

NRSCH Review

Individual Submission to the Discussion Paper

21 February 2019

Dear NRSCH Working Group.

My interest in providing this individual submission stems from my extensive work with the community housing sector in NSW, and more recent experience working in a regulatory function across two Australian jurisdictions. While I have tried my best to cluster my feedback according to the Discussion Paper scope and themes, some feedback may be applicable across a number of themes.

Regulation of community housing

Regulation is required and relevant. The sector is not at the stage of maturity to entrust self-regulation. Issues that have emerged from other industries (Banking Royal Commission, and current Royal Commission into the Aged Care sector) and human service sectors clearly show a correlation between wrongdoing and schemes have fallen victim to 'regulatory capture' by the sector they are mandated to regulate. In these examples, it is the end service user that has felt the consequences of wrongdoing. This harm can manifest in many forms. In relation to community housing, the presence of a well-functioning regulatory scheme within itself can serve as a deterrent to any potential wrongdoing, at any level of business activity.

Some components of the NRSCH scheme do not fit well with where the CHP sector is currently at or where it aims to be in the next five to ten years. For example, the scheme requires financial viability assessments and reporting of the entire regulated entity. This approach is in effect double handling the role of the board and their internal financial expertise. Regulation should instead, focus closely on ensuring that those funds generated or leveraged from the use of government owned housing assets or direct government funding, have been utilised toward creating more social (or affordable) housing for people in need. This is not enabled within the current NRSCH Framework or its operational policy. Regulatory staff have no mechanism by which they could conduct any cross verification of a funding source and investment in new projects or development opportunities. This should be a core focus for regulators, with the monitoring of whole-of-organisation financial health left to the board as it is indeed, their responsibility.

The NRSCH needs to move to a completely nationalised scheme, with more focus on standardising those areas of community housing activity that can be validated, verified and analysed. There should be less focus on the nuances and points of difference across the separate jurisdictions.

With providers now operating across jurisdictions in diverse service delivery capacities, it is time the regulatory scheme became more enabling and effective in this space.

The other issue to note here is that the profile of the regulator and to whom it reports to, where the lines of accountability sit are crucially important in how it positions itself to its relevant jurisdiction. Having the delegation and powers set out in National Law and having enforcement provisions is crucial

in moving the regulatory scope forward and achieving maximum effectiveness in effectively regulating the community housing sector into the future.

The WA regulatory model is problematic for a number of reasons. It has no enforcement powers, which is a core function of well-designed regulatory scheme. While one may not need to use a 'big stick' approach, occasionally, it may need to be waved to assert its existence. In this case, it does not exist. The role and function of the Registrar is not adequately defined within the Department, and not officially recognised as completely independent. The business unit has no enforcement powers and the scheme is voluntary for providers operating and managing social housing in Western Australia. It claims to be 'consistent with the NRSCH' however this is questionable. The term consistent in this case refers to the alignment of administrative procedures and methods of assessment. To providers, this assertion of 'being consistent' can be misleading.

The NRSCH's consistent application across participating jurisdictions may also be impacted by some less obvious factors. Some other jurisdictions have the Registrar performing dual functions (appointed as Registrar but also carrying functions of a senior public service executive). This is not conducive to an impartial and independent mandate and should be reviewed as part of this discussion paper. Individual jurisdictions and housing agencies should consider this tension and conflict of roles and functions, for the benefit of a well-functioning independent and impartial regulator. Lines of reporting and regulators' delegated authority should not expose the regulator to any internal conflicts particularly where there may be a requirement to progress sensitive, contentious information from the regulator to the executive within the Agency or for example, additional funding or resources are required by the regulator and must be sought from the Agency.

Regulation should focus on activities within scope and closely linked to the objective of creating more subsidised housing for people in need and people on low incomes. The objective of the regulatory scheme should align to the purpose and intent of community housing in Australia.

Regulatory focus should better link to the intent of decentralisation of social housing and the subsequent asset transfers and related program funding; why has this taken place and what is the benefit to the government of the day, the public and the end user?

Community housing regulation should apply to all forms of housing services delivered by registered community housing providers. The focus of regulatory activity should be the broad objectives of subsidised housing service provision. It should not seek to differentiate or define separately the various forms of housing programs. This is currently creating additional and unnecessary complexities which do not within themselves provide for a more sophisticated regulatory scheme.

It is time to consider a national subsidised housing policy, that is aligned to common elements that apply across Australian jurisdictions. For example, statutory benefits are set at a national level. This can be a starting point to designing a universal subsidised housing policy as a minimum standard with community housing providers enabled to apply this nationally consistent policy to their social housing portfolios. It would create greater efficiencies and enable better regulatory assessments, with less complexities and streamlined assessments.

Although this theme may be slightly out of scope, it is important to draw attention to it in the context of the cost of regulation. Consider a national subsidised housing program with a policy that is easy and simple to apply.

Design and operation of the NRSCH

The NRSCH may consider reviewing its approach to assessing certain ratios, given the extremely costly exercise of delivering social housing (heavily subsidised, minimal rent capture due to policy requirements). The Return on Assets ratio (RoA) and the recent changes in accounting standards relevant to financial reporting for not for profits may also impact the regulatory assessments across Performance Outcome 7- financial viability. This needs to be re-evaluated and if required, an alternative approach taken given the lack of profitability with delivering heavily subsidised housing services.

Assessing risk based on tier, size of entity and scope of operations is still relevant however, it should consider increased focus on historical performance, and any diversification of business model or service provision.

The NRSCH regulatory assessments have identified additional financial risk exposure for providers taking on significantly run-down government assets as part of asset transfer programs, with lack of clarity or detail around how the provider will fund the extensive maintenance to bring assets back to an acceptable standard.

Modification to the NRSCH could include:

- Revision of the evidence examples section.
- Incorporating cross jurisdictional regulatory activity to ensure affordable housing is being managed effectively as intended
- Better information sharing protocols between housing agencies, regulators and other funding arm of government
- Regulators should be more active in reporting of breaches that fall outside of the NRSCH but are indicative of failures to comply and have linkages to one of the seven outcome areas under the NRSCH.
- The NRSCH vision should consider a more flexible, less administrative approach to regulatory assessments, for both new entrants and ongoing compliance assessments.
- The NRSCH should be more 'visible' and have greater capabilities (and adequate funding) to undertake planned and impromptu site visits, to undertake part or all of its compliance assessment on site at the providers offices. Observations should contribute to the assessment, in addition to tangible evidentiary documentation. The compliance assessment should take into account a broader range of evidentiary sources.
- Primary source evidentiary documents (straight from the source) should be relied upon for those areas or activity that carry greater risk or present opportunities for fraud.

In response to consultation question 11, the concept of 'smaller CHP' needs to be defined.

Many of the Tier 3 providers have complex business models consisting of service delivery across a number of human service domains (i.e. disability, aged care, youth crisis, transitional, social, affordable housing). Although small in terms of their community housing size and scope, these providers have large and sophisticated operating models across a multitude of human service domains. They are required to provide/produce significant data and evidentiary documentation to satisfy the NRSCH regulatory requirements. Tier 3's operate within multiple regulatory frameworks to which they are required to report on an annual basis. Information sharing protocols or accessing publicly available determinations from other regulatory bodies could alleviate some of the reporting burden, where common data is sought from the provider.

Non-participating jurisdictions are potentially placing providers in a disadvantageous or non-competitive position with regard to growth across multiple jurisdictions or certain commercial opportunities including funding arrangements. Jurisdictions need to have a regulatory champion that will drive this agenda and bring it to the attention of relevant Ministers.

All participating jurisdictions should provide the following communication platforms to their jurisdiction's regulated entities and general public:

1. An annual statement of performance-inward focused to justify value for money and benefit of regulatory activity to the sector, broader public and government of the day, and
2. An annual statement of sector performance and regulatory insights designed to provide transparent aggregate data to the sector, including any systemic weaknesses that the sector should be informed of and work toward correcting their performance or behaviour.
3. Regular tailored briefings and information sessions in relation to any changes, emerging issues or risks and technical expertise for completion of the NRSCH system requirements.

The NRSCH was not designed to measure tenant outcomes. Currently, there is no benchmark for the NRSCH to utilise to ascertain whether tenant outcomes were achieved. Tenant surveys conducted by CHP's and in many cases, managed by the peak body, do not in themselves provide a reliable source of data to answer this question. A combination of data metrics across asset maintenance, tenant satisfaction levels and other indicators could provide some insight into the tenant's experience. Any future attempts to align regulatory assessments to the human services outcomes' framework (housing domains) would be problematic and potentially not aligned to regulatory best practice principles. Creating even broader and more detailed reporting requirements is not conducive to efficient operations or cost-effective business modelling.

Current and future challenges

The NRSCH would be strengthened with the addition of a Quality and Best Practice business unit that picks up on regulatory weaknesses arising out of analyses and historical performance across tiers. This unit should act as a quality and capacity enabler, building educational strategies to maximise and encourage compliance and minimise poor performance. The unit could focus on developing project scopes that could then feed into priority programs delivered by peak bodies (e.g.) and/or the government funding housing agency (FACS and LAHC). The quantity and breadth of valuable information gathered through regulatory activity is not effectively channelled through to direct capacity building programs. This is because the capacity building programs have not always 'hit the mark', due to a number of factors. Greater collaboration is required between the regulator, peak bodies, the government housing agency and contracting arm to design effective capacity building programs that address the skill gaps, and are well received by housing providers.

Housing agencies need to be more active in raising the profile of regulators (registrars), and the regulatory scheme in their respective jurisdictions. Housing agencies need to be seen to support the regulatory activity, access intelligence gathered by regulators and take steps to embed better information sharing between the different business areas. The common good should be a focus here; minimise and prevent wrongdoing, promote good behaviour and enhance capabilities of providers to lift their performance and protect government investment and maintain assets. The end user of the system should always be a central focus.

Regulators need to continue to professionalise their staffing establishment, particularly in the area of leading investigations into alleged wrongdoing and the regulatory discipline of determining the right level and type of response to breaches of the Regulatory Code.

The NRSCH should not be modified in order to regulate Aboriginal community housing providers. This course of action would fail to examine the core issue. Instead, regulators together with expert peak bodies should be adequately funded to be able to deliver tailored capacity building programs to ACHPs across the identified areas of weakness; governance, board effectiveness and operational performance. The most common issues manifesting in ACHPs are a lack of professional governance, robust financial management and forecasting, maintaining their asset portfolio and effectively delivering housing. There are many reasons for these weaknesses, including anecdotal information on legacy issues associated with historical funding decisions, commitments to fund asset improvement strategies and other complexities. Nevertheless, the focus should be a collaborative effort for a commitment to appropriately design, fund and deliver a broad reaching capacity building program to enable ACHPs to be in a position where they are more likely to meet the requirements of the NRSCH. Creating variations or different standards of regulatory requirement is not a panacea to the real barriers and obstacles. Any capacity building program should be designed in collaboration with ACHPs and their peak Aboriginal Housing Office or equivalent body with a focus on long term skills enhancement, succession planning, transfer of corporate knowledge and embedding capacity building into their governance framework.

It is interesting to note that some CHP's have commenced international operations in third world countries. It is great to see their drive and innovation in this space however, it is also unfortunate that these efforts could not have been delivered domestically to much needed communities. Unfortunately, there are no policy levers to mandate new initiatives or programs to much needed Aboriginal communities in Australia's rural and remote regions. This would be a much better allocation of those providers resources and a direct link to government objectives of improving outcomes for Aboriginal people. While this issue may be out of scope, providers should reflect on the opportunity to demonstrate leadership in this space by putting in place their own policy position and empowering Aboriginal communities throughout their jurisdictions wherever possible.

Some feedback from providers has referenced the issue of risk in the context of the NRSCH encroaching into the providers risk domain. There is some confusion with risk ownership in regulatory assessments and related activity. Some jurisdictions are described as conducting risk based regulatory assessments however this is either not adequately understood or is not taking place in practice.

The NRSCH and related assessments should be consistent across participating jurisdictions however, many jurisdictions are not aligned with setting benchmarks on methodology, or depth of analysis to establish compliance with a performance outcome. Providers may find this confusing, inconsistent in expectations and excessive in terms of reporting burden.

The NRSCH should be funded to commission the design of a data repository platform, from which other funding partners could draw relevant data and information. The data system could be similar in design to the current NRSCH with a provider environment and 'read only' screens that could be used by relevant government agencies, regulators and funding bodies. This concept would significantly reduce repetitive reporting requirements currently imposed on providers who find themselves reporting the same information, in different formats, on custom built databases or spreadsheets as requested. Achieving this central data repository would ensure good regulatory practice and achieve the 'reporting once, data used by many' principle.

There seems to be a growing trend of mandating community housing providers to deliver outcomes-based services to clients, and linking their contractual agreements to reporting against these outcomes. The realities of imposing these requirements is that providers need to professionalise their staffing establishment, to ensure they have adequately skilled officers that understand the concepts

of translating outputs into outcomes, evaluation program logic and the techniques involved in producing reliable evidence. This in turn, is costly and requires providers to increase their employee expenses. The focus of funding agencies needs to be on ensuring contractual obligations do not produce unintended consequences of diminished quality of services to tenants arising out of increasing running costs for providers. Funding and government housing agencies need to align their contractual performance reporting to ensure the requirements imposed on providers do not contradict the regulatory strategic objective. Regulators focus their activities and compliance assessments to support a well-functioning and viable community housing sector that is well positioned to deliver quality housing services to tenants.

To ensure the regulatory body in each jurisdiction remains immune to sector capture or head funding agencies' influence, Registrars should be appointed by Minister of the relevant portfolio for a fixed term, with performance objectives linked to their review of contract.

The NRSCH regulatory assessments should be utilised wherever government housing agencies are making decisions on asset transfers of existing social housing stock. Providers should not be exposed to excessive expenditure by way of preparation of costly tender packages. This additional requirement takes away much needed funding, sometimes in the millions of dollars, that could be channelled to the provision of more social housing. Providers that have continuously performed well, and met regulatory standards with no major weaknesses identified across the scope of their reporting responsibilities (asset standards, governance etc.) should be invited to submit an expression of interest and determinations should factor in their performance and historical analyses of housing services provision.

Further complexities emerge in some jurisdictions with the housing agency contracting arm conducting commercial business and providing new funding and entering contractual arrangements with non-registered entities. This protocol is further justified as their right to facilitate an 'open doors' policy with no- government entities wanting to do business in partnership with government. Unfortunately, this policy position weakens the regulatory framework, bringing into question the value and benefit of becoming registered given the housing agency's willingness to extend funding to non-registered entities. Jurisdictions that engage in these arrangements should carefully consider the consequences on the sector and public perception of doing business with unregulated entities. Providers that have voluntarily registered should be viewed as preferred providers by their government housing or funding agency. In contrast, it is hard to see the value or benefit of the regulatory framework in relation to enabling future opportunities for registered providers.

Comments about the NRSCH:

1. The NRSCH system needs to be enhanced to better enable providers to submit quarterly financial data.
2. NRSCH system needs to be expanded to create a data repository platform, where all relevant agencies can draw data from, thereby reducing reporting burden on providers.
3. The NRSCH system needs to consider capturing the following crucial information that to date, has not been adequately tracked, reported on, or sought from providers. The below information is not explicitly listed under any performance outcome area although it seems crucial to the overall objective of community housing and subsidised housing provision:
 - a. Number of applicants that the provider housed and accessed via the Pathways housing register (excluding tenant transfers between dwellings)

- b. Better tracking of surplus funds generated from leveraging programs, i.e. affordable housing rent revenue where the affordable housing was developed from full or part government funding. The FPR cannot adequately track the allocation of surplus funds by housing program. This is a significant deficiency in the system and reporting.
- 4. It is important to note that no system will ever be perfect, however, there needs to be a national dialogue and agreement on commonly used terminology within the NRSCH and these agreed definitions need to be consistently communicated to providers to avoid ambiguity in reporting requirements and to strengthen reliability of data.

The compliance assessment process should consider analysts attending the provider offices, talking to executive and key staff, attending a board meeting or AGM, and conducting a large part of the compliance assessment on premises. This compliance assessment approach would require primary source data evidence, directly from the providers computer systems. For example, evidence of long-term asset management budget allocation and unit costings. Evidence of complaints registers, and any compliance breaches. This approach to compliance assessment would be far more effective, and reduce costs for providers. The current system, left unchanged, runs the risk of morphing into a quasi-self-assessment methodology in which the provider both submits and analyses their own evidentiary documents. Whilst the NRSCH scheme is indeed a self-reporting scheme, it should not become overly predictable or linear and certainly should not produce scenarios where providers are self-assessing their own performance and submitting these to the regulator. Self-regulation is not an impossible fete however, this is not the current objective of the NRSCH scheme.

In response to Q26, the NRSCH cannot within itself, impact the growth of the sector. One paralysing factor in the progress/growth of CHPs seems to be the lack of CHP decision-making capacity on asset projects and reconfiguration of asset portfolios. CHPs are often best placed to make good (financially viable, cost effective, RoA) decisions on how to utilise current assets that are not achieving optimum returns or have become too costly in comparison with their configuration and rental yield. To date, there seems to be limited dialogue between housing agencies and CHP's to progress this important issue. This needs to be explored with a view of having the CHP's leading discussions and tabling recommendations for decisions on asset disposals, sales or reconfigurations to maximise their returns and create better options for their client cohorts.

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