INTER-GOVERNMENT AGREEMENT FOR A NATIONAL REGULATORY SYSTEM FOR COMMUNITY HOUSING PROVIDERS

2 AUGUST 2012

1 Parties

An Agreement made between:

- (a) the Commonwealth of Australia;
- (b) the State of New South Wales;
- (c) the State of Victoria;
- (d) the State of Queensland;
- (e) the State of Western Australia;
- (f) the State of South Australia;
- (g) the State of Tasmania;
- (h) the Australian Capital Territory; and
- (i) the Northern Territory of Australia.

2 Recitals/Background

- (a) To date, regulatory arrangements for the registration and accreditation of Community Housing Providers have varied across the States and Territories.
- (b) Consistent with the reform directions outlined in the National Affordable Housing Agreement (NAHA) and Nation Building and Jobs Plan National Partnership Agreement, governments of the Commonwealth and of the States and Territories have agreed to introduce a nationally consistent regulatory system for Community Housing Providers.
- (c) In June 2011, the Commonwealth and State and Territory Ministers agreed in principle to draft specifications for a national regulatory system to encourage the development, viability, good governance and quality of social and affordable housing by providing for the registration of Community Housing Providers and the ongoing monitoring and regulation of registered Community Housing Providers.
- (d) The Parties have agreed that the National Regulatory System for Community Housing Providers should be established and should be given legal effect through the introduction of the National Law.
- (e) The National Law will be established under legislation of the Parliament of the Host State, with each other Participating Jurisdiction either passing legislation applying the legislation passed by the Parliament of the Host State or enacting corresponding legislation that substantially corresponds to the legislation passed by the Parliament of the Host State (except for any minor or inconsequential

- differences), in each case so as to establish the National Regulatory System.
- (f) This Agreement outlines each Party's commitment towards achieving and maintaining the National Regulatory System.

3 Objectives and Purpose

3.1 Objectives of the National Regulatory System

The objectives underpinning the National Regulatory System are to:

- (a) provide a consistent regulatory environment to support the growth and development of not-for-profit Community Housing Providers;
- (b) provide an avenue for regulated participation by for-profit Community Housing Providers;
- (c) reduce the regulatory burden for Community Housing Providers working across Participating Jurisdictions;
- (d) provide a level playing field for Community Housing Providers seeking to enter new Participating Jurisdictions; and
- (e) Implement a system that is interpreted and implemented in ways that are:
 - (i) Proportionate reflecting the scale and scope of related activities;
 - (ii) Accountable able to justify regulatory assessments and be subject to scrutiny;
 - (iii) Consistent based on standardised information and methods;
 - (iv) Transparent clear and open processes and decisions;
 - (v) Flexible avoiding unnecessary prescriptions and impositions on how housing providers organise their business and demonstrate compliance with performance requirements; and
 - (vi) Targeted focused on the core purposes of improving tenant outcomes and protecting vulnerable tenants; protecting government funding and equity and ensuring investor and partner confidence.

3.2 Purpose of the Agreement

The purpose of this Agreement is to create a framework for establishing and maintaining ongoing arrangements for a National Regulatory System for Community Housing Providers that:

(a) improves tenant outcomes and protects vulnerable tenants;

- (b) protects present and future government funding and equity in social and affordable housing; and
- (c) enhances confidence for persons (including investors and financiers) having dealings with registered Community Housing Providers.

4 Registration of Community Housing Providers under the National Regulatory System

- (a) The National Law will provide for the registration of Community Housing Providers under the National Regulatory System.
- (b) The registration of Community Housing Providers in the National Regulatory System will be implemented in accordance with the provisions of the National Law.
- (c) Community Housing Providers will be registered under a tiered arrangement as provided in guidelines made jointly by the relevant Ministers of each participating jurisdictions.
- (d) Registration under the National Regulatory System will not be compulsory for Community Housing Providers.
- (e) Government funding agencies may make it a requirement of receiving or retaining government housing assistance that a Community Housing Provider is registered under the National Law.

5 Roles and Responsibilities

5.1 Role and responsibilities of the Parties

The Parties will:

- (a) work collaboratively regarding the establishment, ongoing operation of and future changes to the National Regulatory System;
- (b) make recommendations to the Ministers and the Ministerial Council in relation to the establishment, ongoing operation of and future changes to the National Regulatory System; and
- (c) facilitate monitoring of the effectiveness of the National Regulatory System.

5.2 Role and responsibilities of the Host State

The Host State will:

(a) submit to its Parliament the National Law as agreed by the Ministerial Council;

- (b) submit to its Parliament a bill to amend the National Law as agreed from time to time by the Ministerial Council;
- (c) advise the Parties as soon as possible of any matter that would adversely affect, detract from and/or impede its role as Host State;
- (d) not submit a bill to, or lay a regulation before, its Parliament which would be inconsistent with, or alter or repeal the effect of, the National Law, in each case without the prior agreement of the Ministerial Council;
- (e) undertake functions as Host State as required by the National Law;
- (f) ensure any necessary consequential amendments (including repeal) are made to other legislation in the Host State; and
- (g) agree to provide such information to the Parties as is necessary to support the establishment, ongoing operation of and future changes to the National Regulatory System.

5.3 Role and responsibilities of the Participating Jurisdictions

Each Participating Jurisdiction, except for the Host State whose role is specified in **clause 5.2**, will:

- (a) ensure that legislation is submitted to its Parliament either as a Mirror Law or Applied Law to enable the application of the National Law as enacted in the Host State;
- (b) submit to its Parliament any necessary consequential amendments (including repeal) to enable ongoing consistency with the National Law;
- (c) not submit a bill to, or lay a regulation before, its Parliament which would be inconsistent with, or alter the effect of or repeal, the National Law, in each case without the prior agreement of the Ministerial Council; and
- (d) agree to provide such information to the Parties as is necessary to support the establishment, ongoing operation of and future changes to the National Regulatory System.

5.4 Existing policy and funding roles and responsibilities unaffected

The existing policy and funding roles and responsibilities of each Party are unaffected by of the National Regulatory Scheme or this Agreement.

6 Enactment of legislation

6.1 Host State

- (a) The Host State will host the National Law.
- (b) As soon as practicable after the Ministerial Council has approved the National Law, the Host State will submit the National Law to its Parliament.
- (c) The National Law will stipulate the Commencing Date for the National Law.

6.2 Applied Law jurisdictions

- (a) Each Applied Law Jurisdiction will, as soon as practicable after the enactment of the National Law in the Host State, submit to its Parliament applicable legislation applying in its jurisdiction the National Law as enacted in the Host State.
- (b) The legislation passed by the Parliament of each Applied Law jurisdiction will commence no later than the Commencing Date or within a specified period after the Commencing Date approved by the Ministerial Council.

6.3 Mirror Law jurisdictions

- (a) Each Mirror Law Jurisdiction will, as soon as practicable after the enactment of the National Law in the Host State, submit to its Parliament applicable legislation that substantially corresponds to the provision in the National Law as enacted in the Host State (except for any minor or inconsequential differences).
- (b) Each Mirror Law jurisdiction will use its best endeavours to commence the legislation passed by its Parliament no later than the Commencing Date or within a specified period after the Commencing Date approved by the Ministerial Council.

6.4 Guidance of legislative content

At a minimum the National Law will provide:

- (a) The Objectives;
- (b) A National Register of Community Housing Providers;
- (c) The appointment, roles, functions and responsibilities of Registrars;
- (d) The registration of community housing providers; and
- (e) The sharing of information between parties.

7 Transitional Arrangements

7.1 Amending/repealing existing legislation

Each Participating Jurisdiction will, no later than the Commencing Date or within a specified period after the Commencing Date approved by the Ministerial Council, use its best endeavours to repeal, amend or modify any other legislation applying in its jurisdiction that is inconsistent with, or would alter the effect, scope or operation of, the National Law or this Agreement (other than legislation in relation to the operational transitional arrangements permitted under **clause 7.2**).

7.2 Operational transitional arrangements

- (a) The Parties will agree a national and consistent approach to transitional arrangements and implementation for the National Law.
- (b) Any required transitional arrangements and derogations from the National Law will be the responsibility of the Participating Jurisdictions.
- (c) Each Participating Jurisdiction will ensure that any transitional arrangements or derogations will:
 - (i) be limited in duration and extent, to transitional arrangements and derogations essential to the orderly introduction of the arrangements contemplated by the National Law; and
 - (ii) except where otherwise agreed by the Ministerial Council under **clause 7.1**, be phased out, repealed or terminated within, or on the last day, of a specified period after the Commencing Date approved by the Ministerial Council.
- (d) The Ministerial Advisory Committee will advise the Ministerial Council on the implementation of the National Law and any transitional arrangements or derogations.
- (e) Notwithstanding the nationally agreed transition arrangements outlined in **Clauses 7.2 (a)** and **7.2 (b)**, Participating Jurisdictions are able to enter into or continue any legally binding arrangements with a community housing provider.

7.3 Displacement of Corporations Act

To the extent any provisions of the National Law (or any provisions of any Applying Legislation that are not consistent with the National Law but are otherwise approved by the Ministers under this Agreement) are or would be inconsistent with the Corporations Act, the National Law and any Applying Legislation may displace the provisions of the Corporations Act in accordance with section 5G of the Corporations Act.

7.4 Indigenous Community Housing Organisations

It is acknowledged that the displacement provisions of the Corporations Act do not apply to the CATSI Act.

Two years after the commencement of the National Regulatory System a review of the level and the manner of participation of Indigenous community housing providers in the National Regulatory System up to that point will be undertaken. The review will examine whether further effort is required to maximise participation of Indigenous community housing providers in the National Regulatory System and may include reference to the CATSI Act to ensure relevant consistency with the National Law.

7.5 Co-existence with the Australian Charities and Not-for-profit Commission (ACNC) scheme

- (a) The Parties acknowledge that as at the date of this Agreement the Commonwealth intends to reform the regulation and taxation of not-for-profit organisations and charities and will seek to enact legislation to implement those reforms.
- (b) The Parties agree that if legislation is enacted for the regulation of not-for profit organisations and charities, the Parties will consult with a view to agreeing and developing arrangements to ensure the effectiveness and co-existence of the ACNC Scheme Legislation and the National Regulatory System.

8 Alteration of the National Regulatory System including amendments to the National Law

8.1 Review of the operation and effectiveness of the National Regulatory System

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

8.2 Amending the National Law

- (a) Any Party may propose amendments to the National Regulatory System or National Law by submitting the proposed amendments to the Ministerial Council for consideration together with the following information:
 - (i) a description of the amendment and the justification for the amendment;
 - (ii) a description of the key features of the National Regulatory System or National Law which the proposed amendment seeks to address;
 - (iii) a discussion of alternative methods of addressing the subject matter of the amendment, including any non- regulatory methods; and
 - (iv) if required, a draft regulation impact statement.
- (b) The Ministerial Council will consider and make a determination on the proposed amendments. If the proposed amendment does not alter and is not inconsistent with the National Regulatory System Objectives and Purpose specified in Clause 3 of this Agreement, a majority decision of the Ministerial Council in relation to the proposed amendment is effective and binds the Ministerial Council. If the proposed amendment alters or is inconsistent with National Regulatory System Objectives and Purpose specified in Clause 3 of the Agreement, a unanimous decision of the Ministerial Council in relation to the proposed amendment is required to be effective and to bind the Ministerial Council.
- (c) If a proposed amendment to the National Law is agreed by the Ministerial Council as outlined in clause 8.2(b), the Host State will submit to its Parliament a bill in a form agreed by the Ministerial Council which has the effect of amending the National Law in the manner agreed.
- (d) If an amendment to the National Law is passed by the Parliament of the Host State, then:
 - (i) in each Applied Law Jurisdiction the amendment to the National Law is taken to apply as at the date the amendment become effective in the Host State; and
 - (ii) each Mirror Law Jurisdiction will as soon as practicable after the enactment of the amendment to the National Law in the Host State enact an amendment to its Mirror Legislation to ensure consistency with the National Law as amended in the Host State.

8.3 Mirror Law Amendments

A Mirror Law Jurisdiction must not submit a Bill to its Parliament to amend its Mirror Law legislation (except for minor or inconsequential amendments) without the prior agreement of the Ministerial Council noting that the final decision rests with Parliament with regards any amendments to the Mirror Law legislation.

9 Governance

9.1 Ministerial Council

- (a) A relevant Ministerial Council, comprising Ministers nominated by each State and Territory and the Commonwealth will have oversight of the National Regulatory System using the decision-making processes of the Ministerial Council or other appropriate mechanism agreed by the Ministerial Council.
- (b) The Ministerial Council, which represents the Parties, will be responsible for:
 - (i) approving, and approving changes to, the National Law;
 - (ii) issuing policy directions for the National Regulatory System;
 - (iii) appointing members to the NRC;
 - (iv) approving protocols and operational guidelines;
 - (v) determining any disputes related to cross-jurisdictional issues that cannot be resolved by the Ministerial Advisory Committee; and
 - (vi) approving National Regulatory System performance standards.
- (c) Except as set out in **clause 8.2(b)**, majority decisions of the Ministerial Council will be effective and binding.

9.2 Ministerial Advisory Committee

- (a) A Ministerial Advisory Committee will advise the Ministerial Council on:
 - (i) policy requirements for the National Regulatory System to meet government priorities and objectives; and
 - (ii) any such other matters referred to the Ministerial Advisory Committee from time to time by the Ministerial Council.
- (b) The Ministerial Advisory Committee may establish such advisory committees as the Ministerial Advisory Committee may require from time to time. Such advisory committees may or may not include external members.

(c) The Ministerial Advisory Committee will resolve any cross jurisdictional issues relating to the National Law.

9.3 National Regulatory Council

Functions

- (a) A NRC will be established as an independent advisory committee appointed by the Ministerial Council with the following functions:
 - (i) to publish, review and administer protocols and guidelines to ensure the implementation and ongoing effectiveness of the National Regulatory System in line with the agreed Objectives and Purpose specified in Clause 3 of this Agreement, specifically in relation to:
 - (A) the consistency and quality of regulatory decisions and conduct across the network of Participating Jurisdiction regulators;
 - (B) the assurance that Participating Jurisdiction regulators are meeting agreed performance standards and national guidelines;
 - (C) the availability of consistent, high quality information on the performance of registered Community Housing Providers; and
 - (D) the maintenance of a single national register of Community Housing Providers.
 - (ii) to periodically review the National Law and evaluate the effectiveness of the National Regulatory System;
 - (iii) to provide advice and make recommendations to the Ministerial Council;
 - (iv) to provide recommendations to the Registrars in regard to the interpretation and application of the National Law;
 - (v) to put in place mechanisms to consult with industry and relevant technical experts to ensure the ongoing development of the National Regulatory System is informed by the best available evidence; and
 - (vi) to provide an annual report to the Ministerial Council on the operation and implementation of National Regulatory System.
- (b) The Ministerial Council may agree to give the NRC other functions. The NRC may determine its own procedures subject to the objectives and provisions set out in the National Law and any directions of the Ministerial Council.

(c) The Parties will determine proportional funding contributions to the operation of the NRC and any support arrangements.

Membership

The NRC will consist of:

- (a) one representative from each Party (nominated by the relevant Minister);
- (b) not more than two experts nominated by the Ministerial Council;
- (c) one member nominated by the Ministerial Council drawn from the community housing industry; and
- (d) a chair appointed by the Ministerial Council from paragraphs (a), (b), or (c) above.

9.4 Registrars

- (a) There is to be a Registrar appointed for each Participating Jurisdiction.
- (b) The Registrars will:
 - report from time to time, and upon request of the Minister, to the Minister in its Participating Jurisdiction regarding matters related to the Registrar's function and aspects of the National Regulatory System;
 - (ii) meet as required to ensure consistency in the administration of the National Law; and
 - (iii) undertake such functions as may be prescribed in the National Law, or determined by the Ministerial Council from time to time.

10 Industry Development

The Parties agree to work together to seek to support and maintain a national focus on industry development within their policy making and funding agencies.

11 Reporting and Data Collection

11.1 Annual Reporting

- (a) The NRC will report annually to the Ministerial Council on:
 - (i) consistency and quality of regulatory decisions; and
 - (ii) compliance with agreed performance requirements and national protocols and guidelines.

- (b) Each Registrar will provide an annual report to the NRC on meeting the requirements set out in **clause 11.1(a)**.
- (c) The Ministerial Council may request an independent assessment/evaluation of compliance with performance requirements and national protocols and guidelines.
- (d) The Parties will:
 - (i) work together to ensure that there are appropriate mechanisms in place to monitor and publicly report on the implementation of the commitments in this Agreement; and
 - (ii) provide such assistance as is reasonable required to enable the NRC to prepare and publish the annual report.

11.2 Data collection

- (a) The Parties acknowledge that effective data collection is required to enable consistent and reliable assessments by Registrars of Community Housing Provider performance against the requirements of the National Regulatory System.
- (b) The Parties agree to:
 - (i) work cooperatively to ensure effective data collection to assist with the operation of the National Regulatory System;
 - (ii) review the existing data collection processes in their jurisdiction and identify those items that will need to be collected outside the National Regulatory System; and
 - (iii) share where appropriate outcomes of data collection.
- (c) The Parties will use their best endeavours to develop a memorandum of understanding with the ACNC which agrees to align data collection and reporting activities, and to share outcomes from data collection, monitoring, investigation and reporting activities.

12 Funding and Resourcing

- (a) The obligations of Parties under this Agreement are subject to the satisfactory resolution of the financial arrangements for the National Regulatory System through the Ministerial Council, including further analysis of the infrastructure costs of the National Regulatory System.
- (b) Funding arrangements will be reviewed periodically and endorsed by Ministers.
- (c) The National Law may provide for the payment of fees and other charges in relation to registration.

13 Resolution of Disputes

- (a) If a dispute arises in relation to the operation of this Agreement the Parties will use their best endeavours to settle the dispute through direct negotiation, acting in the spirit of cooperation.
- (b) If the Parties are unable to resolve the dispute, the Parties shall refer the dispute to the Ministerial Council who will seek to resolve the issues.

14 Commencement

The provisions of this Agreement will commence for each Party on the date this Agreement is signed by all of the Parties.

15 Variation of this Agreement

15.1 Variations of this Agreement

- (a) This Agreement may be varied from time to time with the agreement of all of the Parties.
- (b) Any proposal to vary this Agreement will be submitted to the Parties.
- (c) Any variation of this Agreement will be made in writing and executed by all of the Parties to this Agreement, and will include the date on which the variation will come into force, which will be no earlier than the date on which the agreement is signed by all of the Parties.

16 Withdrawal from/termination of Agreement

- (a) The Parties agree that withdrawal from this Agreement will be a measure of last resort.
- (b) A Party that proposed to withdraw from this Agreement will notify all other Parties of its intention to do so by giving at least 12 months written notice.
- (c) In the event of the withdrawal from this Agreement by a Party that is a State or Territory this Agreement will continue to operate while the Commonwealth and any other Party to this Agreement remains a signatory to the Agreement.
- (d) This Agreement may be terminated by consent of all the Parties.

17 Definitions and Interpretations

In this Agreement, unless the context appears otherwise:

Applying Legislation means the legislation (including any regulations) enacted by a Participating Jurisdiction pursuant to either **clauses 6.1(b)**, **6.2(a)** or **6.3(a)** as the case may be and as amended from time to time.

ACNC Scheme Legislation means the legislation (including any regulations) intended to be enacted or enacted by the Commonwealth on or after the date of this Agreement to regulate the operation and taxation of not-for-profit organisations and charities.

Agreement means this Inter-Governmental Agreement as amended from time to time in accordance with **clause 15.1**.

Applied Law Jurisdiction means a State or Territory in which the Parliament enacts Applied Law Legislation, and amends such legislation from time to time that substantially corresponds to any amendments to the National Law (except for minor or inconsequential differences).

Applied Law Legislation means legislation enacted by a State or Territory Parliament that corresponds to the provisions in the National Law (except for minor or inconsequential differences).

CATSI Act means the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth) as amended or substituted from time to time.

COAG means the Council of Australian Governments.

Commencing Date means the date the National Law or the substantive provisions of the National Law become or is to become effective in the Host State and being either:

- (a) a specified date; or
- (b) a date that occurs within a specified period of time after the date of royal assent for the National Law in the Host State.

Commonwealth means the Commonwealth of Australia.

Community Housing means housing for people on a very low, low or moderate income or people with additional needs that is delivered by non-government organisations.

Consent means 100% agreement of the Parties

Corporations Act means the Corporations Act 2001 (Cth) as amended or substituted from time to time.

Host State means the State of New South Wales.

Minister means a minister with the portfolio responsibility for the administration of the provision of the National Law from a Participating Jurisdiction or the Commonwealth, or both as the context requires.

Ministerial Advisory Committee means a committee of senior government officers appointed by the Ministerial Council.

Ministerial Council means the relevant Standing Council appointed by COAG such as the COAG Community, Housing & Disability Services Standing Council or its successor or a subset thereof which will comprise a Commonwealth Minister and the Ministers nominated by each State and Territory that are responsible for the National Regulatory System. In the absence of a Ministerial Council, references to Ministerial Council are taken to be references to COAG or its delegate.

Mirror Law Jurisdiction means a State or Territory in which the Parliament enacts Mirror Legislation, and amends such legislation from time to time that substantially corresponds to the National Law (except for minor or inconsequential differences).

Mirror Legislation means legislation enacted by a Participating Jurisdiction Parliament that substantially corresponds to the provisions in the National Law (except for minor or inconsequential differences), but only in relation to that State or Territory and includes legislation that applies the National Law in a participating jurisdiction.

National Law means the legislation and regulations establishing and governing the National Regulatory System for Community Housing Providers that is enacted in the Parliament of the Host State and adopted by Mirror Law Jurisdictions and Applied Law Jurisdictions as the law of their Parliaments and includes any subsidiary legislation and instruments made pursuant to that legislation as well as any other guidelines determined by the Parties under this Agreement, as amended from time to time.

National Register means the National Register of Community Housing Providers established by the National Law.

National Regulatory Council or NRC means the National Regulatory Council to be appointed by the Ministerial Council.

National Regulatory System means the national regulatory system for Community Housing Providers and includes the National Law and the supporting administration, structures and systems that enable the operation of those Community Housing Providers within the National Regulatory System.

National Regulatory System Objectives means the objectives set out in **clause 3.1** of this Agreement and any other objectives for the National Regulatory System as developed from time to time.

National Regulatory System performance standards means the evaluation criteria for the efficiency, effectiveness and quality of the National Regulatory System and its administration by Registrars

Participating Jurisdiction means the Host State, a Mirror Law Jurisdiction or Applied Law Jurisdiction, and which is Party to this Agreement (and excludes the Commonwealth).

Party means a party to this Agreement.

Registrars means the registrars of Community Housing Providers in each Participating Jurisdiction, except where a Participating Jurisdiction has an

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agency agreement with another Participating Jurisdiction to act as their Registrar.

regulation means all obligations imposed by governments, whether by legislation, legislative instruments, codes or guidelines.

State means any of the State of New South Wales, the State of Victoria, the State of Queensland, the State of Western Australia, the State of South Australia or the State of Tasmania, or all of them, as the case may be.

Territory means any of the Australian Capital Territory or the Northern Territory of Australia, or both, as the case may be.

SIGNED FOR AND ON BEHALF OF EACH OF THE PARTIES BY:

Signed for and on behalf of the Commonwealth of Australia by	
[INSERT] Minister for Housing	
Signed for and on behalf of the State of New South Wales	
[INSERT] Minister for Family and Community Services	
Signed for and on behalf of the State of Victoria	
[INSERT] Minister for Housing	
Signed for and on behalf of the State of Queensland	
[INSERT] Minister for Housing and Public Works	

Signed for and on behalf of the State of So	uth Australia
[INSERT] Minister for Social Housing	
Signed for and on behalf of the State of Wo	estern Australia
[INSERT] Minister for Housing	
Signed for and on behalf of the State of Ta	smania
[INSERT] Minister for Human Services	
Signed for and on behalf of the Northern T	erritory
[INSERT] Minister for Public and Affordable Housing	
Signed for and on behalf of the Australian	Capital Territory
[INSERT] Minister for Community Services	