

Review of the National Regulatory System for Community Housing

Terms of Reference

Context

In 2014 the National Regulatory System for Community Housing (NRSCH) was introduced to ensure a well governed, well managed and viable community housing sector as well as reduce the regulatory burden for community housing providers (CHPs) operating across jurisdictions.

In August 2012, the NSW Parliament, acting as the 'host jurisdiction', enacted the National Law through passing the *Community Housing Providers (Adoption of National Law) Act 2012* (the Act). On 1 January 2014 the legislation commenced.

As of 2018, all states and territories, except Victoria and Western Australia, have adopted the NRSCH through the passage of National Law legislation in their respective Parliaments¹.

Clause 8.1 of the *Inter-Government Agreement for a National Regulatory System for Community Housing Providers*² (IGA) requires a review after five years of operation, or as otherwise agreed. This section states:

- a) *After this Agreement has operated for 5 years or as otherwise agreed by the Ministerial Council, the Parties will:*
 - i) *review the operation and terms of the National Law and this Agreement; and*
 - ii) *determine the effectiveness of the National Regulatory System.*
- b) *Further reviews will be conducted at intervals of no more than 5 years.*
- c) *The Parties will work collaboratively to develop appropriate evaluation criteria for the review of the operation of the National Law and this Agreement and the effectiveness of the National Regulatory System.*

A review of the NRSCH was also canvassed in recommendations made by the Affordable Housing Working Group (AHWG). In September 2017, in its final report, the AHWG recommended that:

“...the Commonwealth and State and Territory Governments and the community housing sector work together to develop and implement a uniform and nationally applied regulatory framework that supports the implementation of a bond aggregator as well as the growth of the sector nationally.”

¹ Queensland amended its *Housing Act 2003* to include details from the National Law for community housing providers (see Part 4A of this Act).

² Signed 2 August 2012.

“...the National Industry Development Framework for Community Housing be revised and updated to reflect findings and recommendations from the Review of the NRSCH.”

More broadly, market changes in policy, funding mechanisms and delivery vehicles for social and affordable housing, and the opportunity to review the reasons Victoria and Western Australia are not fully participating in the NRSCH are drivers for the NRSCH Review.

Victoria

In 2005, the Victorian system of regulation began with the introduction of a new Part VIII of the *Housing Act 1983*.

In 2016, following a review of the Victorian system, the Minister for Finance accepted in principle the recommendation to pursue resolution of administrative and other barriers to Victoria’s adoption of the NRSCH, and to explore options for jurisdictions to mutually recognise registrations and simplify reporting requirements.

Western Australia

In 2016 Western Australia introduced a new regulatory policy, the Community Housing Regulatory Framework (Framework). Although the Framework is consistent with the NRSCH, Western Australia has not adopted the National Law. The Framework is therefore a policy-based administrative system.

Objectives

On 1 March 2018 a NRSCH Reform Working Group (working group) was established by the Housing and Homelessness Senior Officers.

The working group will:

- provide an assessment of whether the objectives and purpose of the IGA and the National Law have been met
- assess whether the NRSCH has been implemented effectively to achieve those objectives
- identify potential options to update the NRSCH to ensure that it remains able to support the growth of the community-housing sector, taking into account the operating environment of providers and changes in the funding and policy settings of the Commonwealth and state and territory governments
- assess what changes to the NRSCH, or other options for a future national regulatory system, might be required to support the introduction of the bond aggregator
- assess what changes to the NRSCH, or other options for a future national regulatory system, might be required to support any future decision for Victoria and Western Australia to join

- outline the best method to implement any reforms that are identified as part of the Review.

This work will culminate in a report and recommendations by the working group to Housing and Homelessness Ministers.

The Review will assist Ministers to meet the requirements of Section 8 of the IGA and address recommendations 1 and 2 of the AHWG, and ensure the NRSCH remains fit-for-purpose in the current environment.

Terms of Reference

In reviewing the operation of the NRSCH and examining options for reform, the working group will consider:

- the design of a regulatory system that supports the objectives and purpose of the Inter-Government Agreement and the National Law
- the design and operation of the National Law and the National Code, Charter for the NRSCH and the National Industry Development Framework for Community Housing
- market place issues including eligibility for registration, the application of financial viability requirements and operational guidelines including tier, evidence and enforcement guidelines
- the appropriateness of the NRSCH and its tier structure for analysing and responding to risk
- barriers to the consistent application of the NRSCH and consistent policy setting across jurisdictions, including:
 - barriers to the entry, and possible changes to the NRSCH to support the entry of Western Australia and Victoria into a national regulatory system
- regulatory practices and lessons that could be transferred from the Victorian regulatory system into a national regulatory system
- the operation and adequacy of current reporting requirements including the National register
- impediments to better use, and analysis of, data currently collected from providers including sharing protocols and public reporting
- compliance processes undertaken by state and territory registrars with respect to the application of the NRSCH, including the appropriateness and consistency of current appeal mechanisms
- possible changes to the NRSCH, including its reporting framework, to support the implementation of the National Housing Finance and Investment Corporation, with specific reference to financial viability, risk management and governance
- how to improve partnerships and interactions between governments, Registrars, Community Housing Providers (CHP) and service providers to improve outcomes

for social housing tenants, especially those who are vulnerable and/or disadvantaged

- the type of capacity building required to facilitate sector growth.

The working group will not consider:

- regulation of public housing
- the regulation of the National Disability and Insurance Scheme and Specialist Disability Accommodation
- performance-based contracting
- the National Community Housing Standards.³

Process

The working group will undertake a three-stage process. The first stage of the process will involve the development of a discussion paper evaluating the effectiveness and operation of, as well as current issues with, the operation of the NRSCH and the effects of Victoria and Western Australia not being part of a national regulatory system.

The discussion paper is expected to be released for public consultation in December 2018.

The second stage of the process will involve the development of an options paper outlining potential reforms to the operation of the NRSCH, informed by public submissions received in relation to the first stage of this process.

The options paper is expected to be released for public consultation in July 2019.⁴

Following the completion of public consultation on the second paper, the third stage will involve writing a final report summarising the outcomes of the process and proposing recommendations for reform.

The working group expects to provide its final report and recommendations to Housing and Homelessness Ministers by the end of 2019.⁵

³ On 8 February 2018, the Commonwealth Deputy Secretary for social housing policy wrote to FACS advising that the copyright for the *National Community Housing Standards Manual, 3rd Edition, May 2010* had been transferred from the Commonwealth to the Community Housing Industry Association (CHIA)

⁴ State elections will impact on deadlines for deliverables. Victoria will be care taker mode from October-November 2018 and NSW is expected to be in care taker mode from December 2018 – March 2019.

⁵ A Federal election is scheduled for 2019, but could be held any time between August 2018 and May 2019. Depending on when the Federal election is held this could impact on the deadline for deliverables.

Membership

The working group will be co-chaired by the Commonwealth and NSW and consisted of staff from the following:

- Commonwealth Department of Social Services
- NSW Department of Family and Community Services
- Victorian Department of Health and Human Services
- Queensland Department of Housing and Public Works
- Western Australian Department of Communities
- South Australian Housing Authority
- Australian Capital Territory Housing and Communities Services
- Commonwealth Treasury⁶

Jurisdictions will draw on the expertise of relevant housing and planning departments, Treasuries and State and Territory Registrars as appropriate.

Jurisdictions will also engage with CHPs on a regular basis to provide them with updates about the progress of the review.

Expert Panel

In undertaking this review, the working group will also establish an expert panel from which to draw expertise and advice as appropriate.

The expert panel will be established with the agreement of all jurisdictions. Members obtained through an Expression of Interest process will include:

- an Aboriginal and Torres Strait Islander community housing industry representative
- a community housing industry representative
- an academic with expertise in community housing
- a financial expert
- a regulatory expert.

Members who will be appointed include:

- The Australian Capital Territory and Victorian Community Housing Registrars
- a representative of the National Housing Finance and Investment Corporation.

⁶ Staff from Commonwealth Treasury will be required for specialist work associated with the National Housing Finance and Investment Corporation and the affordable housing bond aggregator