term regulatory system is used to refer to all the contract and regulatory regimes that providers are subject to

³ We have used the term NRSCH but recognise if other organisations become regulated this will need to be adjusted

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The sector is also considering supporting the introduction of its own voluntary quality assurance against a revised set of National Community Housing Standards. This would complement rather than replace National Regulation. Our hope is that organisations which participate in an independent assessment against the standards will have attainment recognised in the regulatory regime via for example a lower risk profile. Similarly providers that achieve other external independent accreditation / certification (such as a credit rating) should also have the attainment of these recognised.

Associated with regulatory reform, the sector is also keen that the national industry development framework for community housing⁴ is revised and a process for its ongoing review established.

The sector welcomes involvement in the reform process and hopes this paper provides a basis for further discussion.

Legislation - Objects of Regulation

The sector fully supports the objects of the Community Housing Providers (Adoption of National Law) Act 2012 No 59 (NSW) and believes they form the basis for a national registration scheme. The objects of this Act are as follows:

- a) to apply as a law of this State a national law for the registration and regulation of community housing providers under a national system of registration,
- b) to facilitate government investment in the community housing sector and ensure the protection of that investment,
- c) to ensure that registered community housing is developed as a viable and diversified component of the (New South Wales) social housing sector,
- d) to support the provision of registered community housing for people on a very low, low or moderate income⁵

Our proposal does however include some elements to promote consistency which will have legislative implications.

Principles and Rationale

The following principles underpin the proposal:

- the system needs to be **truly national** applying to community housing providers across all jurisdictions
- while the overarching vision, objectives, regulatory principles, and philosophy of the NRSCH should be set by Government the operation of the system needs to be **independent** of

⁴ http://www.nrsch.gov.au/data/assets/file/0006/284604/Industry_Development_Framework.pdf

⁵ We have quoted from the NSW law as this was the first introduced. Other jurisdictions have similar (virtually identical) objects.

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policy and funding agencies and have transparent and accountable governance arrangements

- 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 subsidy ⁶ for social and affordable housing is conditional on registration in the national scheme
- the registration scheme **should be inclusive of all social and affordable housing providers** i.e. public, not for profit (Aboriginal, specialist and mainstream) and, private sector organisations
- the current NRSCH 'wind up clause' eligibility criterion should be reviewed to allow exceptions where the organisation providing social and affordable housing is unable on legal grounds⁷ to satisfy this requirement
- the scheme should retain the NRSCH approach by requiring organisations to demonstrate performance against key service, governance and financial standards. Emphasis should be placed on the compliance process rather than registration
- while key performance standards should apply equally to all organisations seeking registration, some standards will only be applicable where the organisation is of a particular size, carries out specific functions etc
- a **risk based approach to compliance** should be adopted that recognises both impact and probability
- the current NRSCH **tier breakdown should be replaced** with a system that identifies organisations by their regulatory engagement⁸. This does not preclude the development of a provider typology to distinguish organisations by size, operational locations, and main functions / resident base
- that while financial and governance standards have been prominent in discussions around what aspects of the current system need strengthening, standards to safeguard tenants should not be overlooked or seen as of secondary consideration
- **Overall regulatory burden on providers should be minimised** by a requirement that memorandums of understanding are negotiated between key regulatory bodies such as Australian Charities and Not-For-Profits Commission (ACNC) and Australian Securities and

⁶ A precise definition will be important as a start we have identified subsidy as referring to grant, low interest loan, tax credit, land and property and contract to manage / develop social and affordable housing by any level of government. We recognise this process will require much discussion. A final definition needs to recognise the difference between an "investment vehicle" and the "operator" – e.g. If a MIT receives tax concessions we suggest it doesn't need to be a regulated CHP if it ensures the operator of the portfolio is a registered CHP. Similarly affordable housing 'procured' via the planning system where management is outsourced to a registered provider should not require the owner to be registered.

⁷ to allow LALC, local councils and public housing to register avoiding necessity for multiple local schemes

⁸ Regulatory engagement refers to the amount of contact and scrutiny of a particular organisation by a registrar. Typically this could be set by size and performance considerations. Additional explanation is provided later in the document.

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Investments Commission (ASIC) and also with contractual compliance agencies to avoid duplication and encourage reliance on relevant aspects of each regulator's work

- The scheme should be more visible i.e. it 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
- Horizon scanning⁹ should be incorporated into regulatory practice. Registrars should analyse the future by considering how emerging trends and developments are already or might potentially affect the registered community housing providers' current operations, business models, policy and practice, and performance. The scanning process should consider the impacts on the whole industry or specific parts based on specialism or location

We accept the regulatory system should have mechanisms to investigate substantive complaints which potentially impact on providers' compliance with the performance standards. We do not support the Registrar incorporating a tenants' complaints resolution function. We see merit in states and territories adopting common (or at the least consistent) social housing complaints and appeals systems.

A National Framework

Structure

The preferred option is for a single National Registrar with state based deputies in an independent agency with its own Board reporting to a Federal Minister¹⁰. The model can draw on existing regulatory bodies such as Safe Work Australia. Our support for this option is that it best meets the fundamental principles of consistency, accountability and independence outlined earlier. It also builds scale and offers scope for meeting Registrars' need for specialist / technical expertise.

We recognise that this is a longer term option and an alternative approach in the short term is to improve consistency and co-ordination through:

- Establishing the National Regulatory Council as set out in the 2012 Inter Government Agreement¹¹ but with its remit strengthened so that it is empowered to propose changes to the legislation and regulatory policy and make changes to practice related matters
- Requiring state Registrars' offices to harmonise practice and strengthen capacity possibly through sharing specialist and technical functions
- Appointing (possibly on a rotational basis) a lead Registrar with a remit to drive agreed changes

⁹

the systematic examination of information to identify potential threats, risks, emerging issues and opportunities, allowing for better preparedness and the incorporation of mitigation type strategies into organisational practices. The joint peaks with Power Housing have prepared a paper on this topic for the Registrars, Policy and Sector Representative Forum

¹⁰

We have not specified a Minister and department recognising this will be influenced by the level of interest / investment in registered provider outcomes.

¹¹

http://ris.pmc.gov.au/sites/default/files/posts/2013/05/Appendix-4_NRS-Inter-Government-Agreement.pdf

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- Introducing a mechanism for registered organisations and other stakeholders (tenants and investors in particular) to be consulted on the system's operation and proposals for change

It is critical that whichever structural model is adopted both Victoria and Western Australia (WA) join the National Regulatory system from July 2018; with a program to transition providers being implemented from that date. Our suggestion is that agreement is secured through the bilateral NHHA process. Both Victoria and WA regulatory staff have remained closely involved in national regulatory development and adopted in many cases similar practice, thus transition is likely to be relatively straightforward. We also believe that within a single National Registration system there is potential to address jurisdictional difference in relation to policy and contractual settings.

The sector's perceptions of the NRSCH, borne out by the AHURI Inquiry, are that state based Registrars have not been able to individually resource specialist finance and governance expertise or to engage analysts with senior sector experience. We believe there is scope for joint procurement / sharing of these resources. Alternatively there could be scope to co-opt or second expertise from a body like APRA or ASIC be co-opted for this purpose whilst NRSCH builds capacity in the short term while Registrars build their own capacity.

System Scope

In the principles section of this document we have recommended that the registration scheme should be inclusive of all organisations managing social and affordable housing that are required to register in order to be entitled to receive some form of government subsidy.

We would support a phased introduction to extending the system to other organisations (such as public housing) and to other forms of subsidised housing types which could be included in a definition of social and affordable housing, such as (in NSW) new generation boarding houses¹².

We believe it is possible to design a registration and compliance system that can accommodate multiple provider types (including public housing) by careful targeting of the requirements to meet performance standards and the amount of regulatory engagement. The UK regulatory regimes have all successfully accommodated the equivalent of public housing in their regimes.

While there may be a concern about broadening the registration scheme from a resourcing angle, there is an alternate argument that expanding the Registrars' scope to incorporate allied regulation such as of disability accommodation services, boarding houses etc. could in fact bring additional resources into the system and allow for more specialisation to occur in their offices. This could include, for example, provision of Specialist Disability Accommodation to participants in the National Disability Insurance Scheme.

Performance Standards

The NRSCH performance standards should be re-examined to reflect the changing operating environment and context for community housing providers and also to allow for other organisations and housing types to be included in future.

¹²

Noting that where management is outsourced to a registered provider, the owning organisation need not be registered.

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We believe there is scope for:

- Reducing the requirements for smaller and specialist organisations to reflect their risk profiles and other regulatory obligations
- Harmonising some of the current standards – there is overlap between the governance, probity and management standards
- Enhancing / revising standards to reflect more complex corporate structures, arrangements and business diversification amongst larger providers. Property development, asset management, financial management and governance standards should be a focus for change
- Placing more emphasis on value for money within the financial performance standard and tenant participation within current standards 1 and 3
- Cultural competency being better reflected in the standards given the proportion of Aboriginal tenants residing in social and affordable housing

The sector is also open to regular review of the compliance thresholds¹³ and also to variations to accommodate jurisdictional and / or organisational type. We also accept there may be merit in introducing the concept of thematic based compliance assessments where sector systemic matters of interest are identified¹⁴.

Over time and in consultation with the sector, the system could adopt a form of “rating” as is used by the Home and Community Agency (HCA) in England to distinguish say good governance and operations.

Risk Profiling and Regulatory Engagement

The tier classification used in the NRSCH is only a partial indication of a provider’s risk of non-compliance and is often misunderstood as synonymous with capability / performance.

We believe risk profiling should combine performance related factors such as poor outcomes for tenants, sub- standard asset management and development activity, and financial, governance and management concerns with organisational context considerations such as the organisation’s property portfolio - numbers and quality; tenancy turnover; the amount of public funding and private finance it is servicing or has committed by lenders; its organisational complexity; the degree of local community dependence on the organisation; and the nature of its overall business.

Significant changes to the organisation might also warrant a higher risk profile.

¹³

We believe that the term ‘threshold’ currently used by the NRSCH should be replaced by “indicators” because they are simply an indication / trigger for further regulatory enquiry and some business models will sit outside these and this must be ok if the overall assessment is still strong. ‘Target’ is also an inappropriate term as this suggests a benchmark of performance.

¹⁴

An example is [here](#).

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We are open to a regulatory approach that collects key information annually for all tiers if this is balanced with an overall less burdensome regime for Tier 3s.¹⁵ Registrars could use this information together with information about organisations drawn from other sources:

- about individual organisations (such as complaints); and
- concerning the general operating environment, including changes in government policy and new initiatives, economic conditions and emerging issues (Grenfell Tower is one example).

This would enable Registrars to determine what engagement is required for individual providers and also to identify whether there are sector systemic issues that require a more thematic investigation.

The assessment would consider the following:

- impact - the scale and significance of the problem if it was to arise
- probability / likelihood of the risks materialising
- manageability - the ability to deal with the risk and ultimately, in a worst-case scenario, the potential for a suitable rescue partner or partners

The Scottish Housing Regulator (SHR) has used a similar method to determine its regulatory engagement - high, medium and low with organisations. The SHR also annually identifies some organisations as 'systemically important' because of the contextual considerations highlighted above. In these circumstances the SHR requires additional assurance about how 'business models operate and the risks they face'. This means that higher levels of regulatory engagement cannot be equated to poor performance. It also has a separate organisational typology mainly for comparative purposes, categorising providers by size, whether mainstream or specialist and location. Providers self-nominate to these categories.

The engagement levels are summarised below:

Level of engagement	Definition
Low	Where the annual data return and other available information do not raise any compliance concerns. No further engagement is planned
Medium	Where the profile indicates the Registrar needs further assurance than from annual data return alone. In these cases the SHR publish an individual regulation plan ¹⁶ for each landlord in this category summarising the proposed engagement

¹⁵

We believe there is considerable scope to reduce the routine information collected from T3 organisations - financial in particular and focus on what a standard business should be reporting to its board. We suggest a project to work with a representative sample of T3s to design an approach to data collection is carried out. An annual collection is also predicated on their being no further engagement unless the review reveals non-compliance risk

¹⁶ For a regulation plan example use attached link

<http://directory.scottishhousingregulator.gov.uk/2018%20Documents/Link%20Group%20Ltd%20-%20Regulation%20Plan%20-%2031%20March%202017.pdf>

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Level of engagement	Definition
High	Where the profile indicates the SHR need the most intensive or continuous relationship. This may mean engaging in a more sustained way to develop a detailed understanding of current and potential areas of risk and the organisation's approach to managing them. It is likely that more regulatory tools will be used. An individual regulation plan will set out the planned approach

Transitioning to a New System

The proposals we are making work as a package but elements can be introduced separately. We recognise that a decision to set up an independent agency for example is one requiring considerable discussion. This does not prevent other elements being carried forward as items such as national coverage, changes to risk profiling, extension to other provider types and revised and updated performance standards are not conditional on one National Registrar.

For organisations already in the NRSCH their current registration ought to be automatically transferred to a new National Registrar as while there are likely to be some amendments to standards, not we assume to the degree that full re-registration is necessary.

For organisations that are not in the NRSCH we assume registration will be phased in if and when a decision is made to extend the system.

Joint Community Housing Peaks

Community Housing Providers – Registration Systems in Australia

State / Territory	System	Number Registered (T1, T2, T3)	Comment
ACT	NRSCH	15 (1, 3, 11)	No information on assets from website
NSW	NRSCH	147 (20, 11, 116)	Includes all assets where NSW assistance – including to specialist homelessness, disability services etc. but none of the following (although some ‘conditional’ on registered status): <ul style="list-style-type: none"> • National Rental Affordability Scheme B • Fee for service management arrangements • Leveraged properties without NSW Government interest • Partnerships with local councils • Boarding House Financial Assistance Program Funding
NT	NRSCH	1 (0, 1, 0)	Requirement to register limited to larger providers
QLD	NRSCH	77 (4, 10, 63)	Includes all assets where QLD enter into a contract plus ‘a national provider receipt’ - A grant, loan or other financial assistance paid to a national provider by the chief executive of the Housing Act 2003. Rent or other income, including proceeds of sale, from property funded by the chief executive of the Housing Act 2003 including fees or interest received in the course of providing a community housing service
SA	NRSCH	49 (4, 11, 34)	No information on assets from website
TAS	NRSCH	2 (2, 0, 0)	Registration mandatory only for those managing property under Better Housing Futures
VIC	State	40 (9 HAs, 31 HPs)	
WA	State	39	New system being introduced modelled on NRSCH

Appendix 2

Tiers: Implications and future options

1. Purpose

This short paper has been jointly produced by the Queensland Registrar and NSW Federation of Housing Associations' CEO following the regulatory advisory meeting on 13 September.

The paper's purpose is to stimulate discussion within the Regulatory Advisory Group about the interpretation and current (and potential future) use of Tiers. The paper should not be read as implying that the existing Tier categorisation has failed. The Tier guidelines were drawn up following extensive discussion and have for the most part operated well.

Since the NRSCH was designed there have been many changes in community housing providers' operating environment and this has led to new opportunities and different risks. More changes are anticipated as jurisdictions introduce new strategy and policy. This paper considers whether the Tier system needs adjustment or more systematic change to remain relevant. For this reason it does not focus in depth on what has previously occurred.

The paper also provides a short description from the UK's subsidised housing regulatory regimes of how each publicises risk profiles for individual providers.

The paper makes no specific recommendations and is as already noted a preliminary contribution to what might become more in-depth piece of work if the consensus is that the Tiers should be reviewed.

2. Intent

Tiers have been established to implement the sections of the National Law relating to registration of providers in a category - S12(2)(b). Tiers of registration are the categories contemplated by the Act NRSCH has Tier Guidelines made jointly by the relevant ministers in each participating NRSCH jurisdiction.

Registration in a Tier is determined by the community housing provider's level of assessed risk (Tier Guidelines p5). Tier determines "the performance requirements and intensity of regulatory engagement" (p5). Further the guidelines make it clear that as risk is not static and may change over time, a change in a provider's registration Tier may occur over time.

Registration Tier is described as the "first level of risk stratification to support a risk-based approach" to regulation. The intent of a tiered registration system based on risk is to ensure proportionality (Tiers Guidelines page 4). It is designed to deal "with the consequences of risk associated with the scale and scope of a provider's community housing business" (Tiers Guidelines page 5).

Registrars' decisions about tiers differ from the Registrar's assessment of risks associated with the providers' capacity and compliance with the National law. Within any tier Registrars vary the amount of regulatory engagement based on actual compliance and risks of non compliance. (Tiers Guidelines p 4). Consequently the second level of risk assessment is implemented through the assessment of a provider's performance data. This is designed to deal with the nature and

intensity of regulatory engagement and where necessary action. The engagement is regularly reviewed in light of changing business focus and complexity and performance. (Tiers Guidelines, page 5)

The Registration Tier determines the performance standards and requirements a provider must meet to demonstrate compliance. Core requirements are consistent across Tiers, but Tiers 1 and 2 have additional requirements. The evidence required also varies between T1 / T2 and T3 providers, reflecting the additional inherent risk posed. T3 providers who pose no particular performance risk are subject to less frequent compliance assessments (once in every two years).

While a provider's Tier is publically available, little information is available about the second level risk unless the provider is subject to serious enforcement action.

As the community housing sector grows and investment in its activities also grows it is critical that information published about the sector is clear and properly interpreted. Further as the sector develops and manages more stock (and consequently impacts on a greater number of people's lives) it is arguable that more information about performance should be published. At the very least there is a debate to be had about whether Tier (or something like it) should be redefined to encompass performance risk too.

As things stand the NRSCH regime does not flag "concerning" performance as is the case in other jurisdictions.

In evolving the regulatory system in Australia, a greater reliance could be placed on self-assessment especially by the more sophisticated providers. For example, they could undertake scenario based stress testing on their growth plans and report the results to the registrar. This approach for the future mirrors that of the evolution of the English regulatory system.

While these approaches are likely to meet the needs of investors who place great value on the regulator's whole of organisational view. The needs of service users for appropriate assurance are not addressed.

If Tier 1 status is perceived as "good", then the first public failure of a Tier 1 organisation would be a significant reputational threat to the sector.

3. Emerging Implementation issues

Providers have been registered in one of three Tiers. The application of Tiering decisions is not generally disputed nor are there claims being made that providers sharing the same salient characteristics in scale and scope, are being assessed as differing Tiers.

The principal issues that have emerged are:

- Third parties (such as financiers) interpret Tier status as implying differences in actual performance – viz Tier 1 providers are better at what they do than Tier 2 or 3 providers. Additionally there is evidence that Tier 2 providers have been offered less favourable loan terms as credit committees have mis-interpreted the purpose and meaning of tier classification.
- Providers hold concerns that governments (including local government seeking managers for its affordable housing) as funders confine certain "funding opportunities" to providers of a particular Tier. In terms of some opportunities it may be an entirely rational decision to

confine opportunities to certain tiers if these are being interpreted properly (if it is held –say– that these categories do truly distinguish major from minor property developers and the Government is unwilling to consider consortia / partnerships).

- Distinguishing between Tier1 and Tier2 providers is difficult. If plotted on a line they form a continuum with significant overlaps. There are arguably more similarities in terms of inherent risk between the smallest Tier1s and largest Tier2s than between the largest and smallest T1s. They are subject to almost identical compliance requirements and significantly the financial and governance evidence is identical. Due to the negative perceptions of Tier2, some providers in this group have understandably sought to be ‘promoted’.
- The extent of the regulatory burden imposed on small providers due to the requirements of Tier 3 evidence. In many cases Tier3s are subject to multiple regulatory regimes (disability, aged care, ACNC etc.) and scope exists to align some requirements and place reliance on other regulators’ assessments. A review of the Tier 3 regulatory burden has been committed too but as yet not actioned.
- Tier 3 encompasses a broad range of organisations whose only similarity is that they manage small numbers of community housing properties. There is a perception that Tier3 = small and unlikely to be able to respond to growth opportunities. In fact some are large organisations well experienced in managing complex service human service delivery programs and significantly, with substantial experience and expertise in property development equivalent to that of many T1 providers.
- Attempts to date to educate external stakeholders about Tiers have not shifted perceptions for some investors and funding bodies. The difficulty is compounded when providers who are re-categorised as Tier 1 publicise this as an ‘achievement’
- The Tier guidelines place significant emphasis on portfolio numbers and providers’ development activity as indicators of inherent risk. Arguably other characteristics such as providers’ organisational structure; membership pf partnership / consortia and diversification away from core social and affordable housing are equally important.
- A number of providers have started to talk openly about whether the regulatory regime could recognise performance that is significantly above the compliance threshold. This is possibly beyond the scope of the current regime and an alternative maybe a variation of the grading system used by the HCA – see below
- Registrars recognise that annual compliance assessment cycles for some providers are too insensitive a strategy for managing risk

Questions:

Are there any other issues that you think should be included?

Do you disagree with any of the problems identified or have any comments on them?

4. What are the options?

- Distinguish between organisational type (size) and performance as for example in the Scottish regulatory approach (see below)
- Re-label Tiers to minimise the “better” perception - a suggestion for which is to use Tiers as a credit agency type rating – AAA, AA+, AA, AA-, or perhaps more appropriately using the HCA traffic light system that includes an amber flag where performance may be less than compliant but not failing (see below)

- Recast and re-label Tiers to better articulate stock number boundaries/distinctions between Tiers (option to move away from numerical descriptors for Tiers to one that says something about the business of the providers are in – say Developer and Manager / Manager - based on the nature of the activity providers are engaged in). Possibly supplement this with a gradual move to publishing provider performance information as in the UK (see below) and either:
 - adopt two Tiers
 - use Tier 1 for the very largest - possibly only capturing those with over 5,000 and a pipeline of properties under development of 200 plus ...
- Develop risk tool to the point of pilot implementation and review interaction with Tiers, in this context proceed with parallel investigation and identification of options for reducing the regulatory burden for Tier 3 providers.

Questions:

Are there additional options that should be included?

Do you support any particular option(s) and why?

Are there other regulatory examples that could be considered?

Example - Scottish Housing Regulator (SHR)

Regulatory Analysis and Assessment

The SHR allows providers (RSLs) to designate a peer group which distinguishes them by size, main business (specialist or mainstream) and whether predominantly rural / urban.

Following assessment of annual returns each RSL is placed into one of three broad categories of engagement: low, medium and high. They publish a regulation plan for each RSL which explains the RSL's regulatory profile and sets out how the SHR will engage with the organisation. (See example

<http://directory.scottishhousingregulator.gov.uk/2017%20Documents/Arklet%20HA%20-%20Regulation%20Plan%20-%20draft%20Sept%202016.pdf>

High engagement means that the profile for the RSL indicates they need an intensive or continuous engagement. For medium engagement they need further assurance than they can get from our information returns alone. In reality all larger developing RSLs are placed here but the plan will indicate if the further information is 'nonstandard' or involves a special inspection.

Low engagement means RSLs need only make standard returns including their audited accounts, annual performance and statistical returns (APSR) and five year financial projections. They do not publish regulation plans for RSLs that are low engagement.

They also recognise systemic importance – i.e. because of property portfolio size, turnover or level of debt or because of their significance within their area of operation. They need to maintain a comprehensive understanding of how their business models operate and the risks they face, so we seek some additional assurance through our regulation plans. It is important to bear in mind that higher levels of regulatory engagement cannot therefore be equated to poor performance.

Example Individual Provider Information

<https://www.scottishhousingregulator.gov.uk/find-and-compare-landlords/statistical-information>

Example – HCA Judgements

The English HCA has different requirements for providers based solely on a threshold size. In addition to publishing the grading it also publishes its assessments where this a significant performance failure. The HCA grades performance of the most significant standards - see extract below for the governance standard.

4. Regulatory Judgements⁶

4.1 For all providers which own a thousand social housing units or more, we publish regulatory judgements of their compliance with the governance and the viability requirements in the Governance & Financial Viability Standard.

4.2 There are four governance grades:

G1	The provider meets our governance requirements.	}	Compliant
G2	The provider meets our governance requirements but needs to improve some aspects of its governance arrangements to support continued compliance.		
G3	The provider does not meet our governance requirements. There are issues of serious regulatory concern and in agreement with us the provider is working to improve its position.	}	Non-Compliant
G4	The provider does not meet our governance requirements. There are issues of serious regulatory concern and the provider is subject to regulatory intervention or enforcement action.		

4.3 All providers should seek to be assessed at G1. Where we judge a provider to be G2 this will be because we have identified some deficiencies in its governance which it needs to address. Although material, the deficiencies are not judged to affect our overall assessment of compliance. Our expectation is that providers assessed at G2 will take timely remedial action to address the issues identified. A G3 judgement means that the provider is not compliant with governance requirements. In these circumstances we will be actively involved with the provider as it works to address the failures in governance and move back into compliance with regulatory requirements. A G4 judgement also signifies that the provider is non-compliant with governance requirements but it is applied where the severity of the governance failures are such that we are actively intervening or taking enforcement action.