

**PUBLIC CONSULTATIONS ON THE NATIONAL
REGULATORY SYSTEM FOR COMMUNITY HOUSING**

FINAL REPORT

14 FEBRUARY 2012

Contents

- Executive Summary 1**

- 1 Introduction 3**
 - 1.1 Regulation of community housing 3
 - 1.2 National Regulatory System for Community Housing 3
 - 1.3 Regulation Impact Statement..... 7
 - 1.4 Public consultations..... 8
 - 1.5 Public consultation report..... 8

- 2 Perceived costs and benefits 8**
 - 2.1 Perceived benefits of the NRSCH..... 8
 - 2.2 Potential risks and additional costs10

- 3 National Law..... 12**
 - 3.1 Subordinate instruments.....12
 - 3.2 Definition of community housing assets13
 - 3.3 Incorporation requirements15
 - 3.4 Registration tiers16
 - 3.5 Role of the Registrar17
 - 3.6 Registrar powers18
 - 3.7 Appeals22
 - 3.8 Linkages to NRAS Regulations22

- 4 National Regulatory Code 23**
 - 4.1 Principles of good regulation23
 - 4.2 Tenant outcomes (Outcomes 1, 2 and 3)23
 - 4.3 Housing assets (Outcome 2)25
 - 4.4 Community engagement (Outcome 3)25
 - 4.5 Organisational health (Outcomes 4, 5, 6 and 7).....25

- 5 Implementation issues 26**
 - 5.1 Governance26
 - 5.2 Development of operating guidelines.....26
 - 5.3 Quality assurance28
 - 5.4 Timing.....28
 - 5.5 Support and resources28
 - 5.6 Direct costs.....29
 - 5.7 Transitional arrangements29
 - 5.8 Reporting obligations30
 - 5.9 Partnerships.....30
 - 5.10 State/ territory policy and funding agencies31

- 6 Provider-specific issues 31**
 - 6.1 Jurisdiction-specific provider issues31
 - 6.2 Multi-jurisdictional providers32
 - 6.3 Tier 3 providers33
 - 6.4 Regional and remote providers33
 - 6.5 Multi-functional and specialist providers.....34
 - 6.6 Indigenous community housing organisations.....35

- 7 Tenant issues 36**

- 8 Finance sector feedback 37**

| | | |
|----------|---|-----------|
| 9 | Preferred option | 38 |
| 9.1 | Commitment to growth and diversity of the sector | 39 |
| 9.2 | Refinement of the design elements | 40 |
| 9.3 | Development of NRSCH operating guidelines | 41 |
| 9.4 | Ongoing stakeholder input | 42 |
| 9.5 | Broader reform agenda..... | 42 |
| | Attachment 1: Public consultation process | 43 |
| | National consultation forums | 43 |
| | State/ territory consultation forums | 43 |
| | Extended written submissions | 45 |
| | Attachment 2: Jurisdiction-specific feedback | 46 |
| | New South Wales..... | 46 |
| | Victoria | 51 |
| | Queensland..... | 56 |
| | South Australia..... | 65 |
| | Western Australia | 69 |
| | Tasmania..... | 73 |
| | Northern Territory | 77 |
| | Australian Capital Territory | 84 |

Executive Summary

There was strong in-principle support across the full range of stakeholders for the National Regulatory System for Community Housing (NRSCH) over the status quo—conditional on adequately addressing key risks and concerns as part of the final drafting of the National Law and the detailed development of the operating guidelines for the new system.

The main reason for stakeholder support for the NRSCH related to the

- greater flexibility for providers to pursue growth opportunities—both through streamlined regulatory arrangements for providers working across jurisdictions and through clear pathways between regulatory tiers for single jurisdiction providers
- reduced barriers to negotiating commercial arrangements with finance and development partners—who will no longer have to deal with the complexity of considering the implications of separate state/ territory regulatory systems
- consistency with national competition policy objectives—in particular, by supporting a more level playing field for providers seeking to enter new jurisdictions and for providers wanting to operate in more than one jurisdiction
- greater consistency in the achievement of tenant outcomes—driven by national standards that apply to all providers and in all participating states/ territories
- greater opportunity under the National Regulatory System to leverage off and share existing regulatory systems and practice—both through greater collaboration and communication; and allowing jurisdictions without a statutory regulatory system to cost-effectively participate in the national system
- increased scope for sector efficiencies (if the National Regulatory System is supported by funding and policy settings that allow providers to achieve economies of scale)
- greater potential for the collection and reporting of nationally consistent sector information.

For a small minority of stakeholders, mainly representing smaller providers, their preference, based on the information available during the consultations, was to remain with the status quo. They highlighted that

- too few details were known about the actual regulatory burden under the proposed NRSCH to support it at this time—given that the level of regulatory burden would only be known once the Evidence Guidelines had been developed
- too few details were known about how state/ territory policy and funding agencies would use the NRSCH—in particular what registration requirements would have to be met by providers to retain existing funding or access future funding or investments
- there were concerns about an additional regulatory burden on providers if state/ territory policy and funding agencies did not streamline reporting requirements under funding programs after the introduction of the NRSCH

- there were concerns that the effort of changing to the NRSCH may not be worth it if there were not additional reforms to achieve greater national consistency in policy and funding settings needed to deliver growth.

On balance, Housing Ministers can be confident of proceeding with the proposed National Regulatory System for Community Housing with the support of providers, tenant representative organisations and the finance sector. Subject to the qualifications outlined in this report, the NRSCH is the preferred option of the Community Housing Federation of Australia (CHFA), Homelessness Australia, the National Association of Tenant Organisations (NATO), National Disability Services and National Shelter.

However, maintaining this strong support will require the following.

1. Reinforcement of Housing Ministers' commitment to the growth and diversity of the community housing sector
2. A number of decisions about refinements to the design elements for the NRSCH—most importantly
 - clarifying whether the requirement to transfer surplus community housing assets in the event of wind-up [Clause 13 (2) (a)] only applies to those assets linked to government assistance (i.e. “regulated community housing assets”)
 - refining the definition of Community Housing Assets [Clause 4] to distinguish assets linked to government assistance from other assets purchased or developed without any direct or indirect government assistance
 - retaining the power to issue binding instructions [Clause 18] but clarifying their purpose and scope
 - retaining the power to appointment a Statutory Manager [Clause 19] but clarifying the scope of their function
 - extending the range of appealable decisions [Clause 22 (10)] to include decisions about the appointment of a Primary Registrar and decisions about an organisation's registration tier
3. Extensive stakeholder input into the detailed development of the Evidence and Intervention Guidelines for the NRSCH
4. Strong stakeholder representation on the National Regulatory Council to ensure the integrity of the implementation of the NRSCH
5. Progress in expanding the reform agenda to ensure national consistency in the full range of controls that impact on the growth of the community.

Some stakeholders expressed disappointment at the limited scope of reform covered by the NRSCH—indicating that a truly national system based on competitive neutrality between community housing providers and state housing authorities would have delivered a more substantial reform for the sector and better outcomes for tenants.

Other stakeholders were more optimistic and viewed the NRSCH as a key foundation stone that provides the framework for other national reforms to achieve sustainable growth in the community housing sector.

1 Introduction

This report summarises the feedback from public consultations on a proposal by Housing Ministers across Australia for a National Regulatory System for Community Housing.

This section provides background on the proposed NRSCH and the public consultation process—which covered 2 national consultation forums, 15 state/ territory consultation forums and responses to a nationally advertised call for written submissions.

1.1 Regulation of community housing

The Commonwealth and state and territory governments, through the Council of Australian Governments, have committed to a number of social housing reforms through the National Affordable Housing Agreement and the Nation Building Economic Stimulus Plan. Under these agreements, governments committed to pursue reforms aimed at expanding social and affordable housing, including an extended role for the community housing sector.

The community housing sector encompasses the provision of social and affordable housing by non-government organisations—typically not-for-profit housing providers but potentially including for-profit providers involved in the direct provision of social and affordable housing. As at 30 June 2010, the Australian Institute of Health and Welfare (AIHW) reported there were over 950 mainstream community housing organisations and almost 400 Indigenous community housing organisations (ICHO) that managed nearly 65,000 dwellings—representing approximately 15% of all social housing¹. The precise size and scope of the community housing sector is difficult to estimate because of different reporting arrangements in each jurisdiction, incomplete datasets on affordable housing dwellings, and the lack of data on social and affordable housing managed by unfunded or not actively regulated providers.

Given the potential risks in expanding the community housing sector, Commonwealth and state and territory Housing Ministers agreed to develop a nationally consistent system of regulation and prudential supervision to preserve government-funded assets transferred to the sector, as well as ensuring the interests of tenant and financial partners were protected.

The current regulatory environment in each state and territory varies. While there has been significant growth of registered providers in a number of jurisdictions, the lack of a nationally consistent system may limit the ability of the community housing sector to expand. Regulation is undertaken at the state and territory level, with a range of legislative and administrative schemes that are not consistent across jurisdictional borders. This has contributed to a lack of confidence in the sector and limited the opportunity for stakeholder and financial investment. This imposes restrictions on housing providers that are seeking to operate at a national level.

1.2 National Regulatory System for Community Housing

In June 2011, Housing Ministers across Australia agreed to a blueprint for a National Regulatory System for Community Housing (NRSCH). The proposed system seeks to

¹ Housing assistance in Australia 2011, Australian Institute of Health and Welfare, 15 Jun 2011.

introduce nationally consistent regulatory arrangements to promote the growth of the community housing sector nationally. The proposed systems will aim to

- improve tenant outcomes and protect vulnerable tenants
- protect government funding and equity in the sector
- enhance investor and partner confidence.

Housing Ministers agreed that the core objectives underpinning the development of a national approach to regulation of housing providers are to

- provide a consistent regulatory environment to support the growth and development of the not-for-profit housing sector
- provide the finance sector with confidence to invest
- provide an avenue for expansion of regulation to the for-profit housing sector to prepare for future housing product development
- reduce the regulatory burden for housing providers working across jurisdictions
- provide a level playing field for providers seeking to enter new jurisdictions.

The NRSCH Blueprint proposed by Housing Ministers covered a number of core design elements.

National Law

The NRSCH will be introduced through consistent state- and territory-based legislation. The legislation, referred to as the National Law, will be enacted firstly in the host jurisdiction, New South Wales, and either applied or adopted thereafter by other jurisdictions.

National Registration

Registered providers will be placed on a single National Register. Queensland may retain separate state-based registration of funded local government providers.

Housing providers will be registered in one of three tiers:

- Tier 1: housing providers with asset procurement and development functions (and the ability to grow social and affordable housing supply through construction, purchase or acquisition) and/or complex tenancy and property management functions that operate at scale
- Tier 2: housing providers typically involved in moderately complex asset and tenancy management activities
- Tier 3: housing providers typically involved in small-scale tenancy management activities.

Detailed guidance notes on the registration tiers will be published. They will contain expectations of the performance outcomes including the systems, policies and practices providers must demonstrate to appropriately mitigate risk.

Registration eligibility

Housing providers will not be compelled to register under the national system. However, funding agencies may make registration a precondition for future funding or investment and require organisations with existing state and territory funding or transferred assets to register. Registration will be open to any housing provider that meets the requirements specified in the National Law, including

- an appropriate corporate structure for the proposed tier of registration (e.g. Tier 1 housing providers must be incorporated as either a company limited by shares or by guarantee under the Corporations Act 2001; or a corporation incorporated under the Corporations (Aboriginal and Torres Strait Islander Act 2006)
- have in place constitutional mandatory arrangements that ensure in the event of wind-up and/or deregistration, surplus assets remaining after the payment of liabilities continue to be available for social housing
- have a demonstrated capacity to meet and achieve ongoing compliance with the National Regulatory Code.

National Regulatory Code

The National Regulatory Code will set out the performance requirements that registered housing providers must meet under the national system. The Code will not prescribe how providers should run their businesses, but rather will focus on the achievement of outcomes in the following areas:

- tenant and housing services
- housing assets
- community engagement
- governance
- probity
- management
- financial viability.

The Code will also establish separate evidence guidelines to help providers meet the requirements for registration at each tier.

Registrars

Each state and territory will have a Registrar or appoint a Registrar from another jurisdiction to apply the National Law and regulate providers within their state or territory.

Registrars will have the power to register providers, monitor provider performance, to intervene when non-compliance occurs, and to cancel the registration of non-compliant providers. Where a provider operates across multiple jurisdictions, a Lead Registrar will be appointed so the housing provider only deals with one Registrar.

Registrar powers

The National Law will set out the specific obligations on registered housing providers, including on

- complying with the National Regulatory Code
- providing information, records or documents requested by the Registrar
- allowing the Registrar to carry out inspections
- notifying the Registrar of anything that could affect their registration status
- maintaining a register of social and affordable housing assets.

The National Law will also give the Registrar powers to intervene where a provider is not meeting their obligations. These powers are intended to provide staged, proportionate intervention provisions that reflect the seriousness and potential consequences of a provider's failure to meet their obligations.

The focus is on the Registrar engaging early when warning signs are identified in order to avoid the possibility of serious non-compliance, on working to return the housing provider to full compliance where noncompliance occurs or, as a last resort, deregistering the provider.

The intervention options available to the Registrar include

- issuing a notice of non-compliance
- issuing binding instructions
- issuing a notice of intent to cancel registration
- appointing a statutory manager to take control of a registered housing provider and carry on its business while bringing the provider to compliance (or facilitating deregistration), before returning control to the provider's governing body.

All intervention powers will be subject to legislated procedural fairness and appeal provisions. Intervention protocols will be published to guide Registrar actions.

What's not in the National Regulatory System

The proposed National Regulatory System does not require the referral of any powers from states and territories to the Commonwealth, nor is Commonwealth legislation required to enable the System.

States and territories will continue to be responsible for

- appointing and supervising a jurisdictional Registrar (or nominating another jurisdiction to undertake regulatory activity on their behalf)
- maintaining authority over funding arrangements. These sit outside the National Regulatory System and include asset controls in legislation, funding agreements and contracts, and tripartite agreements with providers and lenders.

Governance arrangements

Housing Ministers will have an overall supervisory and policy-making role in relation to the National Regulatory System, using the decision-making processes of the COAG Standing Council or another appropriate mechanism.

The Housing Ministers' Advisory Committee (HMAC) or its successor will continue to advise Housing Ministers on policy requirements for regulation to meet government priorities and objectives. The HMAC will be responsible for resolving cross-jurisdictional disputes that cannot be resolved using the national system protocols or operational guidelines (e.g. disputes about the appointment of Lead Registrars).

A National Regulatory Council will be established as an independent advisory committee, appointed by Housing Ministers to oversee the operation of the National Regulatory System with Secretariat support. A National Registrars' Forum will coordinate implementation of the new system.

1.3 Regulation Impact Statement

In November 2011, the Office of Best Practice Regulation (OBPR) formally approved for consultation a Regulation Impact Statement (RIS) on the proposed NRSCH.

The RIS analysed the costs and benefits for two regulatory options—Option 1 (status quo) where each jurisdiction maintains their own regulatory processes; and Option 2 (NRSCH) where a nationally consistent regulatory system is enacted in one jurisdiction and adopted or applied by other participating jurisdictions.

Under Option 1, different standards, regulatory controls and regulatory processes would apply in each state and territory and community housing providers operating in multiple jurisdictions would be subject to multiple regulatory systems.

Under Option 2, participating jurisdictions apply the same standards, controls and processes and community housing providers would be subject to a single regulatory system.

Under both Options 1 and 2, it is assumed that the future growth of community housing would be primarily driven by funding and policy decisions outside of either regulatory arrangements—albeit with different growth rates having different implications for costs and benefits.

Information on the costs and benefits presented in the RIS was gathered from a number of sources, including desktop research, survey providers and interviews, and regulator workshops. Providers that might be expected to become tier 1 or 2 were surveyed to assess the quantifiable factors relating to the cost and benefits of regulation. A selection of providers who might be expected to be tier 3 were interviewed in each jurisdiction to find qualitative factors unique to small providers that may impact on costs and benefits. The survey was web-based and interviews were generally conducted by teleconference.

The interviews involved at least one provider from each jurisdiction in each size tier, except for small jurisdictions where not all tiers were able to be represented. Multi-jurisdictional and Indigenous housing providers were also represented in the surveying.

1.4 Public consultations

Public consultations on the Regulation Impact Statement and the design elements of the proposed NRSCH were held between 23rd November 2011 and January 20th 2012.

The public consultation process involved 2 national consultation forums, 15 state/territory consultation forums and a nationally advertised call for written submissions. In total, 20 extended written submissions and 25 completed feedback forms were received (attachment 1).

The consultation forums and guidelines for written submissions were structured around five main themes:

- perceived costs and benefits of the NRSCH
- feedback on the draft National Law
- feedback on the National Regulatory Code
- feedback on implementation issues
- preferred option for national regulation.

1.5 Public consultation report

This report of the public consultation process has been prepared for the Housing Ministers' Advisory Committee (HMAC) to inform their advice to Housing Ministers on a final decision on the National Regulatory System for Community Housing.

The report is structured around the first four elements of the consultation process (sections 2–5), with separate summary sections for different types of providers (section 6), tenants (section 7) and the finance sector (section 8). The final section of the report summarises stakeholder feedback on a preferred option for national regulation (section 9).

2 Perceived costs and benefits

Overall, there was broad stakeholder agreement that there were likely to be greater net benefits under the NRSCH than if the status quo was maintained with separate state/territory regulatory arrangements for community housing—although many remained cautious in assessing the benefits until they had seen the full details of the Evidence Guidelines and the policy and funding settings that would be adopted by state/territory policy and funding agencies.

2.1 Perceived benefits of the NRSCH

Stakeholders are confident about a number of important net benefits of the NRSCH over the status quo.

Greater protection for tenants

The NRSCH has the potential to improve tenant outcomes through the adoption of nationally-consistent standards. In particular, peak bodies and tenant representative organisations highlighted the benefits of adopting national standards that applied to all community housing providers in all participating states and territories.

Greater confidence for government and banks to invest in community housing

The NRSCH was widely recognised as a necessary pre-condition for future increased government and private sector investment in community housing. Stakeholders highlighted benefits in terms of

- making it easier for providers to access private capital through the greater confidence of financiers and investors that flows from a National Regulatory System
- making it easier to work with finance and development partners who will no longer have to understand multiple regulatory systems
- promoting confidence in the professionalism and stability of the community housing sector—leading to increased government willingness to invest in the sector
- a more reliable basis on which funders can make decisions.

Reduced regulatory burden for multi-jurisdictional providers

The NRSCH was seen as reducing the regulatory burden associated with operating across multiple jurisdictions—eliminating the need to seek registration under multiple systems and cutting red tape associated with reporting under multiple regulatory systems.

Further, most multi-jurisdictional providers were confident that they would be able to operate as a single, consolidated entity under the NRSCH rather than having to form separate subsidiary companies in each jurisdiction—although some remained concerned that state/ territory policy and funding agencies could impose additional restrictions to negate this potential benefit.

Promotion of quality improvement and sector efficiencies

The NRSCH should support quality improvement and greater professionalism across the sector through the adoption of nationally consistent standards.

Multi-jurisdictional providers indicated that the NRSCH provides greater opportunities for achieving economies of scale by removing barriers to operating across multiple jurisdictions. Other providers highlighted the greater potential for sector efficiencies through partnerships between providers—both across jurisdictions and between tiers (e.g. Tier 1 providers with development expertise partnering with Tier 3 providers to deliver local housing services).

Promotion of a level-playing field

The NRSCH was seen as promoting a 'level-playing field' for community housing providers—particularly in relation to key elements of the proposed design:

- ensuring the independence of regulatory decisions from policy and funding decisions
- expanding coverage of regulation to all community housing providers across Australia
- creating three tiers of regulation to ensure that regulatory burden is proportionate to risk
- supporting the inclusion of the Indigenous Community Housing sector.

Promotion of a national vision and strategy for community housing

The NRSCH is inclusive of all community housing providers and provides a framework to underpin a national vision and strategy for community housing—particularly in relation to

- promoting alignment with other reforms such as the establishment of the Australian Charities and Not for Profit Commission
- ensuring the capture of more nationally consistent information about the scope and performance of the registered community housing sector.

Despite the consistency of feedback on the potential benefits of the NRSCH, stakeholders had different views about the size of the net benefits likely to flow from the NRSCH and where these benefits were likely to accrue.

Some providers expected very significant flow-on benefits linked to improved access to private capital and reduced barriers to operating across jurisdictions. Other providers were more cautious—highlighting that significant benefits would only flow if a national approach was also adopted for community housing policy and funding decisions.

Many smaller providers and some larger single-jurisdiction providers expected the benefits of the NRSCH to mainly flow to multi-jurisdictional providers—although many still supported the NRSCH because of the broader benefits.

2.2 Potential risks and additional costs

While there was strong in-principle support for the intent of the NRSCH, a wide range of stakeholders remained concerned about potential risks that could undermine the benefits of the NRSCH and additional costs that could be incurred if the system was poorly implemented.

Additional costs through increased regulatory burden

A wide range of providers remained cautious in assessing the benefits of the NRSCH until they had seen the full details of the Evidence Guidelines—highlighting that the “devil would be in the detail”. Smaller providers were particularly concerned that burdensome Evidence Guidelines could lead to additional reporting obligations or duplication with existing reporting requirements. Providers were encouraged by Housing Ministers’ commitment to ensure no overall increase in regulatory burden for providers—but believed that this risk could only be properly mitigated by the extensive involvement of providers in the detailed development of the Evidence Guidelines (see section 4).

Risk of undermining the independence of community housing providers

A wide range of providers remained cautious in assessing the benefits of the NRSCH until they had seen the full details of the Intervention Guidelines—highlighting that the Registrar powers in the National Law are very strong and extremely broad, and if inappropriately used could undermine the independence of community housing providers. Providers understand the rationale for staged, escalating powers and the ability to intervene directly as a last resort, but remain concerned that they have to take “on trust” how the powers will be applied. As with the Evidence Guidelines, providers believe that these risks can only be properly mitigated by having extensive involvement in the detailed development of Intervention Guidelines (see section 4).

Additional costs for multi-functional providers

Many multi-functional providers that deliver social housing services as just a small part of their overall business were concerned that they would face an increased regulatory burden under the NRSCH. Many of these providers are already regulated under other systems (e.g. disability service standards; homelessness quality standards) and it was not clear whether the NRSCH would simply create an additional layer of regulation. These providers highlighted the importance of mapping the National Regulatory Code against other standards and recognising evidence generated as part of other regulatory assessments (see section 5).

Risk of exclusion of smaller regional and local providers

Many smaller regional and local providers remained concerned that state/ territory policy and funding agencies could use the NRSCH as a mechanism to exclude them from future service delivery—by making funding and investments only available to Tier 1 and 2 registered providers. There was considerable concern that the sector could be dominated by a small number of very large providers that did not understand the local delivery context. Providers wanted further details of state/ territory requirements for ongoing and future funding—to fully understand how the NRSCH would impact on the future shape of the sector.

Risk of inconsistent conditions imposed by policy and funding agencies

A number of multi-jurisdictional and larger housing providers raised concerns that despite the intent of the NRSCH, state/ territory policy and funding agencies could still adopt policy and funding settings that unnecessarily restricted the ability of providers to operate across jurisdictions—for example by placing onerous restrictions on their trading activities or adopting inconsistent mechanisms for protecting state/ territory investments.

Risk of providers opting-out of the NRSCH

Tenant representative organisations expressed concerns that state/ territory policy and funding agencies may allow or encourage certain community housing providers to opt-out of the NRSCH—thereby limiting the coverage of the national standards. Specifically, further details were needed on state/ territory requirements for the registration of

- approved providers under the National Rental Affordability Scheme (NRAS)

- Indigenous community housing organisations (ICHOs)
- smaller community housing organisations that are only involved in tenancy management.

The National Association of Tenant Organisations (Submission 3) highlighted that the reliance on an opt-in approach to registration was of concern—indicating that “registration should be mandatory for all long-term not for profit housing providers.” (see section 3).

Exclusion of government providers from the NRSCH

Although explicitly excluded from the proposed regulatory options, the vast majority of participants in the public consultation highlighted their disappointment at the decision to exclude government providers from the National Regulatory System—arguing that this resulted in a continuation of the existing uneven playing field.

As Brisbane Housing Company explained “the principles of the new regulatory system such as accountability, transparency and targeting are equally pertinent to the public housing system as they are to the community housing sector...while we understand public housing will not be incorporated into the first iteration of the new legislation and associated regulations, we encourage the Housing Ministers to consider the extension of the regulation to public housing provision to enhance the transparency to both residents and the general public.”

As a minimum, stakeholders suggested that state Housing Authorities be required under the National Affordable Housing Agreement to comply with the National Regulatory Code, in order to promote transparency as to the use of public funds, and a level playing field between providers.

3 National Law

Overall, stakeholders indicated that the design elements of the National Law appear to be broadly fit for purpose—although a number of specific concerns were raised and refinements proposed. These issues fell into two categories.

First, stakeholders highlighted a lack of clarity and visibility in the National Law of the specific subordinate instruments that are described in the Regulation Impact Statement but not referenced in the draft legislation—including the Evidence Guidelines and Intervention Guidelines. Stakeholder feedback on strengthening the relationship between the National Law and the other non-legislative elements of the NRSCH is summarised in section 3.1.

Second, stakeholders highlighted a number of specific clauses in the draft legislation that required further work and where changes should be considered by Housing Ministers—covering definitions (section 3.2), incorporation requirements (section 3.3), registration tiers (section 3.4), the role of the Registrar (section 3.5), Registrar powers (section 3.6), and complaints and appeals (section 3.7).

3.1 Subordinate instruments

Stakeholders broadly supported the high-level, generic framing of the National Law—to avoid the risk of requiring repeated amendments to deal with specific policy and

operational issues that arise. Stakeholders also supported the inclusion of the National Regulatory Code as a schedule to the legislation, given that this was the 'foundation stone' for regulation.

At the same time, stakeholders highlighted a lack of clarity and visibility in the National Law of the specific subordinate instruments needed for the National Law to operate in practice.

The Community Housing Federation of Australia (Submission 13) highlighted that there is no clearly established framework that articulates the relationship between the National Law (and the National Regulatory Code as a schedule to the Law) and the other essential non-legislative elements of the NRSCH—specifically, the Evidence Guidelines, Intervention Guidelines, Tiers Guidelines, and governance arrangements.

The CHFA suggested that some mechanism, such as a published set of non-legislative subordinate instruments administered by the National Regulatory Council, needs to be in place in order to capture the key elements not explicitly referenced in the National Law. They pointed out that despite the significant role of the Council in the implementation and ongoing administration of the NRSCH, there is no mention of the Council and the various subordinate instruments in the National Law.

Participants in the consultation workshops raised two options for dealing with these issues. First, using the National Law to formally establish the National Regulatory Council and define its role and functions (including their role in publishing and administering the set of non-legislative subordinate instruments needed to support the National Law). Second, Housing Ministers using the Intergovernmental Agreement for the NRSCH to detail the role of the National Regulatory Council and the framework for administering the set of subordinate instruments.

3.2 Definition of community housing assets

A repeated theme throughout the consultations was the lack of clarity in the National Law of the definitions of community housing and community housing assets.

The current definition of "community housing" (Clause 4) as meaning social housing or affordable housing was viewed as problematic as it raised the need for a definition of social and affordable housing, and failed to recognise the continuum of housing assistance, including transitional and supported housing.

However, the core issue for stakeholders was the definition of "community housing assets"—in particular distinguishing community housing assets linked to government assistance from other assets owned and controlled by registered providers.

Stakeholders highlighted that changes are required to the current drafting provisions for the definition of community housing assets to provide greater clarity about the definition of community housing assets—which currently refers to assets "used for the purposes of community housing" and "related to the provision of community housing". As stakeholders pointed out, this definition does not distinguish the treatment of community housing assets linked to assistance from a state/ territory policy and funding agency and other community housing assets owned and controlled by registered providers without any government assistance.

This distinction is critical under the National Law, as

- registered community housing providers are required to have a provision in their constitution that provides for all the community housing assets of the registered community housing provider in participating jurisdictions to be transferred to another registered community housing provider or to the Agency in the jurisdiction where the asset is located (other than any assets that are required to pay for any amounts owed by the registered community housing provider) in the event that the registered community housing provider is wound up [Clause 13 (2a)]
- the Registrar may refuse to cancel the registration of an entity if the Registrar is not satisfied that all the community housing assets of the entity in participating jurisdictions have been transferred to another registered community housing provider or to the Agency in the jurisdiction where the asset is located (other than any assets that are required to pay for any amounts owed by the entity). [Clause 14 (2)]

A number of Aged and Community Services providers (Submissions 1, 9, 14, 15, 16) highlighted that many church and charitable organisations undertake community housing activities with strong existing balance sheets and the ability to cross-subsidise their operations—without any government assistance or government interest in these assets. They stressed that “there will need to be relevant clauses inserted to clearly define the assets which relate to ‘social and affordable housing assets’. Also a clear definition will have to be developed so that the interests held by government and the interests of the (church and charitable organisations) are identified and fenced off”.

Churches Housing Inc (Submission 7) reinforced that the constitutional clause requirement will prove difficult, not necessarily because of its requirement to be placed in various churches’ constitutions, but because most church agencies already have substantial community and affordable housing portfolios that target social housing tenants built without any financial assistance or ongoing support from government. They stated that the National Law must “allow for current community and affordable housing properties developed and owned outright by organisations, to be isolated and identified as assets not encumbered by this [wind-up] clause.”

During the consultation workshops, housing providers also highlighted the need for procedures and rules for ensuring consistency in the treatment of community housing assets where multiple jurisdictions have an interest as a result of providing government assistance. Housing providers highlighted the need for alignment in how different policy and funding agencies used non-regulatory levers to control their interest in jurisdictional investments—suggesting the need to develop common instruments such as standard tripartite agreements and contractual clauses to avoid simply shifting current regulatory barriers into policy and funding barriers. In a similar way, finance sector representatives highlighted the importance of simple and transparent mechanisms for dealing with the transfer of community housing assets to avoid situations where vulnerable tenants were forced out of their homes.

Stakeholders strongly supported the requirement in the National Law for registered providers to maintain a list of all community housing assets [Clause 13 (2h)]—given that it provides a potential mechanism for making clear which assets are subject to the wind-up and cancellation of registration provisions. However, stakeholders indicated that this would require a change to the definition of community housing assets—for example by defining “community housing assets” as any interests in land of the registered community housing provider used for the purposes of community housing with assistance from an Agency in a participating jurisdiction and any other assets of the registered community housing provider that are related to the provision of community housing with assistance from an Agency in a participating jurisdiction.

In practice, stakeholders recognised that such a definition would then require registered providers and policy and funding agencies to reach agreement on what assets should be listed as 'community housing assets' for the purposes of the National Law. For community housing providers established and operating solely with government assistance, this is likely to involve all the organisation's assets. For new entrants with their own unencumbered assets, the list of community housing assets will need to be negotiated.

Once established, the list of community housing assets will need to be regularly updated in line with conditions associated with any funding and investments from policy and funding agencies. Housing providers highlighted that there will need to be clear rules for ensuring the timeliness of updates to the assets register—to ensure it does not create delays in undertaking property developments.

3.3 Incorporation requirements

Most stakeholders were comfortable with the proposed incorporation requirement in the National Law—namely that Tier 1 registered providers must be a company and Tier 2 and 3 could be any suitable body corporate.

However, there were some important exceptions that require more detailed consideration.

Churches Housing Inc. (Submission 7) raised strong concerns that the current requirements for Tier 1 registration "does not acknowledge the current legal status of the church based welfare agencies with the 'multi-focus' of their work. The major issue for a number of the larger churches is the fact that as a Body Corporate they are already a recognised legal entity acceptable to the Australian Securities and Investment Commission and the Australian Tax Office and similar to the Aboriginal and Torres Strait Islanders under their Corporations Act of 2006, they also are able to Incorporate agencies under their relevant Acts."

Churches Housing Inc. emphasised that "a number of the church agencies already have access to financial structures that would enable them to expand this sector significantly in partnership with government and find themselves bewildered at being locked out by legislation that prevents them from even the basic right of being able to compete with other community housing providers on all levels for future sector developments."

These comments were strongly supported by a number of Aged and Community Care Associations (Submissions 9, 14, 15, 16). Aged and Community Care Victoria highlights that "the requirements for eligibility as a Tier 1 provider should be consistent and inclusive for a variety of housing providers who are already meeting regulatory requirements under other streams of government as well as other geographical jurisdictions...Several of the large church based organisations and their agencies are incorporated by a separate Act of Parliament ... This type of incorporation should not be excluded but be included as an acceptable form of legal structure."

A joint submission from Anglicare agencies in NSW (Submission 1) highlighted that the current Tier 1 requirements would "prevent any of the Anglicare agencies in NSW from being eligible to register as Tier 1 providers, given that each is incorporated under the Anglican Churches of Australia (Bodies Corporate) Act 1938 NSW. We understand that other church based providers may be in a similar position to this and therefore also be ineligible to be Tier 1 providers. This, therefore, discriminates against a significant proportion of potential Tier 1 providers in NSW."

Anglicare agencies in NSW also raised concerns about the constitutional requirement to have the provision of community housing and associated services as one of the objects of the registered community housing provider. They perceived that this failed to recognise the multi-focus of providers that offer a wide range of services to disadvantaged people—and recommended broadening the requirement to more explicitly recognise the diverse work of multi-functional providers.

There was also confusion in the consultation workshops and written submissions about the incorporation requirements for Tier 2. Because the description of the Tier 2 incorporation structure only refers to companies and body corporates (whereas Tier 3 also refers to incorporated associations and cooperatives), many stakeholders assumed that incorporated associations and cooperatives were excluded from Tier 2—despite the fact that ‘body corporate’ encompasses incorporated associations and cooperatives. To avoid this confusion, it would be clearer if exactly the same incorporation requirements were used for Tier 2 and Tier 3—with the current wording for Tier 3 providing the best description.

Further, the NSW Federation of Housing Associations (Submission 5) highlighted that no account seems to be taken of the fact that the establishment of the Australian Charities and Not-for-profit Commission will take over regulatory functions for companies limited by guarantee currently undertaken by ASIC. “Part of the rationale for requiring incorporation as a company is that it will subject [Tier 1] housing providers to the prudential supervision of ASIC, and this will not be the case in the future. Another is to clarify responsibilities in the case of wind-up. Again, it is unclear how this will be resolved following the establishment of the ACNC.” The Federation recommended that requirements relating to incorporation as a Tier 1 provider be reviewed once the ACNC is established and its regulatory responsibilities are finalised.

In addition, Housing Choices Australia (Submission 10) raised a number of issues associated with the constitutional requirements that may be impacted by the statutory definition of a charity under the ACNC.

- The proposed wind-up clause [13 (2) (a)] is different to the sample wording suggested by the Australian Tax Office that refers to the transfer of surplus assets to another organisation in Australia which is a public benevolent institution. There is a concern that having the option of transferring assets back to government may not meet tax exemption requirements or at least may require further consideration after the finalisation of the new statutory definition of a charity
- The proposed ‘community housing object’ clause [13 (2) (b)] that refers to the provision of housing may be inconsistent with the statutory definition of a charity under the ACNC.

The final issue of concern was the lack of clarity in the National Law about the treatment of Group Structures and Joint Venture vehicles and whether subsidiaries would be required to be registered separately.

3.4 Registration tiers

There was strong support for the proposed registration tiers to ensure any regulatory burden was proportionate to risk—although stakeholders required further clarification on the definition of the three tiers of registration.

The Community Housing Federation of Australia (Submission 12) highlighted their support for the tiers outlined in the Regulation Impact Statement—indicating that they are “consistent with the recommendation in our earlier submission on the regulation discussion paper that called for three tiers based on the risk profile and housing provider activities with corresponding levels of prudential supervision.”

At the same time there were concerns that the tiers were only obliquely referred to in the legislation and further consideration was needed of the current definition of the tiers outlined in the regulation impact statement.

In terms of the definition of the tiers, stakeholders highlighted that the current wording was vague and somewhat tautological—relying on reference to undertaking community housing activities of a scale and scope similar to published guidelines for each tier. Specific concerns related to the following.

- Avoiding the use of the terms ‘small’, ‘medium’ and ‘large’ that imply that tiers will be defined by property numbers rather than risk profile
- Recognising that some Tier 3 housing providers are part of large, multi-functional organisations—and may have the capacity to undertake development projects at scale
- Recognising that some Tier 3 housing providers are already involved in small-scale property management and housing development activities—and may have the capacity to expand these activities
- Recognising that many non-companies (churches, cooperatives and incorporated associations) that are excluded from Tier 1 already are involved in undertaking development projects at scale
- Recognising that many small Indigenous community housing organisations control land and property not linked to government assistance.

The central issue for many providers is whether they are assigned a tier by a Registrar based on their community housing activities and organisational characteristics (including size and historical involvement in housing development activities) or whether they can seek registration under any tier.

The strong view from stakeholders is that providers should be able to seek registration under any tier rather than being assigned a tier—with the onus then on the provider to demonstrate the capacity to meet the performance requirements for that tier at registration and to demonstrate ongoing compliance against the evidence requirements for that tier.

3.5 Role of the Registrar

Stakeholders broadly supported the role and functions of the Registrar defined in the National Law—but raised three main issues where refinements were needed.

First, stakeholders strongly supported the principle that Registrars would operate independent of state/ territory policy and funding agencies—but pointed out that there was nothing in the National Law to give effect to this separation.

The Community Housing Federation of Australia (Submission 12) highlighted that “the point was made repeatedly in the consultations and previous submissions that there must be a clear separation of the Registrar from the funding and asset management operations of a jurisdiction. The CHFA and others have strongly advocated that Registrars must be located outside of the state Housing Authorities in order to avoid conflicts of interest, and that regulatory functions must be clearly separated from funding decisions. It is therefore very disappointing that there is no requirement for a clear separation of responsibilities as it may significantly diminish confidence in the application of the Code at a jurisdictional level.”

This view was reinforced in the Queensland Shelter submission (Submission 18). “Providers are concerned that it is a conflict of interest for the same Minister and Department to be responsible for both funding and policy decisions and registrations. They believe that to make the Registrar responsible to this same Minister and agency undermines the intent of the NRS to create an independent and nationally consistent system. Some stakeholders have suggested that this responsibility would more appropriately sit with Treasury or in a nationally coordinated but state based arrangement outside any state government agency.”

Second, stakeholders strongly supported the appointment of a Primary Registrar for registered providers that operated in more than one jurisdiction and were comfortable with the proposed approach whereby Registrars would collectively determine the primary jurisdiction. Stakeholders highlighted that a Primary Registrar would lessen the administrative burden on providers and created a more efficient means of compliance given that providers will need to adhere to a single National Law rather than the regulatory systems in separate jurisdictions.

At the same time, some providers wanted to ensure that their legitimate interests were not ignored in the appointment of a Primary Registrar. The NSW Federation of Housing Associations (Submission 5) proposed that Clause 5 of the National Law be amended to provide an opportunity for a provider to express a view on the relative impact of a decision to appoint or change a primary regulator and that this information should not unreasonably be ignored in reaching a decision. The Federation also believed that the decision about a Primary Registrar should be an appealable decision where the decision is not based on the location of the majority of the provider’s portfolio. Housing Choices Australia (Submission 10) highlighted that there should be an obligation under Clause 5 for Registrars to consult with and consider the views of providers before making a decision on the Primary Jurisdiction.

Third, stakeholders highlighted that the achievement of consistency under the National Law will require strong quality assurance to ensure the consistency of regulatory practices of the different state/ territory Registrars. Stakeholders were concerned that there are no provisions in the National Law that address the performance monitoring of Registrars. As the Community Housing Federation of Australia (Submission 12) pointed out “while it may be assumed that this is a responsibility for the National Regulatory Council, that authority has not been identified in the Regulation Impact Statement nor the National Law. Clear authority must be given to the Council to undertake performance monitoring of Registrars and take remedial action when warranted.”

3.6 Registrar powers

Stakeholders supported the principle of staged, escalating Registrar powers—but remained concerned that the provisions in the National Law were very broad and unconstrained and that their appropriateness will critically depend on the Intervention

Guidelines—which have not yet been developed. Most of the detailed feedback on Registrar powers focused on binding instructions (section 3.6.1), the appointment of a Statutory Manager (section 3.6.2), and the protection of commercially sensitive information (section 3.6.3).

At a broader level, stakeholders wanted some overarching protection in the National Law to ensure that Registrars' powers had a clear defined scope linked to the functions of the Registrar and limited to actions needed to rectify non-compliance with the National Law. Specifically, stakeholders highlighted

- the need to embed proportionality into the Registrar powers—to ensure Registrars are required to follow due process; to only use powers when certain transparent criteria have been met; and to ensure there is a clear obligation on Registrars to document the basis for regulatory decisions and for these decisions to be subject to independent review and appeal
- that the National Law should provide clarity about the criteria and timeframes associated with different powers—otherwise the powers are a 'blank cheque'—which will turn away new entrants or lead to a highly litigious approach to national regulation
- the need for clearer guidelines on the operation of Registrar powers, including the
 - treatment of minor non-compliances and the timeframes for providers to address non-compliances
 - investigation procedures
 - intervention guidelines to ensure a proportionate, staged approach
 - appeals procedures—which should be independent of the state/ territory policy and funding agency.

At the same time, finance sector representatives wanted assurances that Registrars would have sufficient power to intervene early and address non-compliance before serious problems arose. This was essential to banks for two reasons—to avoid the reputational damage that would occur if a Registrar did not have the power to intervene to protect vulnerable tenants; and to avoid the financial losses if community housing assets could not be transferred to another registered community housing provider. In one of the Victorian consultation workshops, banking representatives wanted assurance that Registrar powers would not be 'watered-down' under the national system and would maintain the same strong controls as available under the current Victorian regulatory system which they viewed as appropriately robust. In follow-up correspondence, national and Victorian representatives of one of the major banks indicated that they were equally comfortable with the Registrar powers under the NRSCH provided it incorporated the key elements of the Victorian powers.

3.6.1 Binding instructions

Stakeholders expressed a range of positions on Registrar powers to issue binding instructions—ranging from complete rejection to strong acceptance. Those that were opposed highlighted that binding instructions were an unwarranted intrusion into the operation of independent organisations and conflicted with Directors' obligations. They argued that it was the role of the Registrar to assess compliance with the Law and to

take action to de-register an organisation if it failed to take action to return to compliance—but ultimately it was a choice for Directors.

In contrast, others argued that some form of binding instructions were appropriate, given the risks associated with a registered organisation failing to take action to protect tenants and the reputation of the sector.

On balance, the majority of providers and most tenant representative bodies and finance sector representatives accepted the position embodied in the draft legislation that the benefits to the system of the power to issue binding instructions outweighed the risks.

At the National Sector Consultation Workshop most participants were comfortable with the proposal for binding instructions—but wanted changes to the National Law to ensure binding instructions could only be issued in certain circumstances and that the potential scope of the instructions was clearly defined.

At other consultation workshops

- most participants were comfortable with issuing binding instructions to provide information or documents requested by the Registrar [Clause 18 (1a)] and to make a relevant person available who is suitably qualified to answer questions about the registered community housing provider's affairs [Drafting Note 2.1 a]—noting that both of these duplicate conditions of Registration in Clause 13
- there were mixed views about binding instructions to improve the governance of the housing provider [Clause 18 (1a)]—with some providers highlighting that the wording was non-specific and too open to interpretation
- there was general opposition to binding instructions for a provider to enter into arrangements with another provider [Drafting Note 2.1 c]—with most stakeholders concerned that Registrars would not be well placed to make informed business decisions about a provider's commercial arrangements
- there was general opposition to binding instructions for a provider handling complaints made by tenants of the housing provider [Drafting Note 2.1 b]—which most stakeholders believed was adequately covered by Residential Tenancies legislation.

In a number of written submissions peak bodies provided in-principle support for binding instructions but indicated that their support for the NRSCH was dependent on changes to the drafting of the binding instructions to clarify their purpose and scope.

The Community Housing Federation of Australia (Submission 12) highlighted that the "legislation must clarify the purpose of binding instructions. In CHFA's view it must relate to improving compliance and be directed at remedying the situation in question."

Specifically, the NSW Federation of Housing Associations (Submission 5) recommended that Clause 18 be amended to state that the purpose of binding instructions is "to require such action as will have a significant impact on the ability [of the registered provider] to rectify a matter about which a notice of non-compliance has been issued." The Federation highlighted that this would make it clear that binding instructions only relate to addressing a non-compliance with the National Law and actions that would have a significant impact on bringing the provider back to compliance.

The Federation further suggested that the scope of binding instructions could be made more specific by referencing the critical areas of non-compliance where action may need to be taken—namely governance, probity, solvency and asset management. The Federation recommended that the list of possible binding instructions be changed to “instructions in relation to (a) governance; (b) actions to remedy a serious breach of probity”; (c) action to prevent a significant risk of insolvency; and (d) action to ensure that tenants are housed to a decent standard.”

It was also seen as imperative that the National Regulatory Council published detailed Intervention Guidelines to ensure that the use of the binding instruction powers was appropriate and nationally consistent. The Guidelines should include information about when a binding instruction can be issued and the factors that must be considered by a Registrar before issuing a binding instruction—namely that the instruction is proportional and reasonable given the risks associated with non-compliance; and that the rationale for the instruction is clearly linked to returning the provider to compliance with the Code.

3.6.2 Statutory Managers

As with binding instructions, the majority of providers and all tenant representative bodies and finance sector representatives accepted the position embodied in the draft legislation that the benefits to the system of being able to appoint a Statutory Manager outweighed the risks. However, any in-principle support was strongly qualified by a need to address a wide range of practical and legislative issues.

Stakeholders wanted the National Law to make it clear that a Statutory Manager’s role needed to be limited to actions related to bringing the organisation back to compliance with the National Law—consistent with the aims of the registered provider. In this regard, the NSW Federation of Housing Associations (Submission 5) recommended amending Clause 19 to state that the purpose of appointing a Statutory Manager was in order to perform the function of either “protecting social housing tenancies and/or protecting assets in which government has an interest; or remedying those areas of non-compliance whose remedy is urgent and beyond the capacity or willingness of the provider to undertake.”

Other stakeholders focused on issues related to ensuring that the legislative intent is practical to implement and does not add to the complexity of controls already available to corporate regulators such as ASIC and potentially the new ACNC. Workshop participants raised numerous questions about how issues of legal liability and Directors’ duties would be managed in practice.

These issues were of particular concern to multi-functional organisations, such as faith-based and welfare organisations where housing is only a part of their overall business. Typically, the governance and financial management of the housing component of the organisation is undertaken through the broader arrangements for the whole organisation—making it problematic for a Statutory Manager to take control of the entire organisation’s business as set out in Clause 19 (5).

Various suggestions were made to address these concerns, including

- making it clear that the appointment of a statutory manager was for a time-limited period and was limited to actions needed to bring the provider back to compliance with the National Law

- making Clause 19 (5) subject to the agreement of the Board of the registered provider.

3.6.3 Commercial sensitive information

While providers were broadly comfortable with the provisions in Clause 10 of the National Law that information on the National Register should be publicly available, the Registrar should have some discretion to protect commercially sensitive information. Housing Choices Australia (Submission 10) provided the example that information about a binding instruction concerning compliance with a loan facility agreement or construction contract may result in commercially sensitive information being published on the Register. It was suggested that “there should be discretion for a Registrar...to limit public access to certain information held on the register.”

3.7 Appeals

Stakeholders supported the procedural fairness provisions in the National Law that allowed providers to appeal Registrar decisions—but required a number of gaps to be addressed and more detailed information on how it would work in practice. Specific issues related to

- ensuring all formal Registrar decisions were appealable—including decisions not explicitly referred to in the appeals section of the National Law, including
 - the appointment of a Primary Registrar/ selection of a Primary Jurisdiction
 - decisions about an organisation’s registration tier.
- ensuring providers have adequate time to respond to instructions or notices issued by Registrars—noting that greater detail is needed in the Intervention Guidelines about the specific intervention procedures that need to be followed by Registrars in using any powers. The appeals mechanism under the National Law could lead to inconsistent regulatory decisions unless state/ territory appeal bodies have very clear guidelines on the grounds for appeal and the basis for Registrar decisions
- providing further details about how complaints handling will occur under the national system—and whether Registrars will have any role in handling tenant complaints
- undertaking further investigation to test the powers of state/ territory appeals bodies (e.g. VCAT) to hear appeals relating to decisions made by a Primary Registrar who resides in another jurisdiction.

3.8 Linkages to NRAS Regulations

A number of Approved Participants under the National Rental Affordability Scheme (NRAS) raised questions about requirements for NRSCH registration. Queensland Affordable Housing Consortium (QAHC) (Submission 20) highlighted that a critical question remains as to whether an NRAS Approved Participant, in attempting to fulfil its obligations under Regulation 17 of the NRAS Regulations 2008, will also be governed by the NRSCH.

Regulation 17 provides that the Approved Participant must ensure that each rental dwelling and the management of it complies at all times with the landlord, tenancy,

building and health and safety laws of the state or territory and local government area in which the dwelling is located. QAHC asked whether this regulation would be interpreted to mean that Approved Participants will be required to register as community housing providers, or whether they would be required to ensure NRAS housing managers are registered community housing providers.

4 National Regulatory Code

Overall, stakeholders indicated that the National Regulatory Code appears to be broadly fit for purpose—although a number of specific concerns were raised and refinements proposed. Further, stakeholders highlighted that the appropriateness of the National Regulatory Code will critically depend on the Evidence Guidelines—which have not yet been developed.

4.1 Principles of good regulation

Stakeholders broadly supported the proposed principles of regulation that underpin the Code—although some believed that the descriptions of the principles were inadequate and lacked the specificity needed to drive good regulatory practice. A number of stakeholders suggested redrafting the principles or expanding on the principles in the Intervention Guidelines. Key considerations are listed below.

- Translating the principles into expectations about practice—for example, proportionality means that Registrars only intervene when necessary and that interventions are appropriate to the risks associated with the non-compliance
- Ensuring that Registrars proactively account for their actions—including working across government to ensure a consistent regulatory approach
- Emphasising a co-regulatory approach that recognises existing industry control instruments
- Emphasising a risk-based approach to regulation.

4.2 Tenant outcomes (Outcomes 1, 2 and 3)

Tenant representative bodies supported Outcomes 1, 2 and 3 but highlighted the need to strengthen the National Regulatory Code's focus on specific tenant outcomes. Specifically, the National Association of Tenant Organisations (NATA) (Submission 3) indicated that they believed the NRSCH "was unnecessarily constrained in that it does not explicitly seek to provide improved outcomes for current and future tenants. As a consequence of this, the National Regulatory Code is inadequate and will not serve to improve outcomes for tenants." NATA proposed enhancing the Code by the inclusion of a number of additional requirements in Code Outcomes 1, 2, 3 and 4.

- *Tenant, residents and clients:* should include outcomes and targets relating to sustaining tenancies and affordability (e.g. % of tenancy turnover due to forced evictions; % of tenants paying less than 25% of income in rent)
- *Housing services:* should include outcomes and targets relating to tenant access to administrative appeal processes and access to advocacy services (e.g. % of successful appeals; no exception to advocacy assistance when requested)

- *Housing assets*: should include outcomes and targets relating to compliance with a defined minimum dwelling standard and disability access (e.g. no exceptions to compliance with agreed housing standards; % of properties with disability access)
- *Community*: should include outcomes relating to the continuation of tenants' connection with their neighborhood and locational choice.

NATA highlighted that these additional outcomes should form the core of the regulatory framework. In practical terms the inclusion of such outcomes could be facilitated by building on the work of the Tenants Union of Victoria in defining specific outcomes, indicators and targets for improving tenant outcomes through regulated minimum standards (Submission 3, Attachment A).

The Tenants Union of Queensland (Submission 8) recommended including an additional outcome on tenant engagement and empowerment covering performance requirements, to

- offer a wide range of opportunities for tenants to have meaningful engagement in the management of their housing
- support tenant skills development to participate in the management of their housing
- have opportunities to influence the strategic priorities of providers
- ensure that tenant views are actively sought when assessing providers' compliance with the National Regulatory Code.

Other stakeholders highlighted the importance of strengthening references in Outcomes 1, 2 and 3 to special needs groups, including Indigenous and CALD communities and people with disability.

National Disability Services (Submission 4) stressed that the "National Regulatory Code should require a strong commitment to providing housing to groups who are very disadvantaged. Many people with disability are in this category." NDS also recommended that "to support tenants with disability, reference should also be made requiring community housing providers to continually increase the proportion of their housing assets that meet Livable Housing Design principles."

Stakeholders working with Indigenous communities recommended that the National Regulatory Code have specific requirements relating to the cultural sensitivity appropriateness of community housing services.

Homelessness Australia (Submission 11) highlighted that parts 1 and 3 of the National Community Housing Standards relating to tenancy management and tenants' rights and participation should be protected and enhanced in the Code. Specifically, Shelter Tasmania (Submission 17) would like to see more explicit references in the Code to National Community Housing Standards 1.1 – 1.5 and 3.1 to 3.6—dealing with issues such as security of tenure, prevention of forced terminations, outsourcing of tenancy management, and tenant-focused services that place tenant rights, needs and interests at the core of their business.

4.3 Housing assets (Outcome 2)

The majority of stakeholders supported Outcome 2, although they highlighted a number of specific areas for further consideration.

- Queensland Shelter (Submission 18) highlighted that Outcome 2 should be amended “to include consideration of both universal housing design and environmental sustainability”
- Ensuring housing designs are suitable for local communities—particularly remote communities
- Including a specific performance requirement related to tenant satisfaction with the condition and maintenance of their housing—given that this is a very common area of tenant dissatisfaction.

4.4 Community engagement (Outcome 3)

There were generally mixed views about proposed Outcome 3 of the Code—with stakeholders concerned about the “vague” nature of the performance requirements.

Some stakeholders wanted more specific obligations such as contributing to inclusive communities, addressing concentrations of disadvantage and building community capacity to assist local communities to meet their own needs. Others were concerned that requirements such as ‘contributing to place renewal, partnerships and planning’ is too narrow and prescriptive. The NSW Federation of Housing Associations (Submission 5) suggested rewording part of Outcome 3 to read “contributing to community building and social inclusion partnerships and planning relevant to the agency’s social and affordable housing activities.”

Queensland workshop participants and Queensland Shelter (Submission 18) suggested that the Regulatory Code include a requirement to be responsive to those groups experiencing particular needs in the area where a provider is operating “It has also been suggested that this area of the Regulatory Code could be amended to specifically require providers to have strategies in place to ensure that services are locally and culturally appropriate.”

4.5 Organisational health (Outcomes 4, 5, 6 and 7)

The majority of stakeholders supported the four outcomes related to organisational health—although highlighted a number of specific areas for further consideration.

- Placing greater emphasis in Outcome 6 (Management) on systems and resources rather than procedures. The NSW Federation of Housing Associations (Submission 5) highlighted that “it is not the regulator’s role to determine the best way to run the business, but rather to identify whether the outcomes of such choices or systems are at risk.” The Federation suggested rewording Outcome 6b to read “having the right skills and experience and the systems and resources to achieve the intended outcomes of their business.”
- Reviewing the wording of the financial viability outcome in the Code to ensure it takes account of the impact of local policy and funding settings and issues of cross-subsidisation

- Avoiding the prescriptive requirements in Outcome 5 (Probity) – such as requiring a system of employment and appointment checks.

5 Implementation issues

Stakeholders highlighted a range of important implementation issues that would need to be addressed if Housing Ministers agreed to proceed with the NRSCH.

5.1 Governance

Stakeholders highlighted that the successful implementation of the NRSCH ultimately depends on robust governance arrangements—yet details of these arrangements are not specified in the National Law and are only briefly outlined in the Regulation Impact Statement.

The key issues raised by stakeholders were

- ensuring the membership of the National Regulatory Council reflects the diversity of stakeholder interests—not solely the interests of state/ territory policy and funding agencies
- ensuring the National Regulatory Council was adequately resourced to undertake the developmental and oversight functions needed for effective implementation, including
 - implementation of training for Registrars
 - establishment of monitoring arrangements to provide assurance of the quality and consistency of regulatory practices of Registrars
- ensuring ongoing tenant input—with tenant-representative organisations highlighting that consideration should be given to establishing a national tenant forum to provide ongoing advice to the National Regulatory Council.

5.2 Development of operating guidelines

The strongest theme emerging from the public consultations was the need for ongoing stakeholder involvement in the detailed development of the operating guidelines of the NRSCH—with providers recognising that the 'devil is in the detail'. In particular, there is a need for extensive sector consultation on the development of Evidence and Intervention Guidelines. Specifically,

- further consultations are needed with tenant representative organisations to ensure the Evidence Guidelines comprehensively cover tenant outcomes. Tenant groups highlighted that this will require funding to ensure appropriate national input of tenant-run bodies. Consideration should be given to establishing a national tenant forum to provide ongoing advice to the National Regulatory Council
- housing providers wanted extensive involvement in the development of the Evidence Guidelines to ensure that any regulatory burden was appropriately proportionate to risk. They highlighted that the Evidence Guidelines will need to stipulate what will need to be demonstrated during the application process for registration and what will be required for ongoing compliance. The frequency of

ongoing compliance assessments will need to be articulated, as well as the circumstances that will require more frequent compliance assessment than would routinely be required

- a key principle should be that providers should be able to use existing evidence sources rather than having to prepare additional information solely for registration assessments—including recognising assessments against the National Community Housing Standards as valid evidence for registration
- the National Regulatory Code should be mapped against the National Community Housing Standards and other quality standards to ensure that evidence from accreditation assessments can be used for registration assessments
- specific consultations will need to be held with smaller providers and providers in regional and remote areas to ensure evidence requirements are appropriate to their delivery context—specifically the Evidence Guidelines must explicitly identify different pressures and delivery context for remote and regional providers and for Indigenous providers
- the development and approval of the Evidence Guidelines is critical to the sector’s support and confidence in the Code and the regulatory system as a whole. Peak bodies such as the Community Housing Federation of Australia stated that “until such time as these guidelines are established and vetted, CHFA’s endorsement of the Code is conditional. It is imperative that key stakeholders, including housing providers are involved in the development of the Evidence Guidelines and not just consulted on a completed product. Housing providers have an essential and unique perspective in terms of documentation that is appropriate, feasible and reasonable to avoid imposing an unnecessary administrative burden on organisations”
- housing providers wanted extensive involvement in the development of the Intervention Guidelines to ensure the application of Registrar powers did not undermine the independence of providers and the role of Directors. Shelter Tasmania (Submission 17) highlighted that key issues would be:
 - distinguishing between minor and major non-compliance—to avoid a situation where Registrars intervene in a ‘heavy-handed’ way over a minor or technical breach
 - setting transparent benchmarks for the time available to providers to respond to any non-compliance — to ensure providers have a fair opportunity to address any issues without risking escalating action
 - making it clear the steps that Registrars need to take before using regulatory powers — to ensure that the system maintains a focus on early intervention and ‘no surprises’

Shelter Tasmania (Submission 17) indicated that assuming Registrars adopt a non-punitive approach with transparent processes before formal regulatory interventions, then it is reasonable to make information about any interventions (e.g. issuing a notice of non-compliance) publicly available.

- finance sector representatives wanted to be consulted on the development of the Intervention Guidelines to ensure Registrar powers were practical to implement and

provided strong assurance to lenders that problems would be identified early and action taken before tenants and assets were placed at risk

- further information was required on the regulatory burden under the national system—what are the evidence and reporting requirements; how often will re-assessments occur; how much time and resources will be needed for ongoing compliance.

5.3 Quality assurance

Most stakeholders strongly supported the appointment of Registrars in each state and territory—highlighting the importance of Registrars maintaining a close connection with providers within their jurisdiction.

However, a number of multi-jurisdictional providers were concerned about the risk of inconsistent regulatory practices across Registrars or a failure to ensure Registrars applied agreed national guidelines. Housing Choices Australia (Submission 10) highlighted “there are few assurances in the proposed model that the Registrars in each participating jurisdiction will interpret and apply the Code in the same manner. There remains a material risk that reporting requirements and standards may differ markedly between jurisdictions.”

Other stakeholders pointed to the important role of the National Regulatory Council in establishing regulatory practice guidelines and monitoring the performance of Registrars—including some form of formal audit process to review the regulatory practices of individual Registrars.

5.4 Timing

While all stakeholders wanted a final decision on future regulatory arrangements as soon as possible, stakeholders emphasised the need for sufficient lead-in time prior to the commencement of the NRSCH. In particular,

- ensuring at least 12 months notice is given of any changes to regulatory reporting requirements—to give providers time to update their systems
- ensuring Evidence Guidelines and any new reporting requirements are finalised well in advance of the introduction of the new system—so that providers have time to prepare and adjust their systems.

In addition, providers wanted assurances that the staged introduction of the National Law in different jurisdictions would not disadvantage providers—for example by NSW enacting the host legislation this should not put them ahead of providers in other states and territories.

5.5 Support and resources

Participants in the consultation workshops highlighted that providers will need access to resources and support, including on-site assistance, to help them prepare for the introduction of the NRSCH—particularly where it introduces new evidence requirements or reporting obligations or where there is no existing registration system. Specifically,

- there is a need for funding and support to assist smaller providers to prepare for the introduction of the NRSCH
 - training delivered by an industry peak body
 - templates and tools to assist providers document evidence for registration assessments
 - need for a clearinghouse of resources that can be used by them to meet their compliance obligations
 - establishment of an advisory service (single national helpline) to answer queries from providers
- ensuring industry support arrangements are in place, through peak bodies and industry networks, to build sector capacity to comply with the National Regulatory Code and to provide avenues for support in the event of non-compliance.

The Community Housing Council of South Australia (Submission 20) indicated that “there will be a need for sufficient commonwealth and state resources to support housing organisations as they move into the new system...The CHCSA while supportive of the NRS would be very concerned if this transition is under resourced and not managed well in its implementation.”

5.6 Direct costs

Stakeholders identified a number of potential concerns associated with the costs of seeking registration under the NRSCH.

First, the National Law allows Registrars to change a fee for registration. A number of stakeholders highlighted that this could act as a disincentive to registration—particularly for smaller providers.

Second, the requirement for Tier 1 organisations to be companies and for all registered organisations to have specific clauses in their constitutions could mean that a large number of providers incur significant legal and administrative costs in making changes to their constitutions.

Housing providers highlighted the need to fully investigate the cost implications, particularly for smaller organisations. Some providers suggested that funding be made available to providers to cover legal costs associated with changes to their constitutions.

5.7 Transitional arrangements

Stakeholders emphasised the importance of putting in place transition arrangements for providers currently registered under state/ territory regulatory arrangements—specifically

- consulting with state/ territory registered providers (including providers registered under administrative regulatory arrangements) to map existing registration status against the new tiers—so that providers know how the transition to the new system will affect them

- putting in place arrangements that automatically recognise existing state/ territory registration status under the new system—subject to re-assessment against the new Code within a specified time period
- developing guidelines on
 - the timetable for re-assessments under the National Regulatory Code
 - the timeframe for re-assessments under a different tier (e.g. a Tier 3 provider wanting to be re-assessed as a Tier 2 provider)
 - the application process for new entrants during the transition period
- putting in place appropriate arrangements for new registration applications to ensure new entrants are not excluded during the transition period.

5.8 Reporting obligations

A key implementation issue for providers is ensuring no net increase in reporting to meet both the NRSCH and state/ territory policy and funding agency reporting obligations. This will require streamlined reporting under the NRSCH and a removal of any duplication of reporting to state/ territory policy and funding agencies. Specifically,

- developing guidelines on data and reporting requirements under the NRSCH—ensuring
 - a single, national set of data and reporting requirements that apply regardless of what jurisdiction providers operate in
 - standard forms are provided by Registrars to make it easy for providers to meet reporting obligations
 - registrars publish information about reporting timelines
- reporting requirements are streamlined and do not overlap or duplicate reporting obligations put in place by funding and policy agencies.

Housing Choices Australia (Submission 10) recommended an explicit role for the National Registrars' Forum in producing the common data forms and reporting requirements, and for the National Regulatory Council in monitoring any regulatory burden in meeting these requirements.

More broadly, stakeholders highlighted the importance of minimising duplication of reporting requirements under other regulatory systems. Inner Northern Community Housing (Brisbane) (Submission 2) highlighted that “it is critical that duplication of regulation is eliminated because of the cost of regulation, particularly in terms of senior management time that is invested in preparing for and supporting regulatory visits. This must include the Australian Charities and Not for Profit Commission.”

5.9 Partnerships

A wide range of local and regional housing providers emphasised that a critical success factor for the implementation of the National Regulatory System will be the promotion of partnerships opportunities across tiers—particularly opportunities for

- Tier 3 providers accessing growth funding to undertake small-scale developments by partnering with a Tier 1 provider with expertise in managing housing development
- Tier 1 providers accessing growth through whole-of-region stock-transfers by partnering with a range of local Tier 3 providers to manage on-the-ground delivery of housing services
- smaller providers that do not want to grow choosing to merge with an existing registered provider to allow them to continue to deliver local services without seeking 'stand-alone' registration.

Providers highlighted that such partnerships should be supported as part of an overarching Industry Development Strategy and opportunities promoted as part of all future funding arrangements.

5.10 State/ territory policy and funding agencies

Housing providers highlighted a number of critical implementation issues linked to the decisions of how state/ territory policy and funding agencies will use the new NRSCH. In particular, providers wanted state/ territory policy and funding agencies to

- publish guidelines on their registration conditions for receiving housing assistance—so that providers understand the implication of seeking or not seeking registration in a particular tier. Shelter Tasmania (Submission 17) highlighted that providers should be given as much notice as possible about the state/ territory policy position on registration—covering both conditions for the maintenance of existing funding and proposed arrangements for future funding
- review policy and funding settings that sit outside of the National Regulatory System to ensure they align with requirements under the National Law / National Regulatory Code and are consistent with the policy intent of the National Regulatory System. In practice this should mean removing duplicative control. For example, one Queensland provider (Submission 13) recommended that with the introduction of the NRSCH, the state policy and funding agency could drop the requirement for providers to be accredited under the National Community Housing Standards—allowing providers to choose what industry best practice standards was relevant to their organisation.

The Community Housing Council of South Australia (Submission 20) highlighted that “unless there is strong commitment and support by the states to the underlying principles of this legislation, which is to simplify and standardise the registration of housing providers, the states will introduce de facto regulation and compliance via their funding agreements and policies.”

6 Provider-specific issues

6.1 Jurisdiction-specific provider issues

Community housing providers in different states and territories generally raised very similar issues about the NRSCH—with the relative emphasis on particular issues reflecting the local and jurisdictional context.

The most common jurisdiction-specific issues related to the timing of the introduction of the NRSCH and the impact on funding arrangements. Where regulation has not been introduced, for example in Tasmania and the Northern Territory, there is uncertainty with regards to the capacity of providers to demonstrate their suitability to bid for government investment projects.

A full summary of jurisdiction-specific feedback is provided in attachment 2.

At a broader level, providers were concerned that some states and territories may choose not to participate in the NRSCH—excluding providers in those jurisdictions from the benefits of national regulation. Specifically, if a state or territory chose to opt-out of the NRSCH, providers may face a double regulatory burden of state-based and national regulation—given that a number of providers believed that to access future growth opportunities they would still want to be on the national community housing register.

In addition, providers were also concerned that state/ territory policy and funding agencies may add extra 'regulation' to the national regulation and use inconsistent policy and funding levers that worked against the intent of the NRSCH. These issues are explored further in section 9.5.

6.2 Multi-jurisdictional providers

Most multi-jurisdictional providers strongly supported the introduction of the NRSCH—although there were different views about the size of the net benefits likely to flow from the NRSCH.

Most multi-jurisdictional providers highlighted significant benefits in terms of reduced regulatory costs, opportunities to achieve economies of scale and greater access to private capital—all of which would support growth of community housing in the jurisdictions in which they operate.

A small number of multi-jurisdictional providers were more cautious about the benefits, indicating that the NRSCH was likely to deliver only modest improvements in attracting private finance so long as state housing authorities retain the ability to control the use of assets and prevent providers from using their consolidated assets as security for finance.

Both of these views were reinforced by finance sector representatives attending the national consultations. Positively, these representatives highlighted that national regulation matches the national approach of institutional banking—removing uncertainty about the robustness and consistency of regulatory controls across different state/ territory regulatory arrangements. At the same time, they cautioned that regulation was necessary but not sufficient to directly impact on the cost of borrowing. A lower cost of finance is ultimately related to the volume of community housing activity and certainty about the future growth of community housing—which depends on the policy and funding settings of government rather than national regulation.

In this context, all multi-jurisdictional providers remained concerned that while the NRSCH allows for providers to operate in multiple jurisdictions, state/ territory policy and funding agencies can still use the conditions of funding contracts or stock transfer agreements to undermine this benefit.

Further, there is concern that the interplay between the NRSCH and state/ territory control levers may either lead to the creation of complex corporate structures or a failure

to take advantage of the combined balance sheets and cash flow needed to secure cheaper private finance (Submission 10).

6.3 Tier 3 providers

A wide range of stakeholders highlighted the importance of maintaining a strong role in the sector for smaller providers who are able to meet local community needs and fill niche markets—recognising that Tier 3 appears to provide appropriate recognition.

However, there remains widespread concern from smaller providers that they could be forced out of the sector if

- the requirement for Tier 3 registration increased their total regulatory burden
- state/ territory policy and funding agencies made it a requirement of ongoing and future funding that providers be registered as Tier 1 or 2.

A number of providers indicated that these concerns could be addressed by explicitly recognising the role of smaller and specialist providers in the object of the National Law. The Queensland Community Housing Coalition (Submission 6) recommended that an additional object be included in the National Law regarding “the importance of strengthening community housing providers and the sector as a whole, with a focus on acknowledging and preserving the diversity of the sector.”

Potential Tier 3 providers were also very concerned about the level of support and resources that would be available—particularly for providers that have not previously had to be registered or where registration was not linked to specific performance standards. Queensland Shelter (Submission 18) indicated that Tier 3 providers will require investment in:

- understanding how they position themselves in the new National Regulatory System and how it will impact on their future
- practical advice on registration requirements, such as making changes to constitutions
- capacity building to ensure that providers are well placed to take advantage of the growth agenda and help deliver more social and affordable housing stock
- a tailored capacity-building strategy to address the unique needs of Indigenous Community Housing Organisations.

6.4 Regional and remote providers

Stakeholders in regional and remote areas reinforced the concerns of potential Tier 3 providers (section 6.3) and highlighted the additional challenges of meeting national standards in these areas. Key issues were

- the need for the Evidence Guidelines to be sensitive to regional and remote service delivery issues, e.g. lack of supporting infrastructure; transient population and high staff turnover; higher cost of service delivery

- the additional costs of trying to meet evidence requirements that may be practical in metropolitan areas but are impractical in remote areas (e.g. tenant satisfaction surveys)
- the need for ensuring sufficient resources are made available to support sector capacity building in regional and remote areas—including the proportion of partnership arrangements with other registered providers that support the sustainability of service delivery in regional and remote areas.

6.5 Multi-functional and specialist providers

Multi-functional providers, that deliver community housing as just one of a range of community services, perceive that the NRSCH is targeting organisations that only provide community housing (Submissions 1, 7, 9, 14, 15, 16), citing concerns that

- the Tier 1 eligibility requirements exclude multi-functional faith-based organisations that are incorporated under their own Acts of Parliament
- the current definition of community housing assets appears not to recognise that many multi-functional providers deliver community housing using their own assets that have been purchased without any government assistance
- the constitutional requirement to have the provision of community housing and associated services as one of the objects of the registered community housing provider fails to recognise the multi-focus of providers that offer a wide range of services to disadvantaged people.

Multi-functional providers recommended

- amending the eligibility requirements for Tier 1 to include organisations incorporated by church legislation
- amending the definition of community housing assets to distinguish assets purchased with no government assistance
- clarifying the intent of the requirements for constitutions having an object relating to the provision of community housing or broadening the requirement to more explicitly recognise the diverse work of multi-functional providers.

These concerns were also raised by specialist services such as disability service providers and homelessness services.

National Disability Services (Submission 4) highlighted that many specialist disability service providers support people with disability with accommodation arrangements—and it is unclear whether these providers will be required to register. Jurisdictions currently have different conditions for requiring the registration of disability providers using government housing assets “While NDS understands that there will be no obligation for housing providers to be registered under the national system, it is possible that the creation of a national system will encourage jurisdictions to make registration a precondition for receiving funding or investment [including those who manage group homes on behalf of a government department]. Disability service providers, therefore, may get drawn into the system and be required to meet all the conditions of registration (or, equally concerning, may be excluded from receiving government assistance for housing).” Of particular concern is that registration for disability service providers could

be an onerous impost as they are already meeting regulatory requirements for disability funding.

In a similar way, a number of specialist homelessness services raised questions about whether they would be required to be registered under the NRSCH. Again, jurisdictions currently have different conditions for requiring the registration of homelessness services that use government housing assets—and providers were concerned that they could end up with a dual regulatory burden on assessments against Homelessness Quality Standards and the NRSCH.

6.6 Indigenous community housing organisations

Issues specific to participation by Indigenous community housing organisations (ICHOs) in the NRSCH were raised at the NSW, Queensland, Western Australian, Northern Territory and Tasmanian consultation workshops.

A number of ICHOs expressed in-principle support for ICHO participation in the NRSCH—highlighting that the proposed national system offered a number of important benefits.

- Ensuring that Indigenous housing providers were recognised in the same way as other community housing providers—to avoid situations where Indigenous housing providers become marginalised and unable to access growth funding
- Allowing Indigenous housing providers to compete on a level playing field with other providers
- Supporting the greater professionalisation of Indigenous housing providers.

At the same time, a range of concerns were raised about the significant risk of an increased regulatory burden for ICHOs and a failure to address outstanding Aboriginal community concerns about control of land and housing.

- NSW Indigenous housing providers that attended the consultations expressed concerns about the lack of integration with the NSW Aboriginal Housing Office Provider Assessment and Registration System (PARS) and the NSW Land Rights Act registration systems for Land Councils that deliver community housing—meaning that ICHOs may have to be registered under multiple systems. More broadly, they highlighted the risk that different Commonwealth and state/ territory policy and funding agencies may have different registration requirements
- NSW Indigenous housing providers indicated that the current incorporation requirements for tiers could potentially exclude NSW Land Councils that deliver community housing
- Tasmanian ICHOs raised issues about a lack of clarity about how the NRSCH would align with requirements under the National Partnership Agreement on Remote Indigenous Housing (NPARIH). The three Tasmanian ICHOs have recently completed a comprehensive restructure of all their operational policies and procedures under the NPARIH in line with the development and implementation of the Tasmanian Standards for Governance and Management of Aboriginal Housing (Standards). It was highlighted that this evidence should be formally recognised under the NRSCH rather than either adding new standards or requiring unnecessary administrative burden to further demonstrate compliance

- NT ICHOs highlighted the need to clarify the implications for the NRSCH of the Australian Government’s approach to Indigenous housing through the NT Intervention and the new Stronger Futures strategy, including the provision of future housing services to outstation communities
- ICHOs across all jurisdictions wanted assurance that they would not lose control of land and housing assets that are not linked to government housing assistance. For example, land vested under the Aboriginal Land Rights Act (Commonwealth) 1976 held in trust by Traditional Owners and managed by Indigenous Housing Providers.

A number of ICHOs highlighted the importance of further consultations with the ICHO sector, given their relative lack of engagement in the National Regulatory System reforms to date.

7 Tenant issues

Tenants and tenant representative organisations were positive about the potential benefits of the National Regulatory System over the status quo—namely

- greater protection for tenants through nationally-consistent standards
- greater certainty for tenants as a result of all community housing providers being covered by the national system.

At the same time, as highlighted in the previous sections, tenants also highlighted a range of risks that would need to be managed to ensure potential benefits for tenants were realised in practice—specifically, there is a need for

- national coverage of the NRSCH across all states and territories and all providers of community housing (no ‘opting-out’)
- further work on the National Regulatory Code and tenant involvement in the development of the Evidence Guidelines to strengthen the focus on tenant outcomes—specifically in relation to
 - tenancy management outcomes—particularly in relation to security of tenure and affordability
 - tenant rights and participation
 - tenant engagement in their local neighbourhood and community
- further work on the National Regulatory Code and the Evidence Guidelines strengthening references to culturally-appropriate practices and responsiveness to special needs groups, including Indigenous and CALD communities and people with disability
- appropriate tenant input into the National Regulatory Council to ensure tenants have a strong, ongoing voice in shaping the NRSCH
- appropriate information for community housing (and public housing) tenants about the national system so they understand the new obligation on registered providers to meet National Standards.

8 Finance sector feedback

Representatives that attended the National Finance Sector consultation workshop expressed strong support for the NRSCH—highlighting that national regulation removes uncertainty about the robustness and consistency of regulatory controls across different state/ territory regulatory arrangements, and demonstrates that the Australian and state/ territory governments are serious about the growth of community housing (as opposed to the current perception of some bankers that community housing is only relevant as a “hobby”).

At the same time, finance sector representatives indicated that regulation was necessary but not sufficient to directly impact on the cost of borrowings to the sector. A lower cost of finance will ultimately be related to the volume of community housing activity and certainty about the future growth of community housing—which depend more on the policy and funding settings of government than national regulation. They highlighted that if there is clear evidence of a long-term pattern of community housing growth and a strong commitment from government for the continuation of this growth, then private finance will be more readily available.

Overall, participants at the National Finance Sector workshop indicated that the design elements of the National Law appear to be fit for purpose—although in a number of areas greater detail was required to confirm the intended rigour of the regulatory controls. They indicated that the National Regulatory Code appears to cover relevant risk areas—and registration status against nationally consistent standards will be an important part of banks’ assessment of the credit worthiness of community housing providers.

This issue was particularly important for finance sector representatives that attended one of the Victorian consultation workshops. They wanted assurances that Registrar powers would not be ‘watered-down’ under the NRSCH and that the system would maintain the same strong controls as available under the current Victorian regulatory system—in particular

- ensuring Registrars under the National Law had the power to intervene early and address non-compliance before serious problems arose. This was essential to banks to avoid the reputational damage that would occur if a Registrar did not have to power to intervene to protect vulnerable tenants in cases of provider non-compliance, default or de-registration
- ensuring Registrars under the National Law could intervene in ways that assured banks of continuity of cash flow to service debts in cases of provider non-compliance, default or de-registration (linked to a seamless transfer of community housing activities to another registered community housing provider).

Follow-up correspondence from one of the major Australian banks that had a representative at both the National Finance Sector workshop and the Victorian workshop indicated that they were comfortable with the Registrar powers under the NRSCH provided it incorporates the key elements of the Victorian powers.

The main implementation issue raised by workshop participants was the need for Tripartite Agreements, outside of the NRSCH, between lenders, providers and government funders—to make clear the process of managing investment and reputation risk in the case of either de-registration, secured credit action or wind-up.

National Finance Sector workshop participants discussed that the Tripartite Agreements had been successfully used in parallel with the NSW regulatory system—but consideration would need to be given to ensuring national consistency in these agreements, including agreements covering more than one government funder.

9 Preferred option

There was strong in-principle support across the full range of stakeholders for the National Regulatory System for Community Housing over the status quo—subject to adequately addressing key risks and concerns as part of the final drafting of the National Law and the detailed development of the subordinate instruments for the new system.

The main reasons for stakeholder support for the NRSCH related to the

- greater flexibility for providers to pursue growth opportunities—both through streamlined regulatory arrangements for providers working across jurisdictions and through clear pathways between regulatory tiers for single jurisdiction providers
- reduced barriers to negotiating commercial arrangements with finance and development partners—who will no longer have to deal with the complexity of considering the implications of separate state/ territory regulatory systems
- consistency with national competition policy objectives—in particular, by supporting a more level playing field for providers seeking to enter new jurisdictions and for providers wanting to operate in more than one jurisdiction
- greater consistency in the achievement of tenant outcomes—driven by national standards that apply to all providers and in all participating states/ territories
- greater opportunity under the National Regulatory System to leverage off and share existing regulatory systems and practice—both through greater collaboration and communication; and allowing jurisdictions without a statutory regulatory system to cost-effectively participate in the national system
- increased scope for sector efficiencies (if the National Regulatory System is supported by funding and policy settings that allow providers to achieve economies of scale)
- greater potential for the collection and reporting of nationally consistent sector information.

For a small minority of stakeholders, mainly representing smaller providers, their preference, based on the information available during the consultations, was to remain with the status quo. They highlighted that

- too few details were known about the actual regulatory burden under the proposed NRSCH to support it at this time—given that the level of regulatory burden would only be known once the Evidence Guidelines had been developed
- too few details were known about how state/ territory policy and funding agencies would use the NRSCH—in particular what registration requirements would have to be met by providers to retain existing funding or access future funding or investments

- they had concerns about additional regulatory burden on providers if state/ territory policy and funding agencies did not streamline reporting requirements under funding programs after the introduction of the NRSCH
- they had concerns that the effort of changing to the NRSCH may not be worth it if there was not additional reforms to achieve greater national consistency in policy and funding settings needed to deliver growth.

On balance, Housing Ministers can be confident of proceeding with the proposed National Regulatory System for Community Housing with the support of providers, tenant representative organisations and the finance sector. Subject to the qualifications outlined in this report, the NRSCH is the preferred option of the Community Housing Federation of Australia, Homelessness Australia, the National Association of Tenant Organisations (NATO), National Disability Services and National Shelter.

However, maintaining this strong support will require the following.

1. Reinforcement of Housing Ministers' commitment to the growth and diversity of the community housing sector in the Intergovernmental Agreement (section 9.1)
2. A number of refinements to the design elements for the NRSCH (section 9.2)
3. Extensive stakeholder input into the detailed development of the Evidence and Intervention Guidelines for the NRSCH (section 9.3)
4. Strong stakeholder representation on the National Regulatory Council to ensure the integrity of the implementation of the NRSCH (section 9.4)
5. Progress in expanding the reform agenda to ensure national consistency in the full range of controls that impact on the growth of the community (section 9.5).

9.1 Commitment to growth and diversity of the sector

A range of smaller housing providers and providers in regional and remote areas remain cautious in supporting the NRSCH because of a perceived risk to their ongoing operation—either because of increased regulatory burden or decisions of state/ territory policy and funding agencies to make ongoing housing assistance and assets only available to Tier 1 and 2 providers.

In particular, these providers wanted the documentation on the national system to explicitly recognise the valuable role of smaller providers in efficiently delivering local housing solutions and a clear commitment from Housing Ministers to an ongoing role for smaller providers.

A number of providers indicated that these concerns could be addressed by explicitly recognising the role of smaller and specialist providers in the object of the National Law—for example through adding an additional object in Clause 3 “to recognise the diversity of community housing including small and specialist providers.” Others suggested a statement from Housing Ministers based on the NRSCH Intergovernmental Agreement expressing their commitment to sector diversity and maintaining a strong connection between community housing providers and the communities in which they operate.

9.2 Refinement of the design elements

For many stakeholders, support for the NRSCH is conditional on refinements to the design elements of the NRSCH—either through changes to the draft National Law or by addressing the issues in the detailed subordinate instruments that have yet to be developed.

There are five critical issues where a decision needs to be made in order to finalise the National Law and the signing of the NRSCH Intergovernmental Agreement.

1. Wind-up clause [13 (2) (a)]
 - Are changes needed to the wording of the wind-up clause to make it clear that the requirement to transfer surplus community housing assets in the event of wind-up only applies to those assets linked to government assistance (i.e. “regulated community housing assets”)
 - Does the option to transfer surplus assets back to government in the event of wind-up impact on the tax exemption charitable status of registered providers
2. Definition of Community Housing Assets [Clause 4]
 - Should the definition of community housing assets be changed to distinguish assets purchased or developed with or without government assistance, e.g. by retaining the current definition of community housing assets and including a new definition of ‘regulated community housing assets’—being those community housing assets where an Agency in a participating jurisdiction has provided assistance in relation to the asset
3. Binding instructions [Clause 18]
 - Should Clause 18 be amended to reflect stakeholder feedback about the need to link binding instructions to specific matters of non-compliance—for example by adding a sub-clause that “the purpose of binding instructions is to require such action as will have a significant impact on the ability of the registered provider to rectify a matter about which a notice of non-compliance has been issued”
 - Should the list of possible binding instructions be amended to reflect stakeholder feedback on their appropriate scope—namely
 - providing the Registrar with information or documents
 - making a relevant person available who is suitably qualified to answer questions about the registered community housing provider’s affairs
 - rectifying a matter about which a notice of non-compliance has been issued in relation to (a) improving the governance of the registered community housing provider; (b) actions to remedy a serious breach of probity; (c) action to prevent a significant risk of insolvency; (d) other aspects of the National Regulatory Code
4. Statutory Managers [Clause 19]

- Should Clause 19 be amended to reflect stakeholder feedback about the need to make it clear that the purpose of the Statutory Manager was in order to perform the function of either “protecting social housing tenancies and/or protecting assets in which government has an interest; or remedying those areas of non-compliance whose remedy is urgent and beyond the capacity or willingness of the provider to undertake.”
- Should Clause 19 (5) be amended to reflect stakeholder feedback that the displacement of the Director’s role by a Statutory Manager should be time-limited and restricted to decisions related to bringing the provider back to compliance with the National Law

5. Appealable decisions

- Should the list of appealable decisions [Clause 22 (10)] also include decisions about the selection of Primary Jurisdiction [Clause 5 (1) (2)] or placing or moving a provider to a particular part of the Registrar (Tier) [Clause 10 (5)]

There is an additional long-list of design issues that are capable of being addressed as part of the detailed development work for the NRSCH. While some stakeholders expressed a preference for these issues to be explicitly dealt with in the National Law, this may work against the current high-level framing which has been done to avoid the need for repeated amendments to deal with specific policy and operational issues that arise. These issues are outlined in the body of the report and include work on:

6. Subordinate instruments framework – development of a framework for administering the set of subordinate instruments underpinning the National Law – including the Evidence Guidelines, Intervention Guidelines, and Tiers Guidelines
7. National Regulatory Code – incorporating the range of specific issues raised by stakeholders into the development of the Evidence Guidelines
8. Tier 1 requirement – reviewing the current requirement to restrict Tier 1 providers to Companies—particularly given the impact on faith-based providers that operate under their own Acts of Parliament
9. Application for registration in a particular tier – ensuring providers are able to apply for registration in any tier—with the onus then on the provider to demonstrate the capacity to meet the performance requirements for that tier at registration and as part of ongoing compliance assessments
10. Australian Charities and Not-for-Profit Commission - liaising with the ACNC to ensure there is no misalignment with requirements in the National Law (e.g. constitutional requirements, tier incorporation requirements).

9.3 Development of NRSCH operating guidelines

Stakeholder support for the NRSCH is conditional on their ongoing involvement in the detailed development of the NRSCH subordinate instruction and operating guidelines—most importantly the

- Evidence Guidelines for the three registration tiers
- Intervention Guidelines governing the application of Registrar powers

- Tiers Guidelines that specify any restrictions or requirements for eligibility in a particular tier.

The Community Housing Federation of Australia (Submission 13) stressed that “it is critical that the Evidence Guidelines are appropriate for the intended tier and are developed in consultation with providers...It is imperative that key stakeholders, including housing providers are involved in the development of the Evidence Guidelines and not just consulted on a completed product. Housing providers have an essential and unique perspective in terms of documentation that is appropriate, feasible and reasonable to avoid imposing an unnecessary administrative burden on organisations.”

Similarly, providers wanted close involvement in the development of the Intervention Guidelines to ensure Registrar powers are staged and proportionate, and workable in the context of the diverse range of management contexts and business models that exist in the sector.

9.4 Ongoing stakeholder input

Stakeholders highlighted that the success of national regulation depended on ongoing input into the governance and oversight of the NRSCH.

The Community Housing Federation of Australia (Submission 13) highlighted that the role of the National Regulatory Council is fundamental to the successful implementation and administration of the NRSCH—and as such “it is essential that there be substantial housing provider representation on the Council ... (with) strong industry representation necessary to ensure sector ownership of the Code and confidence in the administration of the regulatory system.”

The NSW Federation of Housing Associations recommended (Submission 5), with the support of the CHFA, that Housing Ministers collectively agree and appoint members to the Council with at least one representative from each state or territory and comprised of one third government funders, one third drawn from the community housing industry and one third regulatory experts.

Tenant representative bodies also highlighted the importance of ongoing input to ensure the system remains focused on the key objective of improving tenant outcomes.

9.5 Broader reform agenda

While outside the scope of the consultation process, a wide range of providers and finance sector representatives highlighted that the potential benefits from the introduction of the National Regulatory System would only be realised if a number of other reforms were progressed in parallel.

The Community Housing Federation of Australia (Submission 13) highlighted that there are a number of state-based issues involving funding agreement constraints and ongoing control of government-funded assets that need to be resolved “Current arrangements will likely undermine the anticipated benefit of increased investor confidence and engagement in affordable housing that a national system is intended to deliver due to providers’ inability to expand and manage their portfolios nationally as a result of these restrictions.” In particular, key issues were

- ensuring funding and policy setting adopted by individual jurisdictions support the policy intent of the National Regulatory System to promote the growth of the

community housing sector nationally—specifically, a national approach to planning and funding the growth of the community housing sector

- progressing a national community housing strategy that provides a vision and mechanism to support the growth and diversity of the community housing sector—encompassing both mainstream and specialist community housing providers such as Indigenous housing providers and disability housing providers
- reviewing policy and funding agencies' compliance and reporting arrangements—to ensure they do not duplicate the activities of Registrars.

Some providers expressed disappointment at the limited scope of reform covered by the NRSCH—indicating “that the proposed NRS will deliver only modest benefits to multi-jurisdictional providers. A truly national system, based on a single national regulator and competitive neutrality between non-profit providers and state housing authorities would have delivered a more substantial reform for the sector and better outcomes for tenants and those who are seeking subsidised rental housing.” (Submission 10).

Other stakeholders were more optimistic and viewed the NRSCH as the first major piece of the jigsaw which provides the framework for other national reforms needed to achieve sustainable growth in the community housing sector.

Attachment 1: Public consultation process

Public consultations on the Regulation Impact Statement and the design elements of the proposed NRSCH were held between 23rd November 2011 and January 20th 2012.

The public consultation process involved 2 national consultation forums, 15 state/territory consultation forums and a nationally advertised call for written submissions.

National consultation forums

Two national consultation forums were held on 23rd November 2011 as part of the launch of the public consultations.

- A national sector consultative forum was held in the morning of the 23rd November 2011. The forum was attended by around 40 invited representatives from national peak bodies and community housing providers.
- A National Finance Sector consultative forum was held in the afternoon of the 23rd November 2011. The forum was attended by five institutional lending representatives from the major Australian banks.

State/ territory consultation forums

Each state and territory hosted one or more consultation forum with representatives from community housing providers, support organisations, tenant organisations and peak bodies. In total, 15 state/territory consultation forums were held.

- Two NSW consultative forums held in Sydney on 24th November 2011. The first forum was held between 9.30am-12.30pm and was attended by around 25 representatives from community housing providers. The second forum was held between 1.30am-4.30pm and was attended by around 15 representatives from

community housing providers. Workshop participants included Class 1, 2, 3 and 4 (NSW registered) community housing providers and Indigenous (PARS registered) housing providers, as well as potential new entrants.

- Two Victorian consultative forums were held in Melbourne on 25th November 2011. The first forum was held between 9.30am-12.30pm and was attended by around 15 representatives from community housing providers. The second forum was held between 1.30pm-3.30pm and was attended by around 12 representatives from sector peak bodies, tenant groups and institutional and community banks who lend to community housing providers.
- Three consultation forums were held in Queensland. The first forum was held in Brisbane on 1st December 2011 and was attended by over 100 representatives of community housing providers, tenant organisations and peak bodies. The second forum was held in Townsville on 2nd December 2011 and was attended by around 30 representatives from community housing providers and support organisations. The third forum was held in Rockhampton on 7th December 2011 and was attended by around 25 representatives from community housing providers and tenant organisations.
- Two SA consultation forums were held in Adelaide on 29th November 2011. The first forum was held between 9.15am-12.15pm and was attended by around 25 representatives from larger community housing providers operating in South Australia. The second forum was held between 1.00pm-4.00pm and was attended by around 25 representatives from smaller South Australian community housing providers.
- One WA consultative forum was held in Perth on 5th December 2011. The forum was held between 9.00am-12.30pm and was attended by around 20 representatives from current or potential community housing providers operating in Western Australia, the sector peak body and tenant groups
- One Tasmanian consultative forum was held in Hobart on 16th December 2011. The forum was held between 1.30pm-4.00pm and was attended by around 15 representatives from current or potential community housing providers and the sector peak body
- Two NT consultative forums held on the 12th and 13th December 2011. The first forum was held in Alice Springs and was attended by 9 representatives from current or potential community housing providers operating in the Northern Territory. The second forum was held in Darwin and was attended by 19 representatives from peak bodies and community housing providers
- Two ACT consultative forums held in Canberra on 30th November 2011. The first forum was held between 10.00am-12.00pm and was attended by around 15 representatives from current or potential community housing providers operating in the ACT. The second forum was held between 2.30pm-4.30pm and was attended by around 7 representatives from peak bodies and tenant representative organisations.

Extended written submissions

| Submission | Agency |
|-------------------|---|
| 1 | Anglicare Agencies in NSW (Anglicare North Coast; Anglicare Canberra and Goulburn, Samaritans Foundation) |
| 2 | Inner Northern Community Housing (Brisbane) Assoc Ltd |
| 3 | National Association of Tenant Organisations |
| 4 | National Disability Services |
| 5 | NSW Federation of Housing Associations |
| 6 | Queensland Community Housing Coalition |
| 7 | Churches Housing Inc |
| 8 | Tenants' Union of Queensland Inc |
| 9 | Aged Care Queensland |
| 10 | Housing Choices Australia |
| 11 | Homelessness Australia |
| 12 | Community Housing Federation of Australia |
| 13 | Brisbane Housing Company Limited |
| 14 | Aged & Community Care Victoria |
| 15 | Aged & Community Care, WA |
| 16 | Aged & Community Care Association of NSW & ACT |
| 17 | Shelter Tasmania |
| 18 | Shelter Queensland |
| 19 | Queensland Affordable Housing Consortium |
| 20 | Community Housing Council of South Australia |

Attachment 2: Jurisdiction-specific feedback

New South Wales

This section summarises the feedback from the two NSW consultative forums held in Sydney on 24th November 2011. The first forum was held between 9.30am-12.30pm and was attended by around 25 representatives from community housing providers. The second forum was held between 1.30am-4.30pm and was attended by around 15 representatives from community housing providers. Workshop participants included Class 1, 2, 3 and 4 (NSW registered) community housing providers and Indigenous (PARS registered²) housing providers, as well as potential new entrants.

Perceived costs and benefits

Workshop participants highlighted a number of key points about the likely costs and benefits of the proposed National Regulatory System compared to current regulatory arrangements for community housing.

Multi jurisdiction Tier 1 and 2 providers

Multi-jurisdictional providers that are likely to be registered as Tier 1 or 2 under the National Regulatory System highlighted that the system has a number of critical benefits.

- Reducing the regulatory burden associated with operating across multiple jurisdictions—eliminating the need to seek registration under multiple systems and cutting red tape associated with reporting under multiple regulatory systems.
- Promoting greater efficiencies (that can flow through into increases in the volume of community housing) through the economies of scale that can be generated by operating as a consolidated entity across multiple jurisdictions.

Single jurisdiction Tier 1 and 2 providers

Single jurisdiction providers that are likely to be registered as Tier 1 or 2 under the National Regulatory System highlighted that the system has a number of important benefits.

- Providing a framework to underpin a national vision and strategy for community housing—and therefore has the potential to support additional opportunities for growth
- Making it easier for providers to access private capital through the greater confidence of financiers and investors that flows from a National Regulatory System
- Making it easier to work with finance and development partners who will no longer have to understand multiple regulatory systems.
- Creating a mechanism where it will be easier for registered community housing providers to compete for direct funding from the Australian government

² The Provider Assessment and Registration System (PARS) is the registration system for Aboriginal community housing providers in NSW established by the NSW Aboriginal Housing Office (AHO).

- Supporting the greater professionalisation of the sector through a common National Regulatory Code that applies to all providers and through benchmarking against common performance standards
- Promoting a greater focus on tenant outcomes through the National Regulatory Code
- Promoting confidence in the community housing sector through national branding—potentially leading to increased government confidence to invest in the sector
- Increasing opportunities for partnerships across regulatory tiers (for example, Tier 1/2 providers partnering with Tier 3 providers to deliver local housing services)
- Promoting alignment with other reforms such as the introduction of the Australian Charities and Not for Profit Commission.

Tier 3 providers

Providers that are likely to be registered as Tier 3 under the National Regulatory System indicated that the proposed national system is likely to have a broadly neutral impact—although highlighted that the system has a number of important benefits in particular contexts.

- Providing clear rules for transition between tiers—providing a pathway to Tier 3 providers that want to become Tier 1 and 2 providers
- Maintaining the relationship with the existing NSW Registrar
- Promoting recognition and visibility in the community housing sector through national branding—with Tier 3 providers being nationally recognised (e.g. easier recognition by real estate agents)
- Providing opportunities for churches and other multi-functional organisations that operate on a multi-jurisdictional basis to be nationally registered
- Supporting the greater professionalisation across the diversity of the sector
- Providing opportunities for greater efficiencies for Tier 3 providers through partnerships with Tier 1 and 2 providers.

Indigenous community housing providers

NSW Indigenous housing providers that attended the consultations had mixed views about the National Regulatory System. One provider expressed concerns about the lack of integration with the NSW AHO PARS system (meaning that providers may have to be registered under two different systems) and had broader concern that regulatory systems in general did nothing to address Aboriginal community concerns about security of land and housing.

Another Indigenous housing provider highlighted that the proposed national system offered a number of important benefits.

- Ensuring that Indigenous housing providers were recognised in the same way as other community housing providers—to avoid situations where Indigenous housing providers become marginalised and unable to access growth funding

- Allowing Indigenous housing provider to compete on a level playing field with other providers
- Supporting the greater professionalisation of Indigenous housing providers.

Feedback on the draft National Law and National Regulatory Code

Overall, workshop participants indicated that the design elements of the National Law appear to be fit for purpose—although in a number of areas, additional refinements and further details are needed. Further, providers were very clear that a broader set of policy and funding reforms needed to be progressed in parallel to the National Law to deliver on the underlying rationale for the National Regulatory System.

Tier 1 and 2 providers

- The appropriateness of the National Law and National Regulatory Code will critically depend on the Evidence and Intervention Guidelines—which have not yet been developed.
- The achievement of consistency under the National Law will require strong quality assistance mechanisms to ensure the consistency of regulatory practices of Registrars
- The appeals mechanism under the National Law could lead to inconsistent regulatory decisions unless state/ territory appeal body have very clear guidelines on the grounds for appeal and the basis for Registrar decisions
- Further information is required on the details of the appointment of a Statutory Manager to ensure that the legislative intent is practical to implement and does not add to the complexity of controls already available to corporate regulators such as ASIC. Workshop participants were supportive of the intent of having a last resort option to protect tenants and community housing assets—but had questions about how issues of legal liability and Director’s duties would be managed in practice
- Changes are required to the provisions for issuing of binding instructions. Workshop participants agreed in-principle that binding instructions were appropriate and were comfortable with a Registrar issuing a binding instruction to:
 - Provide information or documents requested by the Registrar
 - Improve the governance of the housing provider
 - Make a relevant person available to answer questions
 - Handle complaints made by tenants of the housing provider.

Providers did not think it was appropriate that a Registrar have the power to issue a binding instruction for a provider to enter into arrangements with another provider. More broadly, providers indicated that the National Law should include a legal requirement for Registrars to issue Guidelines on binding instructions—to ensure nationally-consistent and transparent guidelines are in place to determine when binding instructions can be issued and the scope of any binding instructions

- Changes are required to the current drafting provisions for the social and affordable housing assets register to provide greater clarity about:

- The definition of social and affordable housing assets
 - The treatment of current and future social and affordable housing assets linked to assistance from a state/ territory policy and funding agency referred to in the National Law
 - The treatment of current and future social and affordable housing assets not linked to assistance from a state/ territory policy and funding agency referred to in the National Law
 - The treatment of current and future social and affordable housing assets linked to direct Australian government assistance
- Consideration should be given to having one Registrar nominated as the Primary Registrar for all multi-jurisdictional providers—thereby allowing specialisation of the function for regulating multi-jurisdictional providers

Tier 3 providers

- Further information is required on exact requirements for Tier 3 providers under the National Law and National Regulatory Code—in particular more details are required about the reporting requirements under the new Code and how closely it aligns with the current NSW Code
- Further information is required on the implications of the national system for homelessness services—in particular how the current system will align with the proposed national quality standards for homelessness services
- Further consideration is needed about how the national system will work for large organisations that have only a small level of government assistance—that is a small community housing asset register even through they may have extensive other ‘community housing’ and related assets.
- Further consideration is needed about how the national system will work for Trusts

Indigenous community housing providers

- The appropriateness of the National Law and National Regulatory Code will critically depend on addressing policy issues that currently lead to duplication of regulatory arrangements for NSW Indigenous community housing providers—with different policy and funding agencies potentially requiring Indigenous provider to be registered under the National Regulatory System, the AHO PARS and the Land Rights Act registration systems for Land Councils that deliver community housing
- The current incorporation requirements for tiers could potentially exclude NSW Land Councils that currently deliver community housing

Implementation issues

Workshop participants highlighted a number of implementation issues that would need to be addressed if the National Regulatory System was adopted.

- Extensive involvement from community housing providers in the development and finalisation of the Evidence and Intervention Guidelines.

- Putting in place transitional arrangements to automatically recognise existing NSW registration status under the national system—subject to a subsequent re-assessment against the National Code
- Putting in place appropriate arrangements for new registration applications to ensure new entrants are not excluded during the transition period
- Resolving outstanding policy and funding issues such as the merger of subsidiary companies for providers that formed subsidiaries in response to the current state/territory regulation systems
- Implementation of training for Registrars and the establishment of a monitoring to provide assurance of the quality and consistency of regulatory practices of Registrars
- Publication of detailed guidelines on the decision-making processes and evidence requirements for all appealable decisions
- Reviewing reporting obligations of government policy and funding agencies to minimise any duplication of reporting
- Developing an MoUs or other suitable arrangements with the Australian Securities and Investment Commission (ASIC) and the Australian Charities and Not for Profit Commission (ACNC) to minimise any duplication of regulatory activities and reporting burden
- Providing support and resources to NSW Class 3 and 4 providers if the national system results in any new evidence or reporting requirements
- Ensuring industry support arrangements are in place, through peak bodies and industry networks, to build sector capacity to comply with the National Regulatory Code and to provide avenues for support in the event of non-compliance.

As a general comment, all providers highlighted their disappointment at the decision to exclude government providers from the National Regulatory System—arguing that this resulted in a continuation of the existing uneven playing field.

Preferred option

For providers that are likely to be registered as Tier 1 or 2 under the National Regulatory System, there was unanimous agreement that the proposed National Regulatory System (Option 2) was preferable to Option 1 (status quo).

For providers that are likely to be registered as Tier 3 under the National Regulatory System, there was a broadly neutral view of Option 2—but most Tier 3 providers recognised the potential of the national system to support increased and ongoing investment in the community housing sector.

Workshop participants highlighted five main reasons why the proposed National Regulatory System will deliver greater net benefits than the status quo.

- Reduction in costs for multi-jurisdictional providers, and if appropriately implemented, no increase in regulatory costs for single-jurisdiction providers
- Greater consistency in meeting clear national standards

- Improved environment for accessing private capital and further government investment need to grow community housing
- Increased opportunities for partnerships across jurisdictions and across registration tiers
- Greater promotion of the community housing Brand.

Victoria

This section summarises the feedback from the two Victorian consultative forums held in Melbourne on 25th November 2011. The first forum was held between 9.30am-12.30pm and was attended by around 15 representatives from community housing providers. The second forum was held between 1.30pm-3.30pm and was attended by around 12 representatives from sector peak bodies, tenant groups and institutional and community banks who lend to community housing providers.

Perceived costs and benefits

Workshop participants highlighted a number of key points about the likely costs and benefits of the proposed National Regulatory System compared to current regulatory arrangements for community housing.

Tier 1 and 2 providers

Providers that are likely to be registered as Tier 1 or 2 under the National Regulatory System highlighted that the system has a number of important benefits.

- Creating a clearer, more appropriate, more consistent set of rules for the regulation of community housing providers—without unnecessary restrictions on the independence of organisations that operate at arms-length from government
- Reducing the cost of regulatory engagement and reporting for multi-jurisdictional providers
- Creating a regulatory environment that allows multi-jurisdictional providers to operate as a single, consolidated entity rather than having to form separate subsidiary companies in each jurisdiction—assuming that policy and funding agencies do not impose additional restrictions on the incorporation status of registered housing providers
- Increasing financiers' and investors' confidence in the integrity of the sector—with the flow-on impact of easier access to private capital at a potentially lower cost of lending
- Creating a regulatory environment that drives improved tenant outcomes—through nationally-consistent standards
- Increasing the opportunity for direct Australian government investment in the sector

Different providers had different views about the size of the net benefits likely to flow from the National Regulatory System. Some providers expected very significant flow-on benefits linked to improved access to private capital and reduced barriers to operating

across jurisdictions. Other providers expected more modest benefits—highlighting that significant benefits would only flow if a national approach was also adopted for community housing policy and funding decisions.

Tier 3 providers

Providers that are likely to be registered as Tier 3 under the National Regulatory System (and some single-jurisdiction Housing Associations and Housing Providers) indicated that the proposed national system is likely to have a neutral impact—although highlighted that the system has a number of potential advantages for particular organisations.

- Increasing opportunities to partner with like-minded organisations in other states and territories
- Greater opportunities to ensure alignment with other national reforms—in particular the establishment of the Australian Charities and Not for Profit Commission.

Peak and tenant representative bodies

Peak bodies and tenant representative organisations that attended the consultations had generally positive views about the National Regulatory System —although indicated that they needed to review the legislation in details before assessing whether it offered net benefits over the status quo. The key issues for peak and tenant representative bodies were

- Ensuring the National Regulatory Code had sufficient focus on tenant outcomes—rather than simply the organisational health of providers
- Ensuring the national system delivered more nationally consistent information about the performance of community housing providers.

Institutional and community banks

Banking representatives that attended the consultations had generally qualified views about the National Regulatory System—indicating that they needed to review the legislation in details before being able to assess whether it offered net benefits over the status quo. Based on their experience of lending to community housing providers covered by the current Victorian regulatory system, their key issues were:

- Ensuring Registrar powers were not ‘watered-down’ under the national system and maintained the same strong controls as available under the current Victorian regulatory system—in particular,
 - Ensuring Registrars under the National Law had the power to intervene early and address non-compliance before serious problems arose. This was essential to banks to avoid the reputational damage that would occur if a Registrar did not have to power to intervene to protect vulnerable tenants in cases of provider non-compliance, default or de-registration
 - Ensuring Registrars under the National Law could intervene in ways that assured banks of continuity of cash flow to service debts in cases of provider non-compliance, default or de-registration (linked to a seamless transfer of community housing activities to another registered community housing provider)

- Ensuring the national system delivered additional benefits compared to the status quo. The workshop participants from the major Australian banks indicated that their current experience was mainly with single jurisdiction providers covered by the current Victorian regulatory system—and they did not comment on the implications of lending to organisations that operate in more than one jurisdiction or a jurisdiction not covered by a strong, legislatively based registration system. The workshop participant from the community bank indicated that a National Regulatory System would make it easier to work with multi-jurisdictional providers although qualified this benefit as being dependent of the consistency of investment conditions imposed by policy and funding agencies.

Feedback on the draft National Law and National Regulatory Code

Overall, the vast majority of housing providers that participated in the workshops indicated that the design elements of the National Law appear to be fit for purpose—although additional refinements and further details are needed in a number of areas. Peak and tenant representative bodies and bankers raised a number of issues and indicated that they may want to raise additional issues after reviewing the National Law in detail.

Housing providers

- Further consideration is needed about the current drafting provisions for binding instructions. Housing providers agreed in-principle that binding instructions were appropriate but raised concerns about the broad and general way the current provisions are worded.

A binding instruction “to improve the governance of the housing provider” or “to enter into arrangements with another provider” was seen as open to interpretation and regulatory creep. There was no support for a specific provision to appoint or remove Board members.

Housing providers suggested that the National Law or the Intervention Guidelines include specific details about when a binding instruction can be issued and the factors that must be considered by a Registrar before issuing a binding instruction—namely that the instruction is proportional and reasonable given the risks associated with non-compliance; that the rationale for the instruction is clearly linked to returning the provider to compliance with the Code

- Further consideration is needed about the current drafting provisions for the Statutory Manager. Housing providers agreed in-principle that the provision for a Statutory Manager was appropriate but raised concerns about the practicality of a Statutory Managers controlling all the functions of a large, complex, multi-functional provider (particularly where the policy intent is to protect the interests of tenants and to protect community housing assets).
- Greater clarity is needed around the definition of social and affordable housing assets and the operation of the social and affordable housing assets register – in particular:
 - Treatment of current and future assets not linked to government housing assistance
 - Treatment of the “Director’s interest” of asset on the register

- Rules for ensuring consistence in the treatment of assets where multiple jurisdictions have an interest as a result of providing assistance
- Rules for ensuring the timeliness of updates to the assets register—to ensure it does not create delays in undertaking property developments

Housing providers highlighted the need for alignment in how different policy and funding agencies used non-regulatory levers to control their interest in jurisdictional investments—suggesting the need to develop common instruments such as standard tripartite agreements and contractual clauses to avoid simply shifting current regulatory barriers into policy and funding barriers.

- Greater clarity is needed around the definitions of community housing, social housing and affordable housing—with the current drafting having vague and overlapping definitions. Particular consideration will need to be given in re-framing the definitions to transitional and supported housing.
- Further consideration is needed of the drafting of the definition of registration tiers to ensure ‘small providers’ are not excluded from applying for Tier 1 or 2 registration
 - Some ‘small housing providers’ are part of large, multi-functional organisations—and may have the capacity to undertake development projects at scale
 - Some ‘small housing providers’ are already involved in small-scale property management and housing development activities—and may have the capacity to expand these activities
 - Further consideration is needed of the exclusion of cooperatives and incorporated associations from Tier 1—some of whom have the capacity to undertake housing developments.
- Further details are required about how complaints-handling will occur under the national system—and whether Registrars will have any role in handling tenant complaints
- Further investigation is needed to test the powers of state/ territory appeals bodies (e.g. VCAT) to hear appeals relating to decisions made by a Primary Registrar who resides in another jurisdiction.

Peak and tenant representative bodies

- Further work is needed to clarify the definition of ‘community housing’ and ‘social and affordable housing’ within the National Law—as the current draft does not align with definitions used in other policy documents
- Public housing tenants will need clear information about the scope of the National Law—to avoid confusion and anxiety about their security of tenure within the public housing system
- The National Regulatory Code (and the evidence guidelines linked to the Code) need to be much more explicit about tenant interests and the issues that are of greatest importance to tenants—namely housing affordability and security of tenure

- The National Regulatory Code should be more explicit about the obligations on providers to ensure appropriate levels of tenant engagement in their local neighbourhood and community
- Peak and tenant representative bodies should have extensive involvement in the development of the Evidence Guidelines to ensure tenant interests and outcomes are adequately reflected in assessing compliance with the Code
- Further consideration is needed of the 'opt-in' nature of registration—which means that policy and funding agencies can still exempt certain community housing providers from the requirement to meet the National Regulatory Code. Greater clarity is needed about which organisations will be required to be registered by policy and funding agencies (e.g. crisis and transitional accommodation providers)

Institutional and community banks

- Bankers did not raise specific concerns about the National Law—indicating that they would reserve their judgements until they had reviewed the draft legislation in detail. Their key concern was ensuring the National Law provided a strong and robust set of controls comparable to the Victorian legislation.
- Further details were required about how Tripartite Agreements would operate under the National Law—given the removal of the powers of the Victorian Registrar to transfer surplus assets and wind-up housing providers.

Implementation issues

Workshop participants highlighted a number of implementation issues that would need to be addressed if the National Regulatory System was adopted.

- Putting in place transitional arrangements for registered Housing Associations and Housing Providers under the current Victorian regulatory system to automatically be recognised under the National System
 - Mapping current Victorian Housing Associations and Housing Providers against the new national tiers—so that providers know how the transition to the new system will affect them
 - Ensuring providers have an opportunity to re-apply in a different tier—rather than simply having to accept the transitional allocation of tiers
 - Automatically recognising current registered providers—without the need for reassessment
- Ensuring at least 12 months notice is given of any changes to regulatory reporting requirements—to give providers time to update their systems
- Ensuring the policy and funding agencies publish their requirements for registration status prior to the commencement of the national system—so providers understand the implications for retaining or accessing government assistance within particular jurisdictions
- Ensuring that the implementation of the national system occurs in a way that ensures there is either a reduction or no net increase in regulatory burden for

housing providers. Particular consideration will need to be given to ensuring there is no increase in regulatory burden for providers in the lowest risk category

- Further consideration of how the national system would deal with the complexity of Group Structures and Joint Venture vehicles
- Ensuring tenant representative bodies have appropriate input into the detailed design and ongoing oversight of the National Regulatory Council—which may involve additional funding or support to tenant organisations.

As a general comment, all housing providers highlighted their disappointment at the decision to exclude government providers from the National Regulatory System—arguing that this resulted in a continuation of the existing uneven playing field.

Preferred option

There was unanimous agreement amongst housing providers that the proposed National Regulatory System (Option 2) was preferable to Option 1 (status quo). For providers that are likely to be registered as Tier 3 under the National Regulatory System, there was a broadly neutral view of Option 2—but most recognised the potential of the national system to support increased and ongoing investment in the community housing sector.

Peaks and tenant representative bodies did not express a preferred option at the consultation session—preferring to review the legislation in detail before deciding on their preferred option.

Representatives of institutional and community banks did not express a preferred option at the consultation session—preferring to review the legislation in detail before deciding on their preferred option.

Queensland

This section summarises the feedback from the three stakeholder forums held in Queensland. The first forum was held in Brisbane on 1st December 2011 and was attended by over 100 representatives of community housing providers, tenant organisations and peak bodies. The second forum was held in Townsville on 2nd December 2011 and was attended by around 30 representatives from community housing providers and support organisations. The third forum was held in Rockhampton on 7th December 2011 and was attended by around 25 representatives from community housing providers and tenant organisations.

Perceived costs and benefits

Queensland workshop participants highlighted a number of key points about the likely costs and benefits of the proposed National Regulatory System compared to current regulatory arrangements for community housing.

Brisbane Forum

There was broad support from workshop participants for the policy intent of the National Regulatory System, although many remained cautious in assessing the benefits until they had seen the full details of the Evidence Guidelines and the policy and funding settings that would be adopted by policy and funding agencies. Workshops participants

highlighted that a number of these concerns could be addressed if there were additional elements expressed in the statement of the NRS policy intent—namely:

- Explicitly acknowledging that in addition to protecting tenants, protecting government investments and promoting investor confidence, the statement of policy intent should also refer to:
 - The important role of community housing in delivering a more financially sustainable model of social and affordability housing
 - The importance of retaining the diversity of community housing—including the important role of smaller housing providers that deliver efficient local housing solutions.
- Ensuring that the system is inclusive of Indigenous Community Housing Providers – to avoid the possibility of large numbers of Queensland community housing providers sitting outside of the national system
- Ensuring that policy and funding decisions of state/ territory governments do not work against the policy intent of supporting growth (i.e. Adopting policy and funding settings that unnecessarily restrict the ability of providers to operate in more than one jurisdiction)
- Ensuring the national system is implemented in ways that does not add an additional level of regulation to multi-functional providers that also deliver non-housing services

Within this context, providers highlighted a number of potential benefits of the National Regulatory System over the status quo:

- Greater protection for tenants through nationally-consistent standards on tenant outcomes—although tenant representative organisations indicated that these benefits would be undermined if state/ territory policy and funding agencies did not require all providers to be registered
- Greater potential coverage of regulation across all Queensland community housing providers to create a 'level-playing field'—although some providers raised concerns that providers under the National Rental Affordability Scheme (NRAS) may not be required to be registered by policy and funding agencies
- Greater confidence for government and banks to invest in community housing—although growth in the sector will also require greater national consistency in the conditions and controls by state/ territory policy and funding agencies over the use and disposal of assets.

Smaller providers were more cautious about the potential benefits of the National Regulatory System—making it clear that benefits would only be realised if there was no increase in regulatory burden and an inclusive approach was adopted to smaller providers that have historically had limited opportunities for growth.

Townsville Forum

There were mixed views at the Townsville workshop about whether the potential benefits of a National Regulatory System would be realised in practice. Providers highlighted that they supported the focus on national consistency and having a common regulatory

framework—but remained concerned that smaller regional and local providers could be excluded and that future service delivery could be dominated by a small number of very large providers that did not understand the local context.

Specifically, providers wanted further details and assurances that the NRS would not lead to a “McDonaldisation” of the sector or be used by state / territory funding and policy agencies as a vehicle to create a sector dominated by only Tier 1 providers. Providers were concerned about the potential for rationalisation and were keen for the NRS to guard against this by recognising diversity and avoiding a ‘one size fits all’ approach.

Providers indicated that they would be much more supportive of the NRS if the policy intent explicitly acknowledged the importance of maintaining sector diversity—including the valuable role of small providers in delivering efficient local housing solutions.

Rockhampton Forum

There was in-principle support from workshop participants for a National Regulatory System as long as it was implemented in a way that did not create an additional layer of regulatory burden. Workshop participants highlighted the potential of the NRS to deliver net benefits in terms of:

- Supporting the growth of the community housing sector
- Providing greater protection for tenants through the adoption of national standards
- Creating an environment that supports partnerships between providers—particularly between larger and smaller providers
- Ensuring the independence of regulatory decisions from policy and funding decisions

At the same time, workshop participants indicated that these benefits would only be realised if the system was implemented in a way that did not add to existing regulatory burdens, and ensured there was a genuine focus on tenant outcomes.

Feedback on the draft National Law and National Regulatory Code

Overall, Queensland workshop participants indicated that the design elements of the National Law appear to be broadly fit for purpose—although a number of specific concerns were raised and additional details were needed to fully understand the impact.

Brisbane Forum

- Clarification is needed on the definition of the three tiers of registration
 - More specific details are required on policy and funding agency requirements for registration (so provider fully understand the implications of seeking registration in a particular tier)
 - The definition of tier 3 needs to include small-scale housing development—not just small-scale tenancy management
- Further details are required on how the National Regulatory Council will ensure consistency of regulatory practice between the different Registrars—to ensure the credibility and robustness of the national system

- The National Regulatory Code needs to strengthen the focus on tenants
 - Including a separate element in the Code on tenant outcomes
 - Strengthening references to tenant outcomes across all elements of the Code
 - Ensuring providers are achieving positive tenant outcomes in terms of sustainability of tenancies and addressing tenant needs
- Reviewing the current National Regulatory Code
 - Considering integrating “Probity” outcomes into all aspects of the National Regulatory Code
 - Reviewing the wording of the Financial Viability outcome in the Code to ensure it takes account of the impact of local policy and funding settings and issues of cross-subsidisation
 - Reviewing the requirement of the “Housing Assets” outcome of the Code to include consideration of environmental sustainability and adoption of universal design principles
 - Reviewing the requirement of the “Community Engagement” outcome of the Code to ensure sufficient emphasis is given to inclusive communities and addressing concentrations of disadvantage
 - Reviewing the requirements of the “Tenant and Housing Services” outcomes of the Code to include considerations of the accessibility of complaints mechanisms
 - Ensuring the code maintains the clarity achieved by distinguishing governance and management outcomes
 - Considering the inclusion of additional requirements related to workforce planning and development in the code
- Further consideration is needed of Registrar powers to ensure they do not act as a disincentive for private investors or discourage prudent risk-taking by providers—both of which are important ingredients for growth
 - Need to embed proportionality into the Registrar powers—to ensure Registrars are required to follow due-process and only use powers when certain transparent criteria have been met
 - The National Law should provide clarity about the criteria and timeframes associated with different powers—otherwise the powers are a ‘blank cheque’—which will turn away new entrants or lead to a highly litigious approach to national regulation

Townsville Forum

- Further consideration is needed of the definition of Registers tiers—to recognise and acknowledge diversity and the important role played by regional and local housing providers—regardless of their size and involvement in housing developments

- Tiers 2 and 3 providers shouldn't be "locked out" of future growth opportunities
- Tier 3 should also include providers that undertake small-scale housing development and property management
- Further clarification is needed as to the treatment of crisis accommodation and homelessness services within the NRS (i.e. will they be required to be registered; how will the system ensure there is no overlap with the new Homelessness National Quality Framework)
- Industry stakeholders will need extensive involvement in the development of the Evidence Guidelines for the National Regulatory Code—to ensure the guidelines are not 'south east' centric or 'metro' centric
 - The Evidence Guidelines must explicitly identify different pressures and delivery context for remote and regional providers and for Indigenous providers
 - A separate set of Evidence Guidelines may be needed for remote providers
 - Evidence Guidelines will need to be flexible to reflect the diversity of community housing providers
- Further consideration is needed of potential additional elements in the National Regulatory Code
 - Code elements need to have a greater focus on growth and risk management
 - All elements of the code should reflect sensitivity to cultural considerations – specifically the response to special needs groups including Indigenous and CALD communities
 - The 'Community Engagement' element of the Code could have a greater emphasis on the role of community housing providers in building community capacity—assisting local communities to meet their own needs
 - The 'Housing Assets' element of the Code could have a greater emphasis on ensuring housing designs are suitable for local communities—particularly remote communities
 - The 'Financial Viability' element of the Code will need to be sensitive to the impact of state/ territory policy setting, e.g. policies on the use of surpluses
- Further consideration is needed of the practical issues associated with the Registrar powers.
 - The practicality of finding another registered provider in regional and remote areas in cases of deregistration
 - Statutory Manager should have a (time-limited) role of helping an organisation 'get back on the feet' in cases of non-compliance—rather than simply moving to deregistration
 - The appeals mechanism needs to be accessible and transparent

- Further consideration is needed of the cost to organisations of needing to change their constitution to meet the registration requirements

Rockhampton Forum

- The National Regulatory Code potentially gives better protection for tenants through the adoption of national standards—but to do this the Code will need to include clear requirements for providers to seek and respond to tenant feedback
- Further information is required on the regulatory burden under the national system—what are the evidence and reporting requirements; how often will re-assessments occur; how much time and resources will be needed for ongoing compliance
- Further consideration is needed on who will be required to be registered under the national system—with tenant representative organisations strongly supporting broad coverage of all organisations that receive government assistance including for-profit NRAS providers
- Clearer guidelines are needed on the operation of Registrar powers—including the
 - treatment of minor non-compliances and the timeframes for providers to address non-compliances
 - investigation procedures
 - intervention guidelines to ensure a proportionate, staged approach
 - appeals procedures—which should be independent of the state/ territory policy and funding agency

Implementation issues

Queensland workshop participants highlighted a number of implementation issues that would need to be addressed if the National Regulatory System was adopted.

Brisbane Forum

- Further consultations are needed on the 'details' of the NRS—with providers recognising that the 'devil is in the detail'. In particular, there is a need for extensive sector consultation on the development of detailed Evidence and Intervention Guidelines
- Further consultations are needed with tenant representative organisations to ensure the Evidence Guidelines comprehensively cover tenant outcomes
- Evidence Guidelines and any new reporting requirements need to be finalised well in advance of the introduction of the new system—so that providers have time to prepare and adjust their systems.
- Providers will need access to resources and support, including on-site assistance, to help them prepare for the introduction of the NRS—particularly where the introduction of the NRS introduces new evidence requirements or reporting obligations

- The National Regulatory Code should be mapped against the National Community Housing Standards—so that when the Evidence Guidelines are being developed, there is clear recognition of how evidence from NCHS Accreditation can be used as part of assessments against the National Regulatory Code
- Providers registered under the existing Queensland system should automatically receive provisional national registration—subject to a full reassessment against the National Regulatory Code at their next review
- The Qld Department of Communities will need to review and streamline current reporting obligations linked to funding and assistance agreements—removing any duplication with NRS evidence and reporting requirements
- Further information is needed by local government providers about how they will be regulated under the proposed Queensland state-based registration
- The integrity of the system will be strengthened through clear sector representation on the National Regulatory Council—particularly to ensure the system does not result in increased red tape or a loss of policy intent

Townsville Forum

- Further information about any changes in reporting and compliance obligations under the National Regulatory System—which will only be known once detailed Evidence Guidelines have been published
- Further consideration is needed of remote and Indigenous issues in the roll-out of a National Regulatory System—both in terms of the Evidence Guidelines and registration assessment processes
- A critical success factor for the implementation of the National Regulatory System will be the promotion of partnerships opportunities across tiers—particularly opportunities for smaller providers to come under registration status of larger providers
- Funding and support to assist smaller providers to prepare for the introduction of the National Regulatory System
 - Training delivered by an industry peak body
 - Templates and tools to assist providers document evidence for registration assessments
 - Need for a clearinghouse of resources that can be used by to meet their compliance obligations
 - Establishment of an advisory service (single national help line) to answer queries from providers
- The success of implementation will depend on state/ territory policy and funding settings—in particular it will be essential that policy and funding agencies do not place unreasonable registration restrictions or requirements on providers
 - Demanding providers are registered as Tier 1 or 2—when it does not reflect the risks associated with provider’s funded activities

- Making registration requirements for Tier 3 too onerous—leading to unnecessary regulatory burden for smaller providers

Rockhampton Forum

- Providers currently registered under state/ territory registration systems should automatically transition to the new National Register—subject to a future assessment against the new Code. In the Queensland context, tenant representative bodies, advocacy organisations and home modification services should not be required to be registered.
- Sector input is needed into the development of the Evidence Guidelines to ensure there is no increase in regulatory burden—particularly for Tier 3 providers. A key principle should be that providers should be able to use existing evidence sources rather than having to prepare additional information solely for registration assessments.
 - Mapping the National Community Housing Standards against the National Regulatory Code to ensure that evidence from accreditation assessments can be used for registration assessments
 - Mapping other Quality Systems to identify how it can be used as part of registration assessments
- Tenants should have involvement in the development of the Evidence Guidelines—but this will require funding to ensure appropriate national input of tenant-run bodies. Consideration should be given to establishing a national tenant forum to provide ongoing advice to the National Regulatory Council
- State/ territory policy and funding agencies should publish guidelines on their registration conditions for receiving housing assistance—so that providers understand the implication of seeking or not seeking registration
- State/ territory policy and funding agencies will need to review and streamline existing reporting requirements after the introduction of the National Regulatory System—to avoid a duplication of reporting burden

Preferred option

There were mixed views about the preferred options for the future regulation of community housing—although the majority of Queensland workshop participants expressed in-principle support for the National Regulatory System.

At the Brisbane workshop, the majority of stakeholders supported the NRS as their preferred option, but all stakeholders wanted more details and involvement in the development of the details, before confirming their support. The main reason for their support related to the:

- Adoption of national standards to support better tenant outcomes and better quality services from providers
- The increased opportunities and avenues for growth of the sector
- The inclusive nature of the NRS in covering all community housing providers

For other Brisbane workshop participants, their preference, based on the information available during the consultations, was to remain with the status quo. They highlighted

- Too few details were known about the actual regulatory burden under the proposed NRS to support it at this time—given that the level of regulatory burden would only be known once the Evidence Guidelines had been developed; and that the Queensland Department of Communities had not yet produced information on future policy settings and the approach to funding across tiers
- Concerns about additional regulatory burden on providers if the Queensland Department of Communities did not streamline reporting requirements under funding programs after the introduction of the NRS
- Concerns that the effort of changing to the NRS may not be worth it if there was not additional reforms to achieve greater national consistency in policy and funding settings needed to deliver growth.

At the Townsville workshop, there were also mixed views. Some workshop participants expressed support for the National Regulatory System because it was more consistent with a strong and sustainable community housing sector. Others were more cautious because they were uncertain how smaller and regional providers would be treated under the new system and what benefits would flow to these providers. All workshop participants agreed that they were more likely to support the National Regulatory System if there was:

- A strong commitment from Housing Ministers to supporting the diversity of the sector and strengthening all three tiers—both to ensure close connections between housing services and local community and to mitigate risks from an over-reliance on a small number of large providers
- More clarity from state policy and funding agencies on how the different tiers will be treated
- More information on the Evidence Guidelines to demonstrate that most providers would not face an increased regulatory burden under the new system.

At the Rockhampton workshop, the vast majority of participants supported the move to the National Regulatory System—subject to addressing key implementation issues:

- Ensuring there is a national voice for tenants in the ongoing development and implementation of the national system
- Ensuring the introduction of the National Regulatory System does not lead to an additional layer of regulatory burden (which will require streamlining of policy and funding reporting requirements and clarity on the extent that existing evidence sources can be applied to demonstrating performance under the code)
- Ensuring tenant outcomes and tenant participant are embedded in the National Regulatory Code
- Ensuring policy and funding agency requirements do not work against the intent of the National Regulatory System.

South Australia

This section summarises the feedback from the two provider forums held in Adelaide on 29th November 2011. The first forum was held between 9.15am-12.15pm and was attended by around 25 representatives from larger community housing providers operating in South Australia. The second forum was held between 1.00pm-4.00pm and was attended by around 25 representatives from smaller South Australian community housing providers.

Perceived costs and benefits

Workshop participants highlighted a number of key points about the likely costs and benefits of the proposed National Regulatory System compared to current regulatory arrangements for community housing.

SA Growth Providers and Affordable Housing Providers

South Australian growth providers and larger community housing providers highlighted that the National Regulatory System has a number of important benefits.

- Creating an environment that supports the growth of community housing—although providers highlighted that future growth will still be dependent on the funding and policy settings adopted within South Australia—particularly policies related to asset transfers, capital investments and use of surpluses
 - Promoting government and finance sector confidence that the community housing sector is well-managed and well-governed—through the adoption of national standards
 - Creating opportunities for the Australian government to provide direct funding to CHPs
- Reducing the regulatory burden for providers that operate across jurisdictions
- Creating a more transparent system by separating regulation from policy and funding
- Enhancing the potential for innovation and efficiencies—through increased competition and increased opportunities for partnerships as a result of providers being part of the same regulatory system
- Recognising the diversity of community housing providers through registration tiers—rather than adopting a one size fits all approach or placing different types of providers in different registration systems
- Supporting the greater professionalism of the sector through a National Regulatory Code that applies to all providers
- Placing a greater emphasis on improved tenant outcomes.

SA housing cooperatives and smaller community housing providers

Smaller providers were more cautious about the potential benefits of the National Regulatory System—making it clear that benefits would only be realised if an inclusive

approach was adopted to smaller providers that have historically had limited opportunities for growth. In particular, smaller providers wanted the documentation on the national system to explicitly recognise the valuable role of smaller providers in efficiently delivering local housing solutions—in other words, a clear commitment from Housing Ministers to an ongoing role for smaller providers—regardless of policy and funding setting future growth or not.

If properly acknowledged as an integral part of the national community housing sector, smaller providers recognised that there could be a number of potential benefits from being part of a National Regulatory System.

- Improved tenant outcomes through the adoption of national standards that apply to all providers
- A positive step that is consistent with a long-term government commitment to community housing
- Greater stability in regulation through the adoption of a national law that requires all states and territories to agree to any changes.

At the same time, smaller providers highlighted that these benefits would only be realised if appropriate policy and funding settings were put in place—including reducing reporting to policy and funding agencies where it overlaps with reporting to regulators.

Feedback on the draft National Law and National Regulatory Code

Overall, workshop participants indicated that the design elements of the National Law appear to be broadly fit for purpose—although a number of specific concerns were raised and additional details are needed to fully understand the impact.

SA Growth Providers and Affordable Housing Providers

- There should be a requirement in the National Law that Registrars are independent of policy and funding agencies—structurally and if feasible, under a different Minister
- The National Law will only support growth if additional reforms are undertaken to achieve national alignment of policy and funding settings. This will require a reduction in complexity and jurisdiction differences in how states and territory use other controls to protect jurisdictional investments
- Once the Evidence Guidelines are finalised, policy and funding agencies will need to review existing reporting requirements to remove any duplication with regulatory reporting
- There was in-principle agreement to powers within the National Law to appoint a Statutory Manager—although a range of practical issues will need to be addressed in intervention guidelines
 - How will the Statutory Manager’s role work in a large multi-functional organisation where community housing is only a small part of their business (practicality of controlling the whole business)

- Will Statutory Managers be legally obliged to appoint an administrator after they commence their role if they find the organisation is insolvent
- What criteria will have to be met to justify the appointment of a Statutory Manager
- What checks and balances will be in place to ensure a Statutory Manager is only appointed as a last resort
- There were mixed views about the appropriateness of issuing binding instructions
 - All providers were comfortable with binding instructions to provide information or answer questions
 - Some providers were comfortable with the provision to issue binding instructions about improving governance—as long as there were clear, transparent guidelines about the scope of possible instructions that could be issued in different situations. For other providers, instructions about improving governance were an inappropriate interference in operational decisions—with these providers highlighting the conflicts that could arise between Registrar instructions and Director’s duties.
 - The majority of providers disagreed with powers to issue directions to handle tenant complaints (because it duplicated existing Tenancies Legislation) and enter into arrangements with another organisation (because it interfered with the Director’s responsibility to determine strategic directions)
 - If binding instructions are issued by a Registrar, the onus should be on the Registrar to justify how the action will guarantee a return to compliance with Code
- Further work is needed on the definition of the three tiers—specifically, references to the size of the organisation or the number of properties they own/ manage, should be removed and replaced by descriptions in terms of capacity and risk
- Additional areas should be considered in the National Regulatory Code—particularly ensuring a greater focus on continuous improvement.

SA housing cooperatives and smaller community housing providers

- There is no protection under the National Law to prevent policy and funding agencies using other controls to exclude small providers from the community housing sector and there is no independent scrutiny of conditions imposed by state/ territory policy and funding agencies
- Further work is needed on the definition of the tiers—to remove the current wording that implies smaller providers can only be Tier 3 and Tier 3 providers can not own properties and undertake property management
- Smaller providers are comfortable, in-principle, with the National Law provisions to appoint a Statutory Manager or issue binding instructions—so long as there are clear, transparent guidelines covering the use of these powers

Implementation issues

Workshop participants highlighted a number of implementation issues that would need to be addressed if the National Regulatory System was adopted.

- Consultation with the sector on the Evidence Guidelines to ensure evidence and reporting requirements are reasonable, streamlined and focused on key risks
 - Smaller providers are particularly concerned to ensure there is no increase in regulatory burden compared to the Status Quo
- Parallel changes would be needed to Residential Tenancies legislation to ensure all nationally registered providers would be recognised under the SA Law
- The existing SA legislation would need to be reviewed to ensure all current housing providers could continue to operate under the National Law. The review also provides an opportunity to:
 - Embed nationally-agreed principles for funding and growth of the community housing sector
 - Ensure greater of asset control mechanisms adopted in SA are consistent with other states and territories (to ensure SA can protect their jurisdictional interests without restricting growth opportunities that will benefit SA)
 - Ensure existing protections for housing cooperatives under the SA legislation are maintained
- Implementing a communication and sector development strategy to promote opportunities for partnership across tiers
- Putting in place transitional arrangements that allows easy transfer from state-based registration to national registration
 - Sufficient time for providers to prepare for the transition
 - Clear, transparent rules for recognising existing registration status and requirements to provide additional evidence for new standards under the National Code
 - Adopting a conservative approach to recognition under Tier 1—to ensure governments and investors have strong confidence in the rigour of requirements associated with Tier 1. This means the default for transition should be Tier 2 or 3, unless there is clear evidence that the provider is meeting all the requirements of Tier 1
 - Transitional national registration should be subject to re-assessment under the National Code within an agreed time frame
 - Need for policy and funding agencies to undertake a mapping exercise to compared current state/ territory registration standards against the new National Code

- Providers will need resources and support to manage the transition to national registration—both to bring providers ‘up to Standard’ and to make it easy for providers to demonstrate that they meet the National Code
 - National budget for training and development
 - National tools / proformas to assist providers to document evidence needed to demonstrate compliance with the Code
- Timeframes for implementation must be reasonable
 - Small organisations need time to understand the new requirements and to adapt, improve or change their systems
 - Evidence Guidelines should be released 6-12 months before ‘go live’ to allow providers time to prepare for any changes
 - Providers need advance notice of any changes to reporting requirements – remember that many providers rely on volunteers and do not have sophisticated IT systems.
- Policy and funding agencies will need to review existing reporting requirements to ensure there is no duplication with regulatory reporting requirements.

As a general comment, a number of providers highlighted their disappointment at the decision to exclude government providers from the National Regulatory System—arguing that this resulted in a continuation of the existing uneven playing field.

Preferred option

For larger South Australia providers, there was unanimous agreement that the proposed National Regulatory System (Option 2) was preferable to Option 1 (status quo)—noting that the benefits of national regulation would only be realised for SA providers if the system was supported by appropriate South Australian and national policy and funding settings.

For the majority of smaller providers, there was in-principle support for the proposed National Regulatory System—subject to the system being implemented in ways that recognised the valuable ongoing role of smaller providers and ensuring there was no increase in regulatory burden for smaller providers. Some smaller providers were more cautious about the national system—indicating that they needed more details about the Evidence Guidelines and reporting requirements before deciding whether the national system benefits would outweigh the regulatory burden costs.

Western Australia

This section summarises the feedback from the WA consultative forum held in Perth on 5th December 2011. The forum was held between 9.00am-12.30pm and was attended by around 20 representatives from current or potential community housing providers operating in Western Australia, the sector peak body and tenant groups.

Perceived costs and benefits

Workshop participants highlighted a number of key points about the likely costs and benefits of the proposed National Regulatory System compared to current regulatory arrangements for community housing.

Housing providers highlighted that the national system had the potential to deliver net benefits for the community housing sector in terms of:

- Reducing the regulatory burden on community housing providers that want to operate in multiple jurisdictions
 - eliminating the need to seek registration under multiple systems
 - cutting red tape associated with reporting under multiple regulatory systems
- Reducing the regulatory burden on all community housing providers by focussing on compliance with high-level outcomes in the National Regulatory Code—rather than prescriptive requirements that tell providers how to run their business—although these benefits will only be achieved if the Evidence Guidelines are reasonable and policy and funding agencies remove any duplication in monitoring and reporting requirements
- Providing greater confidence for banks and financiers about investing in the community housing sector—although their willingness to lend at competitive rates will also depend on policy and funding settings that support the required cash flows needed to service loans
- Supporting an environment that promotes greater national consistency in state/territory policy and funding settings—to maximise growth opportunities
- Increasing recognition of the community housing sector through 'national branding' on registered providers
- Supporting increased opportunities for partnerships between providers in different registration tiers through a national system that covers all community housing providers.

Feedback on the draft National Law and National Regulatory Code

Overall, workshop participants indicated that most of the design elements of the National Law appear to be sound—although indicated that the 'devil would be in the detail' and further consideration was needed in a number of key areas.

- Further details are needed about the Evidence Guidelines for each of the three tiers—so providers can fully assess the regulatory burden associated with the registration under the NRS. Specific concerns relate to:
 - The reporting and compliance requirements for each tier are proportionate to the risk of the community housing activities
 - Timeframe and requirements for ongoing reporting and compliance assessments—and how these will vary for each tier

- Providers are not unreasonably required to be registered in a higher tier as a result of state / territory policy settings that are out of step with other jurisdictions (e.g. small providers being required as a condition of WA government assistance to seek registration as a Tier 1 or 2 provider, whereas other states and territories only requiring Tier 3 registration)
- Reviewing state policy and funding agency compliance and reporting requirements after the introduction of the NRS—to ensure there is no ‘double reporting’ or ‘double assessment’ of things already covered through registration assessments
- Evidence Guidelines should be published at least 6-12 month before the commencement of the National Law so providers have time to consider the implications of seeking registration in a particular tier and have time to make any changes to their systems to meet evidence and reporting requirements
- The National Law should explicitly recognise the valuable role of existing, smaller housing providers—so that state/ territory funding and policy agencies are not able to unfairly use policy and funding levers to exclude them from future funding and growth opportunities.
- Further work is needed on the ‘Community Engagement’ elements of the National Regulatory Code. The current version is too broad and it is unclear what is required of community housing providers
- Further works is needed on the National Regulatory Code to identify other state/ territory compliance obligations placed on community housing providers, to drive greater national consistency (e.g. obligations under state/ territory Residential Tenancy Legislation)
- Further work is needed on the definition of registration tiers and incorporation requirements
 - Requirements to have a wind-up clause in a registered providers’ constitution are supported, but there may need to be some flexibility in terms of the exact wording to reflect the organisation’s rights to to protect assets that were not acquired with direct or indirect government assistance
 - The National Law should explicitly state that it is a condition of registration that if a provider is issued a Notice of Intent to Cancel Registration, they are required to transfer community housing assets to another registered providers or back to the policy and funding agency
 - Further investigation is needed of the cost implications of requiring providers to change their constitutions
 - The current wording of Tier 2 seems to imply that Incorporated Associations and Cooperatives are excluded (because the general term ‘Body Corporate’ is used in both Tier 2 and 3, but references to Incorporated Associations and Cooperatives are only made in Tier 3)
- Further consideration is needed of the Power of Registrars
 - Most providers gave ‘in principle’ support for Statutory Managers as a last resort option to ensure providers honoured their obligations—but other

providers were uncertain about the practicality of the role. Key issues raised included the

- Ability and competence of a Statutory Manager to fulfil their obligations under the full range of service and contractual arrangements—recognising that for many providers they may have a large number of service contract with multiple government and non-government agencies.
- It is unclear how 'displacement provisions' apply to state/ territory incorporated associations, Trusts and cooperatives—meaning that it may not be legal to appoint a Statutory Manager to these organisations
- Additional provisions are needed in the National Law about what Registrars must consider before appointing a Statutory Manager—for example, the provider's general obligations under law and existing contracts
- Most providers raised concerns about powers to issue binding instructions—believing that they inappropriately interfered with the independence of housing providers
 - Further legal advice is needed to confirm that binding instructions do not conflict with Directors' duties
 - Particular concern was raised about binding instructions to direct an organisation to enter into arrangements with another organisation and to handle a particular tenant complaint
- Further investigation is needed about the appeal provisions
 - There does not appear to be an appeal right against the issuing of a Notice of Non Compliance or the appointment of a Lead Registrar
 - Further information is needed on the costs associated with appeals to state/ territory Administrative Appeals Tribunals
 - Further information is needed on how appeals would work for multi-jurisdiction providers—in particular the powers of a state Administrative Appeals Tribunals to hear an appeal if the issues related to housing activities in another jurisdiction.

Implementation issues

Workshop participants highlighted a number of implementation issues that would need to be addressed if the National Regulatory System was adopted.

- The need for comprehensive industry representation (across all three tiers) on the National Regulatory Council—to ensure the advice to Housing Ministers reflected the full range of stakeholder viewpoints
- State/ territory policy and funding agencies should publish information about their requirements for registration—at least 6-12 months prior to the commencement of the legislation

- The National Regulatory Council will need to provide strong oversight of the system to ensure consistency of regulatory practice between different Registrars
- Resources will need to be appropriately distributed to support the implementation of the National Regulatory System
 - Support should be available for providers to build their capacity if the National Regulatory Code covers new requirements
 - Additional funding should be available to providers if they face material cost increases as a result of additional regulatory burdens under the national system
 - Registrars will need to be appropriately resourced to undertake their functions
- Transitional arrangements should be adopted to automatically recognise existing state/ territory registration—subject to re-assessment as part of ongoing compliance activities.

Preferred option

Overall, workshop participants expressed unanimous in-principle support for the policy intent of the National Regulatory System—highlighting the potential for Option 2 (NRS) to deliver significantly greater net benefits than Option 1 (status quo with stand-alone WA regulatory arrangements).

However, providers wanted greater assurance that the national system would be implemented in a way that did not lead to an increased regulatory burden and did not exclude WA providers from competing for future growth opportunities. In particular, providers wanted to see the detailed Evidence Guidelines and the WA Department of Housing policy position on growth and treatment of tiers, before giving final unanimous support for Option 2.

Further, providers highlighted a number of areas where the proposed National Regulatory System could be improved—most importantly:

- Industry representation on the National Regulatory Council
- Greater clarity around the definition of tiers and the reporting requirements associated with each tier
- Appropriate resources to support the implementation of the National System

Finally, providers were particularly concerned that if Housing Ministers agreed to implement the proposed National Regulatory System and the WA government choose not to participate, WA providers may face a double regulatory burden of a state-based and national regulatory arrangements—given that a number of providers believed that to access future growth opportunities they would still want to be on the national community housing register.

Tasmania

This section summarises the feedback from the Tasmanian consultative forum held in Hobart on 16th December 2011. The forum was held between 1.30pm-4.00pm and was

attended by around 15 representatives from current or potential community housing providers and the sector peak body.

Perceived costs and benefits

Workshop participants highlighted a number of key points about the likely costs and benefits of the proposed National Regulatory System compared to current regulatory arrangements for community housing.

Housing providers highlighted that the national system had the potential to deliver net benefits for the community housing sector in terms of:

- Reducing the regulatory burden on community housing providers that want to operate in multiple jurisdictions
 - eliminating the need to seek registration under multiple systems
 - cutting red tape associated with reporting under multiple regulatory systems
 - avoiding the need to 'artificially' create separate corporate structures in order to operate in multiple jurisdictions
- Improving protection for tenants through
 - Requiring registered community housing providers to meet a common National Regulatory Code
 - Including specific obligations in the National Regulatory Code for providers to provide quality tenancy services and to facilitate access to support for tenants with complex needs
 - Legislative provisions to protect tenancies in cases of provider failure or de-registration
- Providing greater confidence for banks and financiers about investing in the community housing sector—although their willingness to lend at competitive rates will also depend on policy and funding settings that support the required cash flows needed to service loans
- Providing greater certainty over the protection of provider assets not linked to government assistance—through the requirements to maintain a community housing assets register
- Providing nationally-consistent information about the registered community housing sector
- Supporting increased opportunities for partnerships between providers in different registration tiers through a national system that covers all community housing providers

Feedback on the draft National Law and National Regulatory Code

Overall, workshop participants indicated that most of the design elements of the National Law appear to be sound—although indicated that the ‘devil would be in the detail’ and further consideration was needed in a number of key areas.

- Further consideration is needed of the practicality and reasonableness of regulating multi-functional providers
 - Appointment of a Statutory Manager raises serious complexities for multi-functional providers
 - How capable/ suitable would a Statutory Manager be in ‘running’ the entire affairs of a multi-functional organisation—where housing may be only a very small part of their business
 - How acceptable would the risks of losing control of the organisation be to the Boards of multi-functional providers—which may be ‘forced’ into establishing a subsidiary company
 - More information is needed about how the ‘community housing assets register’ would allow multi-functional providers to protect their existing assets (i.e. community housing and other assets that are not linked to government assistance)
 - More time may be needed for multi-functional providers to negotiate Housing Agreement with state/ territory policy and funding agencies prior to seeking registration
- Further information is needed about the Evidence Guidelines for each of the three tiers—so providers can fully assess the regulatory burden associated with the registration under the NRS.
 - Mapping existing evidence sources against the National Regulatory Code
 - Recognising third-party assessments of quality standards (e.g. National Community Housing Standards) as valid evidence against the National Regulatory Code
- While the requirement to maintain an asset register was strongly supported, clarification was sought about
 - State/ territory policy and funding agency access to the Asset Register—to ensure they can confirm that the information on the Register reflects agreements between the Agency and Providers
 - Whether community housing assets not related to government assistance would also be recorded on the asset register (so that a complete picture was available about the registered community housing sector—not just the part associated with government assistance)
 - Whether information on the register will be published (in aggregate form) to allow analysis of the size and growth of the registered community housing sector

- Further consideration is needed about the intervention guidelines and public access to information about registered community housing providers
 - Intervention Guidelines should distinguish between minor and major non-compliance—to avoid a situation where Registrars intervene in a ‘heavy-handed’ way over a minor or technical breach
 - Intervention Guidelines should set transparent benchmarks for the time available to providers to respond to any non-compliances—to ensure providers have a fair opportunity to address any issues without risking escalating action
 - Intervention Guidelines should make it clear the steps that Registrars need to take before using regulatory powers—to ensure the system maintains a focus on early intervention and ‘no surprises’
 - Assuming Registrars adopt a non-punitive approach with transparent processes before formal regulatory interventions, then it is reasonable to make information about any interventions (e.g. issuing a notice of non-compliance) publicly available
- Further information is needed on the definition of registration tiers and incorporation requirements
- Further consideration is needed within the National Regulatory Code of the protection of tenant rights—to ensure national regulatory has the desired impact on improved tenant outcomes.

Implementation issues

Workshop participants highlighted a number of implementation issues that would need to be addressed if the National Regulatory System was adopted.

- Further information is needed about the position of state/ territory policy and funding agencies on provider requirements to be registered
 - Workshop participants proposed that providers not be required to be registered on the basis of their current funding agreements—but that it was reasonable to make registration a condition of any additional or new government assistance (in particular the proposed stock transfer program)
 - Providers should be given as much notice as possible about the state/ territory policy position on registration—so they can make informed decisions in preparing for registration
- Housing Tasmania will need to publish a clear policy position on any registration requirements associated with the proposed stock transfer tender
 - Tenderers will need information on any registration obligations under the National Regulatory System
 - Registration obligations will need to be framed to ensure Tasmanian providers are not disadvantaged in the tender process—particularly given that they

currently do not have the opportunity to be registered under a Tasmanian registration system

- Resources and support will be required to build the capacity of Tasmanian providers to participant on a level playing field with providers in states/ territories that have had regulatory systems operating for a number of years.
- Tasmanian providers will require a reasonable timeframe to prepare for registration—given that providers have not been previously subject to a regulatory regime
- Further consideration is needed of the potential cost implications for providers in changing their corporate structure to meet registration requirements
- Further consideration is needed of retaining a 'full-service' Registrar function in Tasmania—to ensure
 - close contact is retained with local providers
 - Registrars have a good understanding of the local context
 - Registrars are able to identify problems early and take action before non-compliances occur,

Preferred option

Overall, workshop participants expressed in-principle support for the National Regulatory System—highlighting the potential for Option 2 (NRS) to deliver greater net benefits than Option 1 (status quo).

However, workshop participants wanted further assurances that the National Regulatory System would be implemented in a way that did not lead to an increased regulatory burden. In particular, more information was required on the specific evidence and reporting requirements associated with Registration.

Further, workshop participants highlighted that the success of the National System would depend on state/ territory policy and funding agencies requirements. In the Tasmanian context this will require

- ongoing recognition of the important role of smaller housing providers in delivering efficient and effective local housing services
- not requiring existing small providers to be registered in order to continue delivering housing services under current funding arrangements
- appropriate resources and support to build the capacity of Tasmanian providers to compete for new funding and growth opportunities (which should be subject to registration under the national system).

Northern Territory

This section summarises the feedback from the two consultative forums held in the Northern Territory on the 12th and 13th December 2011. The first forum was held in Alice Springs and was attended by 9 representatives from current or potential community

housing providers operating in the Northern Territory. The second forum was held in Darwin and was attended by 19 representatives from peak bodies and community housing providers.

Perceived costs and benefits

Workshop participants highlighted a number of key points about the likely costs and benefits of the proposed National Regulatory System compared to current regulatory arrangements for community housing.

Alice Springs Forum

Workshop participants highlighted that the national system had the potential to deliver net benefits in terms of

- supporting the delivery of quality improvements in housing services through the adoption of nationally consistent standards
- underpinning the growth of community housing in the NT as a result of providers being part of the nationally regulated sector
- increasing opportunities for partnerships and collaboration across states and territories and across tiers within the Territory.

Darwin Forum

Workshop participants highlighted that the national system had the potential to deliver net benefits in terms of:

- Creating a level playing field for NT providers—to be on an equal footing as providers in other states and territories
- Improving tenant outcomes by ensuring all community housing providers meet agreed standards
- Promoting greater certainty for banks and financiers in investing in the community housing sector—through bringing all providers under the same regulatory arrangements
- Promoting greater consistency, professionalism and quality improvements for NT providers through the introduction of a regulatory system (“Bringing NT providers up to standard”)

Feedback on the draft National Law and National Regulatory Code

Overall, workshop participants indicated that most of the design elements of the National Law appear to be sound—although highlighted a number of specific concerns that would need to be addressed.

Alice Springs Forum

- Further information is needed about how the National Regulatory Code will be applied so that it is sensitive to regional and remote service delivery issues

- Regulatory assessments and evidence requirements need to take account of the delivery context in regional and remote areas e.g. lack of supporting infrastructure; transient population and high staff turnover; higher cost of service delivery
- Evidence requirements that may be practical in metropolitan areas may be impractical in remote areas (e.g. tenant satisfaction surveys)
- Further consideration is needed of the potentially higher costs in regional and remote areas of meeting regulatory requirements
- The scope of inspection powers in the National Law is unclear. It is unclear whether a Registrar could 'turn up unannounced' and demand to enter the organisation's premises and seize documents.
 - The inspection powers should be framed so that the onus is on the provider to cooperate with inspections and provide information (or face being issued with a notice of non-compliance or de-registration)
- The power to appoint a Statutory Managers was supported in principle but strong concerns were raised about the practicality of such appointments
 - Clearer rules are needed around the timeframes, role and terms of appointment of a Statutory Manager
 - Further consideration is needed of the practicality of appointing a Statutory Manager to a multi-functional provider. The National Law should make it clear that the Statutory Manager is only there to protect community housing assets and tenants or to bring the provider back to compliance with Code—not to run the rest of their business
 - Further consideration is needed of issues of Legal Liability of a Statutory Manager e.g. who is responsible for taking action if the provider is found to be insolvent after the appointment of the Statutory Manager
- Greater clarity is needed around the definition of community housing assets—to make it clear what assets are included or excluded.
 - Non-community housing assets (and community housing assets not linked to government assistance) need to be excluded from the asset register
 - It is unacceptable to providers if the intent of the National Law is to capture all the providers assets – even ones that are not linked to government-assisted community housing
- Concerns were raised that the National Law does not deal with state/ territory policy and funding agency conditions over the use of assets—in that this could work against growth opportunities. There is a need for national consistency in the mechanisms used by different state/ territory governments to protect their investments—without unreasonably restricting growth opportunities
- Concerns were raised that the legislation doesn't specify how a separation will be achieved between regulation from policy and funding. Providers want to see the NT Registrar outside of the Department of Housing, Local Government and Regional Services.

Darwin Forum

- Ensuring there are appropriate intervention guidelines and procedural fairness arrangements in place so that Registrar powers are used in a way that gives providers a fair opportunity to address concerns or non-compliances before the powers are used
- Further information is needed about how the 'community housing assets register' would operate and the rules around protecting non-community housing assets
 - Protection of community housing assets that are not linked to government assistance
 - Protection of non community housing assets associated with other services that providers deliver
 - Procedures for determining which assets will be required by state/ territory policy and funding agencies to be on the Assets Register
 - Procedures for negotiating agreements with state/ territory policy and funding agencies about the treatment of community housing assets in the event of deregistration or wind-up
- Consideration is required of the ramifications of the Aboriginal Land Rights Act (Cmwlth) 1976 (ALRA) for Indigenous Housing Providers under the NRS:
 - land in Indigenous towns and communities is held in trust by Traditional Owners through Land Trusts as determined under ALRA
 - ALRA is unique to the NT
- Consideration is also required of the ongoing uncertainty of the Australian Government approach to Indigenous housing in the NT, through the NT Intervention and the new Stronger Futures strategy, including the provision of future housing services to outstation communities.
- Further consideration is needed of the implications of state/ territory policy and funding agencies not requiring certain types of providers to be registered—meaning that large parts of the community housing sector may potentially not be required to be registered
- Further investigation is needed of the implications of national regulation for multi-functional providers (e.g. providers that deliver community housing as just one part of their business)
- Further information is needed about how the National Regulatory Code will be applied so that it is sensitive to regional and remote service delivery issues
 - Ensuring requirements related to maintaining property condition standards reflect the historical and ongoing funding issues impacting on maintaining properties in regional and remote communities
 - Ensuring requirements related to financial viability and governance standards reflect the barriers faced by providers in regional and remote communities

- Further consideration is needed of the potentially higher costs in regional and remote areas of meeting regulatory requirements

As a general comment, several participants expressed their disappointment at the decision to exclude government providers from the National Regulatory System—arguing that this resulted in a continuation of the existing uneven playing field.

Implementation issues

Workshop participants highlighted a number of implementation issues that would need to be addressed if the National Regulatory System was adopted.

Alice Springs Forum

- Ensuring that the National Regulatory System does not lead to an additional regulatory burden for providers
 - Reviewing the impact of the introduction of regulation in the NT on smaller providers (given there is currently no regulatory regime)
 - Addressing concerns that there could be an additional layer of regulation if state/ territory policy and funding agencies introduce duplicate reporting requirements (i.e. they don't 'trust' the regulatory system and also require reporting against the elements covered in the Code)
- Examining how accreditation against the National Community Housing Standards can be used as an evidence source for registration
- Ensuring sufficient resources are made available to support sector capacity building for NT providers
 - NT-specific training to help providers understand and prepare for the new regulatory system
 - Recognising that NT providers are diverse and will need different levels and types of support
 - Many NT providers do not have the management systems currently used by providers in other states – reflecting the historically low level of tenancy and property management activities in the NT sector
 - Training for Boards on new legal obligations and implications of the national law
- Tailoring Evidence Guidelines to be responsive to local policy contexts (e.g. Residential Tenancies legislation)
- Developing tools and templates to assist providers to document evidence for registration assessments and to meet reporting obligations

Darwin Forum

- Ensuring that adequate resources and support arrangements are in place to ensure NT providers are not disadvantaged because of the historically low levels of government-funded community housing in the NT

- Support for current community housing providers to meet the requirements as a Level 3 provider under the National Regulatory Code
- Support for new and existing NT community housing providers to prepare for registration under the new National Regulatory System
- Support for NT registered providers if non-compliances are identified
- Developing resources for Boards, managers, staff and volunteers so that they understand the requirements for national registration
- Developing networks and advisory services so that NT providers do not have to 're-invent the wheel' in preparing for registration
- Examining the implications for NT providers of making changes to meet the requirements of the national law (e.g. cost and timeframe of changing constitutions; costs and workload associated with putting in place systems and processes to meet the National Regulatory Code)
- Ensuring the National Regulatory System does not lead to an additional regulatory burden for providers
 - Examining opportunities to recognise existing evidence sources—rather than requiring providers to document new evidence
 - Mapping other quality systems such as the National Community Housing Standards to identify how they can be used as evidence for registration assessments
 - Reviewing any state/ territory contractual reporting obligations—to eliminate any duplication of reporting
- Supporting Indigenous community housing providers to participate in the national system—without compromising their ability to maintain control over their land and their assets
 - Investigating the barriers for Indigenous community housing providers to gain national registration (e.g. incorporation requirements; treatment of land)
 - Providing funding and support to ensure Indigenous community housing providers are able to meet the requirements of the National Regulatory Code
- Need for a 2-3 year implementation timeframe in the NT to allow providers time to
 - reach agreement with state/ territory policy and funding agencies on requirements for assets to be included in the 'community housing asset register'
 - negotiate constitutional changes to meet the requirements of the national law
 - develop their systems and practices to meet the requirements of the National Regulatory Code

Preferred option

Participants at the Alice Springs workshops expressed in-principle support for the National Regulatory System over the status quo—although support was conditional on the satisfactory resolution of key implementation issues. Specifically, workshop participants highlighted the overall net benefits of the National Regulatory System in that it

- was consistent with supporting the growth of the community housing sector in the Northern Territory
- would drive quality improvements in the NT community housing sector
- would put a greater focus on remote housing issues by ensuring NT providers were part of the national community housing sector.

At the same time, Alice Springs workshops participants stressed that the benefits of national regulation would only be realised if

- sufficient resources were made available to support sector capacity building for NT providers
- Evidence Guidelines were sufficiently flexible to take account of the delivery issues for providers in regional and remote areas
- there was no increase in regulatory compliance costs for providers.

Participants at the Darwin workshop expressed unanimous in-principle support for the National Regulatory System over the status quo—subject to adequate resources being made available to support the participation of NT providers in the nationally regulated sector. In particular, participants highlighted the overall net benefits of the National Regulatory System in that it

- was consistent with promoting the growth and sustainability of community housing in the NT
- would drive consistent and quality improvements in the NT community housing sector
- would attract additional resources, including private capital, to the NT community housing sector.

At the same time, Darwin workshops participants stressed that the benefits of national regulation would only be realised if

- sufficient resources were made available to support sector capacity building for NT providers
- implementation took account of the delivery issues for providers in regional and remote areas in the NT—including the multiple issues faced by Indigenous community housing providers
- the system was implemented in a way that did not add to the overall regulatory burden for providers.

Australian Capital Territory

This section summarises the feedback from the two ACT consultative forums held in Canberra on 30th November 2011. The first forum was held between 10.00am-12.00pm and was attended by around 15 representatives from current or potential community housing providers operating in the ACT. The second forum was held between 2.30pm-4.30pm and was attended by around 7 representatives from peak bodies and tenant representative organisations.

Perceived costs and benefits

Workshop participants highlighted a number of key points about the likely costs and benefits of the proposed National Regulatory System compared to current regulatory arrangements for community housing.

Housing providers highlighted that the national system had the potential to deliver net benefits in terms of

- reducing the regulatory burden on community housing providers that want to operate in multiple jurisdictions
 - eliminating the need to seek registration under multiple systems and cutting red tape associated with reporting under multiple regulatory systems
 - making it easier for national or multi-jurisdictional providers to operate as a single organisation
- ensuring recognition of all community housing providers across the sector—including the valued role of small providers that efficiently deliver local housing services
- creating a transparent system that allows providers to transition between Registration tiers if and when the scale and nature of their housing activities change or if new funding opportunities become available that require them to be registered in a different tier.

Smaller housing providers operating only within the ACT, particularly those run through volunteer staff and Boards, indicated that there were unlikely to be significant direct benefits under the national system—but at the same time there should not be additional costs if the national system was implemented as intended.

Peak bodies and tenant representative organisations highlighted that the national system had the potential to deliver additional net benefits in terms of:

- Driving more consistent sector performance – through a single National Law and common National Regulatory Code
- Improving tenant outcomes through the adoption of nationally consistent standards across Australia and providing an additional mechanism for tenants to lodge complaints against poorly performing housing providers—provided the focus on tenant outcomes in the National Regulatory Code is clear and comprehensive
- Supporting growth of community housing in the ACT through

- a national system that promotes more competitive neutrality between providers
- fewer barriers to attracting new entrants to operate in the ACT
- an appropriate mechanism to protect jurisdiction investments without placing unnecessary restrictions on providers
- Increasing the confidence of investors and partners in the viability and soundness of the community housing sector—through promotion of the community housing ‘brand’.

Feedback on the draft National Law and National Regulatory Code

Overall, workshop participants indicated that most of the design elements of the National Law appear to be sound—although indicated that the ‘devil would be in the detail’ and some of the proposed provisions would create problems for particular providers.

- Community housing providers and other stakeholders need to be involved in the detailed development of the Evidence Guidelines—that is, the specific evidence and reporting requirements for each of the three Registration tiers.
 - The development process should be underpinned by the principle that Tier 3 providers should not face a greater regulatory burden under the national system than under the current ACT system.
 - Evidence Guidelines will need to make it very clear what level of evidence and reporting is required to demonstrate compliance with each element of the National Regulatory Code (e.g. what evidence will be needed to demonstrate the quality of tenant services)
 - Evidence Guidelines will need to make it clear how existing evidence sources can be used in regulatory assessments (e.g. Accreditation against the National Community Housing Standards; Evidence from the ACT Government pre-qualification scheme; Evidence from other Aged Care and Disability Services regulatory systems)
- Further details are required about whether Registrars will charge a fee for providers to be registered (given that there is a provision for fees in the National Law)
- Clarification is needed about the practicality and reasonableness of the powers of a Statutory Manager
 - Workshop participants understood the rationale for a ‘last resort’ option to ensure the enforceability of agreements about the protection of tenants and community housing assets—in circumstances where a Board was not acting in good faith
 - Appointment of a Statutory Manager raises serious complexities for multi-functional providers
 - How capable/ suitable would a Statutory Manager be in ‘running’ the entire affairs of a multi-functional organisation—where housing may be only a very small part of their business

- How acceptable would the risks of losing control of the organisation be to the Boards of multi-functional providers—which may be ‘forced’ into establishing a subsidiary company
- Clarification of the oversight and monitoring of Registrars—to ensure they adhere to agreed national guidelines and are competent in undertaking their role
 - Reviews of Registrar performance
 - Provisions for stakeholders to complain to the National Regulatory Council about the performance of Registrars
- Clarification of how the principle of the independence of the Registrar from policy and funding decisions will be given effect in the National Law
 - Will the Registrar and the policy and funding agency be under the control of different Ministers
 - Will the Registrar and the policy and funding agency be located within different Departments or under different administrative arrangements
- Some concern was expressed that Tier 1 as proposed is restricted to companies registered under Corporations Law or the CATSI Act, thereby excluding faith based organisations.

Implementation issues

Workshop participants highlighted a number of implementation issues that would need to be addressed if the National Regulatory System was adopted.

- Consultation with the sector on the Evidence Guidelines to ensure evidence and reporting requirements are reasonable, streamlined and focused on key risks—with smaller providers wanting to ensure there is no increase in regulatory burden compared to the Status Quo
- Putting in place transitional arrangements that allows easy transfer from state-based registration to national registration
 - Sufficient time for providers to prepare for the transition
 - Clear, transparent rules for recognising existing registration status and requirements to provide additional evidence for new standards under the National Code
 - Need for policy and funding agencies to undertake an exercise to map current ACT registration standards against the new National Code
- Further consideration is needed of the potential overlap of the NRS with other quality and regulatory systems (National Quality Standards for Homelessness Services; Aged Care Accreditation Standards; National Disability Standards; National Community Housing Standards)
 - Need for policy and funding agencies to undertake a mapping exercise to compared the National Regulatory Code against other quality standards

- Opportunity for the new COAG Standing Council to introduce mutual recognition of different standards
- Providers may need resources and support to manage the transition to national registration—both to bring providers ‘up to Standard’ and to make it easy for providers to demonstrate that they meet the National Code
- Timeframes for implementation must be reasonable
 - Small organisations need time to understand the new requirements and to adapt, improve or change their systems
 - Evidence Guidelines should be released 6-12 months before ‘go live’ to allow providers time to prepare for any changes
 - Providers need advance notice of any changes to reporting requirements – remembering that many providers do not have sophisticated IT systems.

As a general comment, several participants expressed their disappointment at the decision to exclude government providers from the National Regulatory System—arguing that this resulted in a continuation of the existing uneven playing field.

Preferred option

For moderate and large-scale housing providers that operate with paid staff, there was unanimous agreement that the proposed National Regulatory System (Option 2) was preferable to Option 1 (status quo).

For multi-functional providers where housing is a relatively small part of their overall activities (e.g. large faith-based charities), there was in-principle support for the proposed National Regulatory System (Option 2)—although the support was conditional on being able to satisfactorily resolve concerns about the operation of Registrar powers.

For small housing providers with volunteer staff, there was not a clear preference for Option 2 over Option 1—highlighting that it was difficult to decide until details of the Evidence Guidelines for Tier 3 had been released.