

Review of the National Regulatory System for Community Housing – CHIA Vic Submission on the Discussion Paper

CHIA Vic welcomes the opportunity to provide input into the review of the National Regulatory System for Community Housing (NRSCH). We do not come from the position of our fellow peaks who are commenting on their experience with and aspirations for the NRSCH. Instead we have approached this submission from the view that Victoria currently has an effective regulatory system however we believe that Australia needs a truly national regulatory system with all jurisdictions aboard.

In 2013 the Victorian Government decided not to join the NRSCH for reasons that will be discussed later in this paper. However, they have decided to be active players in this review and seem willing to revisit the 2013 decision depending on the review's outcome.

The NRSCH is timely given the development in the sector and the projected growth facing community housing through renewed State Government interest, the potential of the planning system to deliver more properties and the Federal Government initiatives and election commitment of Federal Labor. The sector could be 3 times bigger in a decade. Against this backdrop we need to ensure that any regulatory system put in place is appropriate and future proofed.

CHIA Vic is recommending a different approach to the review to that proposed in the terms of reference. We urge the review team to take a step back and focus on identifying and designing the best regulatory system for our industry. The structure of the review and the discussion paper seem to be focussed on analysing what we have and what we can improve rather than trying to develop the best regulatory model to address the objectives both of the scheme, and the challenges of growth.

Together with suggesting research into best practice models of industry regulation, this submission will explore some of the issues that we believe should inform the design of a future system.

Community Housing in Victoria

There are 39 registered entities that own or manage about 20,000 properties. Roughly this is made up of:

- 3,600 transitional properties managed on behalf of the state government
 - 16,400 long term properties that are made up of
 - 6,200 properties leased from the state government on 5 year leases

- 10,200 owned properties

Of the 39 CHOs 10 are Housing Associations which were earmarked as the growth providers and 29 Housing Providers that generally are either cohort specific, locationally based or broader community services/homelessness organisations and who also may have a growth agenda.

In Victoria some of the large religious community service organisations have established separate housing company's to manage their housing properties and activities, due to the winding up provisions required in the regulatory system, while others have retained one entity and the Registrar monitors the financial viability of the whole business. Similarly the multi-jurisdictional CHOs have established separate legal entities for their Victorian operations adding unnecessary cost and complexity to their businesses.

Purpose of Community Housing Regulation

CHIA Vic and our members are convinced by the value of good regulation and its objectives, in that it:

- Improves tenant outcomes and protects vulnerable tenants
- Protects government funding and assets now and into the future
- Enhances the confidence of people dealing with the sector such as investors and financiers

A community housing regulatory system is part of a broader regulatory environment in which community housing organisations (CHOs) operate. State Governments have contractual arrangements with CHOs, all report to the ACNC, some to ASIC or the CAV and the NHFIC and undoubtedly any new Commonwealth program will have its own forms of compliance and reporting. Community services organisations delivering both housing and homelessness services are also required to be accredited. Each regulatory entity must be clear about its areas of responsibility and have confidence in each other to perform their functions effectively. CHOs are regularly required to enter into agreements primarily with government (at all levels) that cover areas addressed by regulation because they either do not understand community housing regulation or do not have faith in it.

A useful exercise as part of this review would be to review State Government contracts with consideration of the regulatory code to determine how the contracts could be streamlined and unnecessary and duplicative reporting reduced.

Scope of Regulation

Both the NRS and the Victorian Regulatory System (VRS) are opt in systems. While there is a very real incentive to opt in with possible government funding as the carrot, the review should consider who and what should be regulated. There are thousands of properties tenanted by vulnerable people that are not part of the regulatory system – in fact some of the parent bodies of CHOs operate another portfolio of properties, and it is not clear where their tenants interests are protected. Other rental properties offering income based or discount to market rents in Victoria are:

- Rental retirement villages
- Independent living units that were funded under old Commonwealth Government programs
- Properties managed by aboriginal co-operatives

A strong argument can be made for **public housing** to be regulated under the same system as community housing given the similarities in service and tenant base. However, state governments would argue that they have an equally rigorous system due to the interest of the Auditor-General and the Ombudsman and the ability of tenants to use the political process. However these mechanisms do not have regular systemic oversight of public housing. In Victoria, the Auditor-General looks at public housing approximately every 5 years and they have remarked that little has changed between inquiries.

From an equity viewpoint public housing should be regulated and if not by the same regulator then at least they should be subject to the same expectations, performance monitoring and reporting.

The VRS does not allow **private providers** to join while the NRS does. In NSW a handful of private operators have been registered and many others have applied. At this stage our members are concerned about private operators being admitted, however they are happy to have the discussion.

Community housing is still not broadly known or understood by the public and even by local government, financiers and developers who are our potential partners. We value our brand and it is underpinned by being not for profit, highly regulated and being a landlord of choice. We would not want to see this emerging brand tarnished or confused. If for profits were to be admitted then we would need clarity over what role they would play and what they would be called – ideally not community housing.

In Victoria all properties that are owned, managed or controlled by a registered entity are part of the system. Therefore a registered entity's **affordable properties** are in the system, even where there may be no government investment and we support this position.

Independence

The VRS has been operating since 2005, while the national scheme commenced in 2014. With this additional operating time we have learnt a few important lessons. The Registrar initially operated out of the state government department that also had responsibility for housing policy and operating public housing. Following an Auditor – General's recommendation in 2010 the unit was moved to a more 'independent' location – the Department of Treasury and Finance. The Registrar had previously committed to a code of practice that included:

- maintaining the confidentiality of any commercial-in-confidence information
- being impartial and objective in evaluating registered housing agencies
- being honest and fair in reporting findings.

Even so the Auditor-General concluded that the arrangements made it difficult for the Registrar to demonstrate to registered agencies that adherence to this code would not be adversely influenced by the apparent lack of independence.

The Department of Health & Human Services, the Registrar and the sector now all agree that this independence is essential and we would not want it changed.

The Registrar should be independent of all other stakeholders and this should also apply to the Commonwealth Government and the National Housing Finance Infrastructure Corporation (NHFIC). Over recent months staff of the NHFIC and the NRSCH have been working together to consider how the NRSCH can assist the NHFIC with its assessment of CHOs that have applied for loans. The NHFIC also has a representative on the NRSCH expert panel. While all would agree that we should minimise reporting and use information collected for a variety of purposes, we need to be careful not to

transfer some of the responsibilities inadvertently from the NHFIC to the NRS – such as credit ratings. Information sharing protocols need to be developed in conjunction with the sector.

Tier System

In the NRSCH there are 3 tiers and 2 in the VRS. There has been considerable discussion about the usefulness of the tier system and we believe that we have evolved to a more nuanced understanding of tiers. The VRS developed a regulatory engagement tool that in essence looks past the tier system. Instead, it focuses on risk, and those CHOs who are considered to be taking on greater risk such as large developments or merging with other organisations will receive greater scrutiny – and they could be associations or providers. The reality is that associations are more likely to be developing, borrowing and forming partnerships while the small players focus on tenancy management however the engagement tool focuses attention on a CHO when it is required.

Governance

Victoria supports a national regulatory system and we are looking to the review to consider and recommend best practice governance models. The current system of harmonisation has not produced a truly national system. While we support a national system we understand that there may be some state based variations which is appropriate as long as they do not undermine the purpose or operation of the scheme.

Regulatory Positives

CHIA Vic held a forum with members where they identified the aspects they value about the VRS and would want to retain under a national system. *Resources and levels of engagement* – the Victorian Registrar Office has 9 or 10 staff to regulate 39 entities which is substantially higher level of resource than other jurisdictions. This allows for greater engagement with CHOs and the development of a good understanding of the CHO. This enables productive working relationships to emerge, an important feature of a robust regulatory system. Appropriate resourcing also allows the unit to develop a variety of skills and expertise such as financial modelling, accounting, community engagement.

- *Continuous improvement* is embedded in the VRS and it is an important principle in telling the community housing story – one where we are not interested in minimum standards but always striving to improve.
- *Benchmarking* – members value the ability to benchmark their organisation against others and are eager to retain this function.

Complaints

A peculiarity of the VRS is that the registrar has a role in investigating complaints. We suggest that the review provides advice on the best models for handling complaints. We believe that it is appropriate for Registrars to receive enquiries from tenants and the public and from this, attend to any systemic issues that emerge. However, we question whether pursuing individual complaints is the best use of resources.

In NSW there is a Housing Appeals Committee that is an independent agency which deals with appeals from people who are unhappy with decision made by social housing providers and this model might be worth investigating.

Victoria's reasons for not joining the NRSCH

In December 2013 the Assistant Treasurer and the Minister for Housing wrote to the sector to explain why they had decided that Victoria would not join the NRSCH. They stated;

- There is not a compelling case for Victoria to do so, particularly given many of the benefits of the national system are anticipated to be captured by aligning Victoria's performance assessment and reporting requirements with the NRS; and
- The current form of the national model will not adequately protect Victoria's investment in the community sector.

It is now clear that alignment has not assisted those CHOs that operate across state boundaries. They still operate under different regimes with different reporting type and timing.

It is true that the Victorian Government has invested in the community housing ownership of assets to a greater extent than other jurisdictions, therefore it is reasonable that they would want to secure these assets for Victorians. We believe this issue can be overcome by:

- Replacing the wind up clauses that require all community housing assets in a jurisdiction to be transferred to another registered entity in that jurisdiction; and
- Ensuring that all community housing assets linked to Victorian funding are recognised, including those assets acquired as a result of leverage, or sales etc have a Director's Interest on title.

A well designed, rigorous and appropriately resourced regulatory system is essential to support the successful development of the community housing sector. We urge the review team to take a broader view of their remit and deliver an options paper exploring leading practice systems for all to consider.

About the Community Housing Industry Association Victoria (CHIA Vic)

CHIA Vic is the peak body that represents the not-for-profit community housing sector in Victoria. CHIA Vic works to support the growth of community housing as the most effective and efficient means of ensuring more disadvantaged Victorians can enjoy the dignity of safe, secure and appropriate housing.

CHIA Vic's member community housing organisations (CHOs) are committed to providing secure, affordable and decent housing for people on low to middle incomes.

Members include the organisations registered as housing associations or housing providers under the Victorian regulatory framework for non-profit housing providers, plus other organisations and individuals interested in housing. The registered organisations manage more than 19,600 units of rental property, including the 10,200 plus dwellings that they own.