

Shelter Tasmania

Response to Regulation
and Growth of the
Not-For-Profit Housing Sector

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Introduction

Input Now

Shelter Tasmania welcomes the opportunity to provide feedback on the Federal Government's discussion paper on the *Regulation and Growth of the Not-For-Profit Housing Sector* (Australian Government 2010). Shelter supports a National Regulatory framework that is inclusive of all providers be they small or large not-for-profit, local government, government or for-profit. That this national system will to be developed under a risk adjusted approach so smaller organisations compliance cost would be lower than those organisations with more complex business activities. That the new system is flexible enough to enable organisation to move between tiers where appropriate. In addition, Shelter highlights that any new regulatory system must protect the security of tenure and rights of tenants. Ensure 'upfront' that tenants' needs are a priority. That people on very low income, be they sole households who provide lower rent returns, people in crisis and with high and complex needs are not excluded from gaining access to and maintain appropriate and affordable housing.

Shelter represents a range of not-for-profit housing organisations and consumers, some who require further information on what regulation will mean in practice (Tasmania has no regulation system in place for community housing). Many others are supportive, as long as the chosen model does not place unnecessary regulatory burden on them and will take into account current contractual and reporting obligations so as not to undermine sustainability and growth or, indeed, reduce the innovative potential of community housing organisations. Tasmanian Community Housing organisations want to ensure no matter what their current size they will be part of a regulatory system that lets them grow and they won't be excluded. Tenant wants to ensure that their rights and housing security will be protected, and that regulation will sit across the range of housing providers and will provide a "no disadvantage" principle if they transfer between different types of affordable housing.

Additional Input

Once there is agreement on the fundamental principles and basic framework for the regulatory system Shelter Tas would like the opportunity to provide more detailed feedback. To ensure that advice from the Tasmanian community sector is provided on how the regulation models can most effectively be implemented and work for both housing providers and consumers in Tasmania.

About Shelter

Shelter Tasmania is an independent not-for-profit housing peak organisation funded by the Department of Health and Human Services. Shelter Tas is the key NGO body that represents the interests of low to moderate income housing consumers, housing providers and Specialist Homelessness Services across Tasmania. Shelter is committed to working towards a fairer and more just housing system. We provide an independent voice on housing rights and a link between governments and the community through consultation, promoting research and policy advice. We seek to improve housing access to all Tasmanians, and as a member of National Shelter we support its policy platform and recommendations to the Federal Government.

Shelter's membership consists of a wide range of organisations across Tasmania, such as: tenants groups, community housing providers, homelessness and crisis accommodation services, local government, research organisations and a range of individuals and services interested in housing and homelessness issues. Shelter sees housing problems and homelessness solutions as the responsibility for all

sectors of the community. This is reflected in our diverse membership, which provides a unique body of expertise in the housing and homelessness area.

Shelter Tasmania is the recognised peak on a State and National level for housing and homelessness issues, and provides the state delegates and input to national policy to the three key National Housing and Homelessness Peaks.

- Shelter is an affiliated member of National Shelter and is part of a network of organisations representing consumer issues in relation to housing and human rights.
- The Council of Homeless Persons (Tasmania) is a subcommittee of Shelter. Shelter provides delegates and board membership to Homelessness Australia, the peak body for Homelessness in Australia.
- Shelter is the state member for Community Housing Federation of Australia.

This submission represents the key issues that the Shelter members have identified to date, and is based on the issues raised in the Community Housing Federation of Australia (CHFA) paper on *Achieving a viable and sustainable community housing sector: an industry Perspective* (CHFA June 2009). Also, on their recent *Industry positioning paper: an appropriate regulatory framework for the non-for profit housing sector* (CHFA 2010), with additional comments on the Tasmanian context and the need for a stronger focus on the protection of tenants' rights.

The submission has been endorsed by the Shelter Management Committee.

Community Housing in Tasmania

The size of community housing is currently small in Tasmania but there are plans for expansion of the sector, with many organisations looking at ways to grow and work in collaboration with other organisations big and small. There are also a substantial number of properties managed by the community sector for emergency and transactional housing that need to be addresses in the regulation discussions.

Under the NAHA reforms, National Rental Affordability Scheme and the National Building Economic Stimulus Package there is unprecedented potential for the community housing sector to grow. In May 2010 Housing Tasmania provided some initial funding of \$50,000 to assist in an enabling strategy to build the capacity of community housing in Tasmania. Shelter Tas and its community housing members are currently working with Housing Tasmania on a series of educational forums to help the wider community sector understand the housing reforms under the NAHA. Also, to assist community housing grow and look at innovative ways to develop community housing in Tasmania.

There are 53 community housing organisations which have or have had funding links with Housing Tasmania, with a combined stock total of 600 units of accommodation. Ninety per cent of the community housing organisations in Tasmania have less than 20 properties in their portfolio. Around a third of the community housing providers are associations, approximately ten are local government based, six are cooperatives and the rest a mix of church based and other providers.

Housing Tasmania also has in place community tenancies with 60 organisations. This includes four Supported Residential Facilities.

Indigenous Housing

There are three Tasmanian Indigenous Community Housing Organisations (ICHOs): Cape Barren Island Aboriginal Association Inc; Flinders Island Aboriginal Association Inc; and Indigenous Tasmanians Aboriginal Corporation, which hold a total of 129 properties.

Affordable Housing

In 2006 Tasmanian Affordable Housing Limited (TAHL) was established as a not-for-profit, unlisted company holding public benevolent institution status, with the target of adding 700 newly built affordable properties to affordable housing supply through a subsidised head leasing model. To date 90 properties have been completed and tenanted.

Community and Affordable Housing stock is also increasing due to funding allocated to organisations through the National Building Economic Stimulus Package and National Rental Affordability Scheme.

Multi-jurisdictional housing providers operating in Tasmania include Community Housing Limited (CHL) and Mission Australia. Other organisations that operate with a specific client group focus (such as aged) include Uniting Aged Care. (Housing Tas May 2010.)

Policy context

Shelter members have noted that due to changes in the current policy environment a national approach to regulation has gained momentum. This has created new opportunities for the not-for-profit organisation to increase their stock and asset base, including a significant proportion of stock built under the stimulus program that is expected to be owned by community housing. In addition there is a significant amount of public housing planned to be transferred to the community sector. Many community housing providers have also gained NRAS incentives to build or manage new homes. There is a clear indication that future government funding will be supplemented by new private investment to deliver more affordable housing. It has been made clear that substantial reform of the social housing sector will occur to enable the asset base to be opened up for community housing providers to leverage against that base to increase supply. (P5 discussion paper)

Preferred Option

Following is a set of key points put forward by CHFA and supported by Shelter Tasmania.

Key points for a national regulatory framework

The purpose of regulation must be clear for the government/s and policy makers responsible for its development and implementation, and made clear to the people subject to the regulation. A regulatory system should have at its core the goal of enabling both the community housing sector and governments to achieve their policy goals, including growth targets.

From a government perspective, a key reason for instituting a regulatory framework for affordable housing providers is to protect government investment. Policy makers must remain mindful, however, that the community housing sector does not exist only as custodians of government investment, who need to practice good financial management: any new framework, and the philosophy behind its development, must also acknowledge that community housing organisations operate to serve the public good and foster improved outcomes for the tenants that they house. This philosophy should be reflected in the scope and structure of any new national regulatory framework.

Shelter Tasmania supports CHFA's stance that a single national regulatory framework will provide clarity and consistency for all organisations managing and developing affordable housing programs in Australia. It will have a number of other advantages over the current patchwork of multiple state-based regulatory systems. These include facilitating organisations that operate across jurisdictions, and providing a single system for other stakeholders involved with the provision of affordable housing, such as financial institutions and investors, to work within. A national system which takes a risk-adjusted approach to regulation will also

benefit smaller organisations, whose compliance costs with the system would be considerably lower than those organisations conducting more complex business activities.

12 key points for the development of a sound and sustainable national regulatory framework for community housing providers

1. The development of a single, national regulatory system.
2. The regulatory system must separate the roles of regulator, funder and competitor.
 - o For this reason the oversight of the system should be situated within an autonomous body.
3. The administration of the system at the provider level must be conducted at the jurisdictional or regional level, not centrally.
 - o This could be done by:
 - An arm of state government that is separate from the SHA, and reporting directly to the Housing Minister in that state (or another Minister or government agency, such as P and C).
 - Branches of the national regulator. One advantage of this would be that branches could theoretically operate cross-border (e.g. ACT/SE NSW, SEQ/Northern Rivers NSW, North QLD/NT).
4. The regulatory system would need to be underpinned by a legislative framework at the national level. This would stipulate the standards and reporting requirements of the regulatory system.
5. These standards and reporting requirements should be monitored nationally by an independent advisory council comprising representatives from the Commonwealth, State and Territory governments, the sector, and financial institutions/institutional investors. (It is possible that other options will be put forward by government. These may include for the relevant Commonwealth department (in this case FaHCSIA) or COAG/HMAC to perform this function. CHFA believes that the former would overly centralise decision making, and the latter would be complex and unwieldy. This council would report directly to the appropriate Federal Minister.
6. The system will need to be designed to reduce the risk of 'regulation by contract' by including elements that minimise the scope of contractual obligations that can be placed on organisations in receipt of funding from State and Territory governments. CHFA envisages that the focus here would primarily be on the financial realm.
7. To reduce compliance costs for organisations, it will be important to ensure that, where possible, the regulatory framework is consistent with other regulatory frameworks that organisations will have to deal with, e.g. aged care regulation.
8. The regulatory system should cover all providers: small, large, government, and for-profit (the system would need to allow organisations to separate their housing from other activities)
 - o It is not practical to have a 'twin track' system, with some providers regulated by State and Territory governments and others

regulated through a national system, as suggested in Option 2 in *Regulation and Growth* (pp18-19).

9. The system's focus needs to be primarily on regulating financial and market risk rather than on QA standards.
10. The regulatory system needs to be tier-based on the activities of an organisation, not the size of its portfolio. Accordingly, CHFA supports a three tiered approach:
 - o Property and tenancy management status — organisations that wish to grow or continue operating at their present scale using their tenancy management expertise. This would be the vast majority of community housing providers in Tasmania.
 - o Commissioning and project managing status — organisations with the capacity to commission development processes¹, secure title to properties, and benefit from GST and other concessions associated with these activities; and
 - o Development and management status — organisations that have their own development capacity. This capacity includes sophisticated procurement, project management, and financial capabilities and experience. Additionally, many organisations in this category have a range of professionals, such as architects, on their staff.
11. The system needs to accommodate consortia arrangements.
 - o This would be best achieved by regulating the consortia or umbrella organisation as a whole (to focus on its financial probity), as well as the members of a consortia responsible for property and tenancy management (to focus on all other aspects covered by the regulations).
12. Once there is agreement on the fundamental principles and basic framework for the system, there will need to be a clear process of engagement (not consultation) with all stakeholders—including the sector—to negotiate the details of the model.

Could current regulatory systems be built on at the national level?

At present CHFA does not believe that there are any regulatory systems in Australia that could be directly transferred to a national level. Outlined below are a number of models that CHFA believes do not provide a good basis to build on.

<u>Jurisdiction</u>	<u>Concern with existing model</u>
Victoria	Too 'black letter' and onerous, and its focus is primarily on 'growth providers'.
Queensland	Based on minimum standards, rather than risk.
Western Australia	Based on the draft national framework which attempted to harmonise models and which still needs improving, particularly regarding organisation governance.

At present, the NSW regulatory model is the only one in Australia that comes close to meeting all of the components of an ideal national regulatory system, as outlined above. One of the primary reasons for this is because it is a tiered system, a core feature that CHFA believes must be included in any new national

regulatory system.

Tenants - where do they fit in?

Section 5 of the discussion paper addresses the interest of tenants in community housing (Australian Government 2010 P22-24). It notes that while a large number of community housing organisations are emerging that have capacity to become large owner/developers, the core business for most community housing organisations will continue to be tenancy management, asset management and the coordination of support services for disadvantaged households. Also, that it is important that tenants continue to enjoy high quality housing standards with no loss of community connections and tenancy support.

Shelter supports these comments. Yet to do this there needs to be much more work done in explaining how the regulatory system will protect and maintain the rights of tenants. There is little discussion on how a regulatory system will ensure compliance with Residential Tenancy Acts. In Tasmania the current Residential Tenancy Act 1997 (RTA) is under review. Shelter has submitted a response to the discussion paper outline key area need to be amended to protect tenants and the quality of housing provided, be that private or social housing. For instance, currently housing provided by Speciality Homelessness Service in Tasmania are exempted from the RTA Act 1997 (Shelter Tas 2009).

Shelter supports the National Community Housing Standards and has participated in their development. They are a great start but do not adequately protect the rights of tenancy. They are voluntary, are not a part of all housing provider contacts with government, and have no legal standing in Tasmania. The Standards are currently being updated and are due for release. Yet this updating was never intended to conclusively cover the right of tenants and more work needs to be done in this area. National Shelter has recently released a national report *A Better Lease on Life: Improving Australian Tenancy Law* (National Shelter 2010). This study provides a comparison of key aspects of tenancy law across Australia and highlights areas for change. Something else which needs addressing in more details are the rights of tenants as stock is transferred from the public to community housing system.

Other points to consider

Stock transfer

Impact on Providers

CHFA have noted (CHFA 2010) that the *Regulation and Growth* discussion paper details many areas that will impact on the ability of the community housing sector to continue growing and meet the needs of governments and communities. Stock transfer is an important source of the growth of the community housing sector over the next few years.

State and Territory governments already place conditions on funding that they provide to community housing organisations. In addition to these, some jurisdictions have placed controls such as caveats, debentures, and secondary mortgages on properties that have been transferred to community housing organisations. Such measures are an important means of protecting government investment and ensuring that these investments are used appropriately over time. This area is one that would benefit from some degree of consistency or minimum standards at the national level, and that oversight in this area through the NAHA would be the best mechanism to achieve this.

Any conditions placed on stock transfers should give community housing providers maximum flexibility to utilise these assets to increase the supply of affordable housing, as well as control over their tenancy management. There must be a balance between protecting governments' investment and maximising assets to achieve growth in affordable housing stock. Restrictive conditions and excessive encumbrances on the use of transferred stock will defeat the objective of leveraging stock for further growth.

The purpose of a regulatory system is to have a mechanism for accountability of providers' activities, and should assuage government concerns about the appropriate management of transferred stock. Further, for not-for-profit organisations, their constitutions provide a strong instrument for dealing with these issues.

CHFA believes that a sufficient degree of conditionality on transferred stock would be that this stock, along with other stock generated as a result of leveraging or the proceeds from selling transferred stock, remains as affordable rental housing in perpetuity. It is not necessary to be overly specific about ongoing levels of affordability, tenant profile, and the use of surpluses.

Impact for Tenants

As noted, the importance of a degree of consistent and minimal standards at a national level for housing providers is also just as important to protect the rights of tenants. Tasmania has no clear policy on what will happen to tenants with stock transfer from public to community housing. This is a key area for urgent policy development between State housing authorities, tenants, peaks and community housing providers. At a minimum, the Australian Government should work with States and Territories to develop national standards for tenants rights that adopt current best practise when stock is transferred that will include a 'no disadvantage' principle for tenants, boarders and lodgers transferring between different forms of affordable housing (National Shelter 2009 p8).

Reporting and compliance obligations need to be considered

In Tasmania, government funded services have a range of reporting requirements already. Work needs to be undertaken to ensure layers of compliance are not just added to existing contracts but are consolidated. As already occurs, organisations managing and delivering affordable housing programs would maintain their reporting responsibilities for individual contracts, whether these are with State or Territory housing authorities, NRAS, or through other Commonwealth, State or Territory departments (e.g. health, disability etc). Crucially, the nationally regulatory standards would be designed to reduce red tape, as well as reduce 'regulation by contract'.

This would therefore have an impact on the design and content of contracts issued by other government departments at the State/Territory or Commonwealth level, which would be obliged to be consistent with the national regulatory standards.

What about Regulation for developers?

One issue that will need to be given consideration in the development of a new national regulatory framework will be how to cover developers. There are currently no standards or definitions of exactly what constitute a 'developer'. Nor are there any for the regulation or accreditation of developers carrying out work for managers of affordable housing programs (to protect the risk carried by organisations commissioning property development). This has recently been highlighted in Tasmania. At the time of writing this submission there is uncertainty about the further of Tasmanian Affordable Housing Limited (TAHL), a

housing association which was established in 2006 with the aim of brokering a private developer(s) to build affordable housing under the TAHL model on publicly owned land. Unlike other community housing providers, TAHL sat outside the normal contractual obligations other government funded community organisations are obliged to comply with regarding quality assurance and National Community Housing Standards. Such anomalies could be dealt with under regulation. The biggest risk to TAHL is that it has been hit by the collapse of its major private sector partner, Viva Properties Pty Ltd, which is in liquidation. The Tasmanian Government is working with TAHL to determine what the impact of Viva's collapse will have on its future viability (O'Connor 2 June 2010).

Conclusion

Shelter Tasmania supports the arguments provided that within the current policy context the time has come for the introduction of a fair and equitable regulatory system across all affordable housing providers. The question is - what type of regulations and how best to achieve its implementation? Shelter Tasmania supports the establishment of a three tiered national system of regulation that will cover the full range of housing providers: big and small, not-for-profit, local or state government and for-profit. Any regulatory system has to prove upfront how it will protect low income and vulnerable groups, and how the security of tenure and right of tenants will be part of any new system so that tenants are not disadvantaged.

Once there is agreement on the fundamental principles and basic framework for the regulatory system Shelter Tas would like the opportunity to provide more detailed feedback. To ensure that advice from the Tasmanian community sector is provided on how the regulation models can most effectively be implemented and work for both housing providers and consumers in Tasmania.

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