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## **Community Housing Industry Association WA (CHIA WA) comments on The Review of the National Regulatory System for Community Housing Discussion Paper**

### **1.0 Introduction**

CHIA WA welcomes the NRSCH review and the opportunity to provide comment and feedback on the Discussion Paper.

In WA we have only had two years' experience of the new regulatory policy, the Community Housing Regulatory Framework (Framework) which commenced on 1 April 2017. This Framework is expressed to be consistent with the National Regulatory System for Community Housing (NRSCH) that applies across all the other states and territories of Australia, except Victoria. Unlike the NRSCH, which is underpinned by the Community Housing Providers National Law 2012, the WA Framework is a policy based administrative system.

### **1.1 About CHIA WA**

This submission is made by CHIA WA on behalf of its members. CHIA WA is the industry peak for community housing providers (CHPs) in WA and represents over 30 providers, including most of the CHPs currently registered or undergoing registration in WA. CHIA WA is the State's branch of the industry's national peak body – CHIA.

WA's community housing providers manage some 9,000 tenancies across a diverse group of households, most of who are on very low incomes.

Our members range from large CHPs developing new properties across the State; through specialist aged care, disability, refuge, and homelessness providers; to small regional organisations. We have members registered in all three tiers.

While their scale and interests may differ, they all share a commitment to growing the capacity of the community housing sector and increasing the supply of quality affordable rental homes for disadvantaged Western Australians.

The views of our members have been sought and incorporated into this submission.

We provide our responses below, following the main headings and question numbers of the Discussion Paper.

## **2.0 Purpose of Community Housing Regulation**

CHIA WA considers that **regulation is still required and relevant (Q1)** for the community housing sector in Australia and that WA should be fully joined into a truly national regulatory system.

CHIA WA believes the regulatory purpose, as defined in the Inter Government Agreement (IGA), remains relevant, namely to:

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

Experience from other countries, for example the UK, evidences the value regulation can bring to the sector in terms of growth, capacity, and the confidence of external investors.

CHIA WA's position is that it is important there is a single nationally consistent regulatory system so that investors, governments, CHPs, and tenants only have to understand and work within the one system. Whilst we have had verbal assurances from NHFIC that WA's current regulatory position will not impact on their lending to WA registered CHPs, the fact the question even had to be asked and explored highlights the risk that WA might be left behind by private sector investors if they deem it too small a market to be worth their while getting their heads around a different regulatory system.



Whilst we are clear that regulation of CHPs is required and relevant, we are conscious that NRSCH is part of a wider regulatory system which includes additional government regulation for a significant number of our member organisations (e.g. those operating in the aged care, youth, and disability areas). In addition, charitable and corporate regulation, as well as contractual compliance, impact on most if not all our members. It is important, therefore, that the NRSCH review includes consideration of this wider system, and the roles played by each component, otherwise 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.

In response to **Q2, whether regulation should apply to all forms of affordable housing including for-profit**, it is our view that what is regulated should follow from the aims of the regulation.

For example, if an aim is to protect government assets/funding there is no point in regulating sectors, e.g. the private sector, which do not receive such assets/funding.

Equally, if an aim is to facilitate the growth of community housing providers there would appear to be little to be gained from regulating other sectors.

However, if the aim is to ensure the same minimum standards are met by all providers of social and affordable housing, including government and private providers, then it would be appropriate for all to be regulated. The current stated aim of “protecting vulnerable tenants and improving tenant outcomes” is interesting in this regard, given that the majority of these, certainly in WA, are housed within the government and private sectors, neither of which is currently regulated.

There should be a clear and transparent link between the aims of regulation and the sectors/organisations regulated. If regulation is to encompass all providers of “affordable housing” a clear definition of “affordable housing” will be required.

If regulation is to be widened to all affordable housing, there is the question as to whether the NRSCH continues to refer to all registered providers as community housing providers. We understand this is already an issue in NSW where for-profit organisations have registered as community housing providers. We agree with CHIA NSW that the term ‘community’ is taken to be synonymous with the not-for-profit sector and, as an industry, we want to maintain this distinction from the for-profit sector. Should ‘for-profit’ housing entities continue to be registered we recommend that they are referred to as registered housing providers, with the addition of ‘community’ reserved for not-for-profit entities only.

Whatever approach is taken CHIA WA believes that it should be applied consistently across all jurisdictions.

CHIA WA's **vision for the future regulation of the sector (Q3)** is a system that gives assurance to government, lenders, tenants, and the wider community about the good governance and financial strength of the sector, whilst being responsive to changes in the sector and the environment it operates in.

The Regulator should be an independent national body, with its own independently appointed Board, at arms-length from State Housing Departments, supported by legislation across all States which provide it with legally enforceable powers in cases of non-compliance.

### **3.0 Overview of Regulation and Community Housing**

#### **Q4 What is the impact (positive or negative) of having three different regulatory systems across Australia? Would there be benefits in WA and Victoria joining the NRSCH?**

CHIA WA would have found it useful for the paper to have included a summary comparing how the three schemes are operating in practice. Without this we are unsighted – we know how the system is being implemented in WA but are unable to compare that with what is happening across the other States.

Accordingly, our comments here reflect a WA perspective rather than the impact of there being three different systems. We feel the impact on WA's community housing providers of not being part of a single national regulatory system includes:

- a) Potential for negative perception elsewhere in Australia – “WA going its own way”
- b) Lack of clarity for investors/financiers who may decide that WA is too small a market for it to be worth their effort obtaining that clarity
- c) It raised a question for us as to whether NHFIC would extend to WA and, whilst that has been answered, it is likely to raise further such questions in future
- d) A lack of reporting – we understand the WA Registrar did not adopt the reporting elements of the CHRIS system and we are therefore unable to take part in any comprehensive reporting across the sector (as is, for example, produced by House Keys with data provided by the regulators in other states such as NSW) – there is thus no reporting available to CHPs within WA and no capacity for benchmarking with CHPs in other States
- e) Potential for “drift”, with WA's system gradually moving away from its alignment with the national system
- f) Potential for State-based political decisions to change/end the scheme in WA
- g) Potential, and perhaps current, differences in the way the assessments are being approached in WA compared with other States



We do not see any up-side for WA CHPs in having a separate regulatory system.

We strongly support one national regulatory system with all States joined in on a legislative, rather than policy, basis.

Our responses to questions 1 to 3 above cover off **Q5 (are the purpose and objectives of the NRSCH and IGA still relevant?)**

With regard to **Q6 (is there sufficient flexibility in the NRSCH to achieve its purpose and objectives?)** given the system has been operating in WA for under two years, essentially just registering providers for the first time, it is probably too early to have a clear picture. The feedback we have received from CHPs undergoing registration is a feeling that it is being implemented on a "one size fits all" basis and does not reflect the very different structures, sizes, and businesses of those undergoing registration.

In the future, the system needs to balance consistency and long-term certainty with flexibility, in that it needs to be responsive to changed circumstances in the sector and wider housing and investment markets, whilst not changing so frequently as to incur providers with the additional burden of keeping up with it.

Community housing providers in WA represent a diverse sector including specialist seniors, disability, youth, refuge, homelessness & transitional accommodation providers as well as more mainstream housing providers. This means that most, if not all, must comply with **existing forms of regulation that overlap with the NRSCH (Q7)**, such as the Incorporated Associations Act, the Australian Charities and Not-For-Profits Commission (ACNC), the Australian Securities Investments Commission (ASIC), the contractual compliance reporting and regulation of various State and Federal government agencies such as Housing, Health, and Disability, etc., as well as meeting their contractual compliance obligations to WA's Department of Communities.

We would like to see a system where, so far as possible, there is only one set of reporting which is then used across agencies.

In terms of **what community housing regulation should offer that is not covered by existing schemes (Q7)** the starting point should be the aims of community housing regulation, as these guide *what* should be regulated. Community housing regulation should cover anything required to meet its aims which is not already covered by other regulation.

We do not think that **there is any other role the NRSCH should be undertaking which it is currently not (Q8)**.

#### 4.0 Issues for Consideration

Taking **Q9 and Q10** together, regarding the **design, oversight, and governance of NRSCH**, CHIA WA supports CHIA NSW's position in advocating for a single National Registrar with State-based deputies in an independent agency. It should be autonomous, with its own Board reporting to a Federal Minister. Our main concern is to ensure that the Registrar has an arms-length relationship with the 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 WA's situation standing separate from the national system, and in the absence of independent oversight of the NRSCH, there is only anecdotal evidence as to whether practice and approaches vary between jurisdictions. We understand that registrars through, for example communities of practice, have attempted to minimise divergence but this is not transparent: we are unsighted as to whether there is consistency.

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.

With regard to **Q11, should the NRSCH be modified to better regulate smaller CHPs, and what would be needed to achieve this**, CHIA WA's position is that it should be mandatory for any community housing provider to be registered if government has an interest in the assets it manages or controls. The requirements and process of registration should be proportionate, reflecting the capacity of small CHPs, but should cover, as a minimum, including evidence to demonstrate proper tenancy and property management, financial management, governance, and probity.

Turning to **Q12 re the indicators and thresholds in the Evidence Guidelines**, feedback from our members is that they perceive little difference between the evidence requirements to meet the indicators and thresholds required of Tier 3 providers compared with those in Tiers 1 and 2.

We would welcome the opportunity to be part of regular review of compliance thresholds and to work with the Registrar to improve data quality. We understand that our sister peak bodies have been included in the Registrars processes to improve reporting in other jurisdictions and we would like this opportunity to be involved in the same way in WA so that we can work with the sector and Registrar to improve the quality of data provided over time.



As part of the review of the standards there should be a consideration of the 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.

Most of our members struggle with the financial report template, which does not match their charts of accounts and/or their current reporting systems. This has required many organisations to incur substantial costs in reformatting their financials to fit the template. CHIA WA would like to see a much more streamlined process for providers to report on their financial performance.

Looking forward, it is clear the sector is likely to expand considerably and become more complex and diverse. This means that the work of the regulator will also become more complex and diverse requiring different and more specialist skills, which may be hard to obtain and resource in smaller jurisdictions.

The review presents an opportunity to consider what staffing and resourcing will be required to regulate a more diverse sector. A single national system of regulation would mean that technical skills and resources could be made available wherever they are needed, ensuring that appropriate skills are available to all jurisdictions.

With regard to **Q13, regarding the registrar's enforcement and investigative powers**, our understanding is that the situation is different in WA in that there is no legislation sitting behind these powers. There is, therefore, little the WA Registrar could do in enforcement terms.

Information from our sister peak, CHIA NSW, is that there has been no indication at the Registrars Advisory Group that their enforcement and investigative powers are insufficient, which suggests that the current wide-ranging powers are sufficient in those jurisdictions where NRSCH has a legal, rather than policy, basis.

We respond to **Q14 and 15 together – has NRSCH been implemented in a way that is proportionate, accountable, consistent, transparent, flexible and targeted, and how could CHPs data reporting requirements be better streamlined to reduce compliance burden, including overlap with other regulatory systems?**

There is no data that we are aware of about the performance and costs associated with the NRSCH. Such information as we do have comes from questioning those of our members who are registered or undergoing registration.

Anecdotal evidence suggests that the compliance burden is high, with one larger provider estimating a cost of some \$300k to achieve registration and a medium sized provider estimated a cost of \$75k.

Many found the process cumbersome and time-consuming, particularly the financial template which takes a full-time, suitably qualified person, two to four weeks to fill out, depending on the closeness of the organisation's accounts system to the template. Our members particularly wish to feedback the burden of adjusting their accounts to fit the financial template and question its value when the provision of audited accounts is sufficient for other regulators, such as the ACNC.

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) to avoid duplication of reporting. This principle extends to the contractual compliance reporting to various government agencies such as Housing, Health, Disability, etc., where there is duplication of reporting with NRSCH. We would like to see a system where, so far as possible, there is only one set of reporting which is then used across agencies.

We see no evidence that NRSCH is accountable: indeed it is not clear who it would be accountable to. Neither do we see any transparency. We are aware that our sister Peaks in other jurisdictions are included in the Registrars Advisory Group, and therefore might have more insight into how consistency and flexibility are achieved across the country, but in WA we are unsighted in this regard.

The overwhelming response to **Qs16 and 17** is, "what communication and information for stakeholders"? Other than publishing the Annual Report on the website, we see no visible evidence of any communication from NRSCH: it has no visible profile.

Whilst generally CHPs in WA feel that **NRSCH provides clear guidance and feedback regarding registration and compliance assessment (Q 18)**, several CHPs felt that the initial briefings and information did not adequately prepare them for the detail of what was to come. A lot of very specific information requirements only became evident after the process got underway. This created a lot of time pressure which could have been avoided if they had realised the time they would need to allocate to prepare in advance of their allocated timeslot.

Many of those going through the process at the end of the financial year reported that the timing was not good. They felt the window allocated to them meant they were being required to stick to a timetable whilst managing their year-end, audit, and AGM processes. Smaller organisations find this very difficult to juggle. We recommend that the timetable provided to individual CHPs for future registration/re-registration, considers other statutory reporting obligations CHPs must comply with at certain times of the year.



It is difficult to say **whether or not NRSCH has affected tenant outcomes (Q 19)**, as the system has only been in operation in WA for less than two years. Registrars would be best placed to answer this question with data obtained from registered providers over time.

## **5.0 Current and future challenges for Community Housing Regulation**

We agree that a consistent regulatory framework is likely to be beneficial for governments, CHPs, tenants, and investors. The Discussion Paper leaves open whether this should be achieved by one "single system or in three more closely aligned systems". This a) begs the question, in what way(s) is the WA system not currently closely aligned with the national system? and b) a reflection that if three systems are to be more closely aligned, it would be a lot more efficient all round if they just became one system.

In terms of **Q20, whether the NRSCH should be modified to better regulate Aboriginal and Torres Strait Islander CHPs**, many of the issues they face are shared with many small non-Aboriginal CHPs in terms of their capacity to meet the evidence requirements needed to achieve registration. This capacity issue is not best dealt with by making exceptions for certain types of provider. Rather it is an argument for resourcing training and support to build capacity across the CHP sector as a whole. There is no such resource in WA at present.

Regarding Aboriginal CHPs' legal obligations in the event of winding up, we support a review of the current NRSCH 'wind-up' clause to allow for exceptions in particular cases. This might extend beyond Aboriginal CHPs, as we are aware of instances where the wind-up clause has caused similar difficulty for non-Aboriginal CHPs.

Where Aboriginal CHPs have specific legacy issues in the way they have been set up/required to operate, then we would support transparent and temporary modifications to the performance thresholds/requirements in order to enable registration.

Appropriate regulation to reflect sector complexity is certainly an issue in WA and it is not clear to us that **(Q21) the current tiered registration system is adequately targeted and flexible enough to capture the level of risk for CHPs of varying sizes and types**. In September 2018, we carried out a telephone survey of all the WA CHPs registered under the NRSCH or going through the registration process. A summary of their responses to this issue is set out below.

Overall, smaller organisations and those organisations for whom housing is only a small part, or not the main focus, of their business (large and small) experienced the most difficulty with the process.

The framework is not well suited to complex organisations for which housing is only a small part of their business. In some cases, this has been a deterrent to such organisations registering under the NRSCH system. This is a loss to the sector as these are often larger, well financed organisations, with good governance, and it would benefit the whole sector if they became bigger players in housing or serviced a niche market.

Similarly, smaller organisations where management of housing, although important, is secondary to their role in support service delivery found that the focus of the assessment tools, particularly the financial ones, was not well suited to analyzing or assessing their business.

The feedback was that assessment of these types of organisations was overly comprehensive across the non-housing parts of the business, whilst not being tailored to reflect that these *are* non-housing areas.

Some providers felt that the distinction between the three tiers was not nuanced enough and that what was required of a Tier 3 provider was not very different from that required of Tier 1 and 2 providers.

When reviewing the regulatory framework, thought needs to be given as to how to make the regulation appropriate and proportionate for such organisations.

We are not well-placed to respond to **Q22, re whether the NRSCH has reduced regulatory compliance costs for multi-jurisdiction CHPs**, as there are only 3 of them in WA and, in each case, their head office is not in WA. Equally, we have as yet seen no evidence in WA that **Q23** the NRSCH has encouraged registration across jurisdictions. These questions are best answered by multi-jurisdiction CHPs themselves.

In answer to **Q24, re the role the NRSCH should have in building organisational capacity in the sector**, we do not support the NRSCH taking on a sector capacity building role for individual providers or for a part of the sector, as this has the potential for confusion of roles.

The Registrars should issue guidance where systemic issues are uncovered and identify where sector development may be required.

There is, however, a need for capacity building across the sector – regulation by itself does not build capacity or growth. We are aware that 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 strategy in NSW will fall within the remit of the NSW Community Housing Industry Council (CHIC), which encompasses the broader role of supporting 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, which is something CHIA WA would very much support.



**Q25 re data reporting requirements** – unfortunately regulation in WA has not included data reporting systems to produce data which would be of value to the sector or support increased investment in the sector. We understand that the State Government elected not to purchase that part of the CHRIS system which would have enabled this data collection being provided to the sector for benchmarking or other purposes. The question as to, what is a reasonable level of regular reporting for collecting such data is therefore academic. The situation is not helped by the low take-up of registration in WA, which would mean that any data sets collected from registered CHPs would not include the majority of CHPs in WA (although it would represent a high percentage of the CHP housing stock as most of the larger CHPs are registered or undergoing registration).

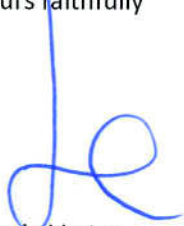
CHIA WA supports the collection of good data on the sector on an annual basis.

In response to **Q26**, NRSCH has probably not particularly impacted on sector growth and development in WA, nor contributed to increased access to private finance or improved organisational capacity. This is not a reflection on NRSCH but simply because most of the recent growth and development in the sector took place before April 2017, when NRSCH was introduced in WA. Recent initiatives, such as the NHFIC and the potential expansion of affordable housing investment schemes in Australia, highlight the potential of regulation for sector growth and development and we anticipate this will become an increasingly important factor in WA.

## 6.0 Conclusion

CHIA WA thanks the NRSCH Review Working Group for the opportunity to provide feedback on the Discussion Paper and looks forward to participating in the next stages of the Review.

Yours faithfully



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