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1.0. Executive Summary

This study was commissioned to provide a high-level review of the current Australian National Regulatory System for Community Housing (NRSCH) and raise questions for future NRSCH reviews. This study also provides a similar high-level review of several international community housing regulatory systems and discusses some lessons learned.

In early May 2019 Wendy Hayhurst (CEO- Community Housing Industry Association) provided the Sustainable Living Infrastructure Consortium (SLIC) and their academic research alliance partner Griffith University a study brief “National Regulatory System for Community Housing – Lessons from other Jurisdictions” (the brief is attached in Appendix 1).

The study methodology adopted the following activities:

1. A review of relevant Australian literature
2. A review of Relevant International Literature
3. The development of Key finding for the study workshop held on the 15th July 2019 in the boardroom of NAHC
4. The development of Key questions for future NRSCH reviews

The workshop presented the initial study findings and followed by an open workshop discussion at which the following categories and key questions were identified for further review using a focus group format.

1. Principles for Good Governance
2. Purpose of Regulation
3. Who is the Regulator?
4. Who is Regulated?
5. What is Being Regulated?

It is currently envisaged conducting a focus group in Canberra during September 2019 following the national CHIA board meeting. In preparation for the September focus group, work will be undertaken to structure the actions around (Griffith University are currently processing the required ethical clearances)

- a) Identified key questions and categories
- b) Current official survey results as contained in the various NRSCH reports
- c) Community housing sector commentary
- d) Various third-party study papers
- e) International review findings

2.0. Study Background

2.1. Introduction

This study provides a high-level review of the current Australian National Regulatory System for Community Housing (NRSCH) and raises questions for future NRSCH reviews. This study also provides a similar high-level review of several international community housing regulatory systems and discusses some lessons learned.

In undertaking this study, the SLIC and Griffith University team was as follows:

Professor George Earl-SLIC and Griffith University

Professor Eduardo Roca- Griffith University

Associate Professor Richard Chung- Griffith University

Dr. Benjamin Liu- Griffith University

Mr. Prabath Morawakage- PhD Scholar Griffith University

In early May 2019 Wendy Hayhurst (CEO- Community Housing Industry Association) provided the Sustainable Living Infrastructure Consortium (SLIC) and their academic research alliance partner Griffith University a study brief “National Regulatory System for Community Housing – Lessons from other Jurisdictions” (the brief is attached in Appendix 1).

Professor George Earl (SLIC and Griffith University), Wendy Hayhurst (CHIA) and Professor Hal Pawson (UNSW) held a research briefing meeting at the UNSW on the 24th May 2019 and professor Earl held several briefing discussions with Mike Myers (MD-National affordable Housing Consortium) on the study brief. Additionally, Professor Earl held discussions with Carol Croce (National Affordable Housing Providers Ltd.) to obtain some additional insights to the development and operation aspects of the NRSCH.

2.2. Study Methodology

This study has undertaken

1. A review of relevant Australian literature
2. A review of Relevant International Literature
3. The development of Key finding for the study at the workshop held on the 15th July 2019 in the boardroom of NAHC
4. The development of Key questions for future NRSCH reviews

3.0. Study Workshop and Key Questions

3.1. High-Level Research Issues

From the initial study brief the high-levels issues identified by the team are listed below:

Issue 1: Regulatory Change

- Have changes to standardise frameworks been successful?
- If so how?
- How do stakeholders view the changes?

Issue 2: Regulatory Change Governance

- Maintaining Registrar Independence
- Ensuring Consistency
- Have flexibility to respond to changing environments
- Giving tenants voice

Issue 3: Impact of NRSCH Chief Executive Officers

- Does the size of State matter?
- How are differing conditions accounted for (e.g. disability, homelessness & Indigenous considerations)
- How has risk been accounted for?
- Is there a difference between T1 & 2 organisations?

Issue: 4 Risk

- How is risk identified
- How are risk handles by various NRSCH

Issue: 5 Change Management

- How do various NRSCH handle change
- New providers
- Increasing diverse activities
- Fewer organisation due to mergers

Issue: 6 International Experience

- What changes have occurred by location
- What can Australia learn for this experience

Issue: 7 Tenant Relationship

- Openness between NRSCH and tenants
- How do NRSCH address tenant concerns
- How are tenant NRSCH interests met
- The role of tenant representative groups

Issue 8: Housing Management

- How is affordable housing (not social) managed?

Issue 9: Sector Review

- Performance openness review
- What is being done to make performance review more transparent?

Issue 10: Self-Regulation

- To what extent has self-regulation been introduced to the sector?
- Has self-regulation been successful?

Issue 11: NFP and Public Housing Regulation

- How does NPF and PH regulation compare to general practice?
- What are the + & - to the current practice?
- Are they in the same system if not why and is it important?

Issue 12: Current Regulatory Bodies

- An overview of the current structure
- How do they work together?

Issue 13: Acceptance of the Current Regulatory System

- Is the current system valued?

Issue 14: Current Regulatory System Resourcing

- Is the current system adequately resourced (quantity and quality)?
- How can it be improved?
- Do the resources have capacity to provide appropriate provider and financial review?

3.2. Initial Study Key Question Categories

From the above identified high-level issues, the team segmented the key questions into the following categories raising the associated questions as the basis of discussion at a workshop conducted in the Office of the NAHC on the 15th July 2019.

1. Risk assessment:

- a) How do successful regulatory regimes tailor their risk assessment requirements to focus on the functions of the Community Housing Providers rather than the size and scale.
 - **Example:** A provider with 3,000 properties solely doing tenancy management is much different from a risk perspective than a provider with 400 properties but who is involved in development projects with joint venture partners.
- b) The need for a regulator and its staff to have the capacity to accurately assess a Community Housing Providers capability in risk management.

2. Flexibility of the regulatory framework:

- a) Is the regulatory framework (RFk) 'nimble' enough to adapt to a changing industry environment, to accommodate new players (such as for-profit providers and public housing entities);
- b) Is the RFk able to regulate providers under different requirements based on their function and role in the housing industry.
 - **Example:** Are providers deliver affordable housing (mid-market housing) services regulated for community engagement functions in the same way as providers delivering social housing functions, including instances where a housing provider delivers both types of housing?

3. Role of an oversight/review council or entity:

- a) How are broader policy disputes or concerns resolved?
- b) How are regulations reviewed, evaluated and potential revisions implemented?
- c) What is the process to address tenant concerns and interests and a place for a tenant voice or perspective?
- d) How do other regimes establish what should be a regulatory compliance measure and what should be a best practice standard of service delivery?

4. Availability/transparency of data:

- a) How do we determine what data is required to be collected; i.e. what is the specific purpose and utilisation of collected information?
- b) How will that data be useful to stakeholders and/or provide necessary assurances to the financial sector and funding entities?
- c) What is the critical information needed to provide useful information about sector performance, support policy development and assuage financial institution concerns? (to avoid is collecting data for the sake of collecting data that is merely 'interesting').

5. Nexus between regulation and funding decisions:

- 1. How does the regulatory system dovetail with government funding processes and housing policy?
- 2. Is the independence of a regulator free from unwarranted and unwelcomed influence of Housing Authorities over the operational functions of Community Housing Providers?
- 3. Is the use of the tier system more of a 'leagues table' a true and useful mechanism?

6. Duplication of effort and perhaps sharing of data:

- a) Does the RFk regime collect the same data that structures such as Australian Charities and Not-For-Profit Commission?
- b) If so, why ask for it again?

3.3. Study Workshop

Introduction

On the 15th July 2019, we held a workshop on the CHIA study brief in the boardroom of the NAHC in Milton, Queensland where the attendees were:

Professor George Earl-SLIC and Griffith University

Professor Eduardo Roca- Griffith University

Associate Professor Richard Chung- Griffith University

Dr. Benjamin Liu- Griffith University

Mr. Prabath Morawakage- PhD Scholar Griffith University

Wendy Hayhurst – CEO of Community Housing Industry Association, Australia

Mike Myers- MD of the National Affordable Housing Consortium

Josephine Ahern- CEO Community Housing Industry Association, Queensland

Jenny Samms: Director of Homeless Persons

Hayley Parkes: Housing Choices Australia

Workshop Structure

1. The structure of the workshop was to inform the attendees on work to date and identify a pathway forward.
2. The workshop was chaired by Professor George Earl.
3. Wendy Hayhurst and Mike Myers were asked to briefly outline the rationale behind the study.
4. Other industry attendees were asked to provide a summary of key issues to inform the future workshop discussions.
5. Professor George Earl introduced the research team plus the research methodology used to date.
6. Mr. Prabath Morawakage- PhD Scholar Griffith University provided an overview of his international review of Community Housing regulative frameworks to guide the workshop discussions.

7. Professor George Earl provided a summary of quantitative data on the performance of the current Australian National Regulatory System for Community Housing (NRSCH).
8. There was an open discussion on issues to guide the future research work.
9. From the discussion several key areas and questions were developed, with the intention of conducting a series of open focus group discussions.
10. Follow up discussions between Professor George Earl and Wend Hayhurst decided to
11. i. Provide a brief summary paper of work and process to date (this paper)
12. ii. Undertake a potential limited focus group discussion following the September CHIA national Board Meeting in Canberra in Early September 2019 which will be conducted by Professor George Earl. Second paper would be produced with the workshop finding to guide future CHIA action.

Community Housing Focus Group Key Areas and Questions

After various presentations and open discussion, the following key areas and questions were identified.

A) Principles for Good Governance

1. What are they?
2. What difference would they make to;
 - i. Agency
 - ii. Tenant
 - iii. Governance
3. How do we make them operational?

B) Purpose of Regulation

1. Are they to protect,
 - i. Public?
 - ii. Investors?
 - iii. Users?
2. Rationale for regulation focus on public, investors & users.
3. Regulation reputational linkages
 - i. Confidence
 - ii. Social licence

- iii. Public testing of investment
- iv. Protection or recognition of market failure
- v. Are community housing & social housing in the same system

C) Who is the Regulator?

1. National or State and rationale
2. Relationship between the regulator and public policy
3. Is the regulator system pre-existing or a new or existing independent body and rationale for the preference?

D) Who is Regulated?

1. Are we regulating,
 - i. Activities or
 - ii. Institutions
2. Based on the question of who is regulated how we compile the appropriate list and groupings
3. Can organisation have an opt in or opt out position/opportunity

E) What is Being Regulated?

1. Are we regulating,
 - i. Activities
 - ii. Procedure
 - iii. Institutions
2. Is an international context we can draw upon?
3. What is **NOT** regulated

As this study is undertaken by a university (Griffith University) the undertaking of any focus groups must be cleared by the university ethics committee. This ethic clearance is now underway and is anticipated to be completed before the proposed September 2019 CHIA board meeting. Meanwhile, work will be undertaken to give a granular expansion of the key areas and questions outlined above.

4.0. Australian Context

4.1. Introduction

The previous sections of the study identified key questions and categories for review of the NRSCH framework. In future focus group processes, it is important to summarise

- a. Current official survey results as contained in the various NRSCH reports
- b. Community housing sector commentary
- c. Various third-party study papers

This section of the study provides a brief review of the above, which will provide a guide to the proposed CHIA focus group process in September 2019, in Canberra.

4.2. Current Official Survey Results as Contained in the Various NRSCH Reports

The NRSCH conducts regular surveys of provider participation in the system, provider compliance and satisfaction, asset/tenancy management, provider/regulator interaction and financial performance benchmarking and these findings are published in the NRSCH annual report. However, they do not include Victoria or Western Australia who remain outside the current system.

Last published NRSCH report indicated a “high” to “very high level” of satisfaction with the NRSCH System. The followings are some of the various survey/ report findings.

4.3. Provider Participation in the System (2015/16 to 2016/17 Change)

The number of overall providers in the NRSCH System have grown by 14% and total 284, with the following segmented “tier categories”.

- a) Tier 1 – Approximately 11%
- b) Tier 2 – Approximately 12%
- c) Tier 3 – Approximately 77%

With this provider participant growth about 67,000 dwellings are now in the current NRSCH System (excluding Victoria and Western Australia).

4.4. Asset and Tenancy Management

The latest annual report on the NRSCH System website indicates the followings:

- a) Based on surveys returned 88% of tenants are happy with the service being provided by T1&2 providers, while overall tenancy satisfaction (all tiers) is greater than 75%
- b) Asset utilisation or occupancy rates have a participation of over 97%

- c) Financial performance of assets is being assisted by the utilisation rates indicated above plus the level of rental arrears which is less than 2.5%. These two have resulted in the financial returns on assets 71% EBITDA which is greater than the target marginal rate.

4.5. Community Housing Sector Commentary

After summarising the official NRSCH System survey and report findings, this section summarises some of the rhetoric of the community housing sector on which the upcoming focus group process will be structured while considering the categories and key questions identified in the July 2019 workshop in the NAHC office.

Issues and Commentary Raised by Various Community Sectors Participants

- a) Is the purpose of the NRSCH to regulate/manage risk?
- b) If that's the purpose, cut out some of the current regulations which do not pertain to risk but are more appropriately covered by assessment against a set of standards (if that's the status they were in place before the regulatory change).
- c) Is NRSCH a data collection exercise (if so, these standards were established to set out best practice and self-improvement; and where removed in the regulatory framework and now act as compliance measures. It is believed that these need to be separated).
- d) How are tenants' needs and priorities addressed?
- e) What is a best practice model for governance to achieve a high standard of service delivery, if so, should these be returned to be part of a regulatory regime or whether there should be a push for re-establishing the community housing standards?
- f) Are community housing regulations associated with government funding allocations and housing policy a key concern? An example is treating the tiers as a performance indicator. The sector is aware of many examples where funding is only available to CHPs of a certain tier as it is used inappropriately as a defacto performance measure.
- g) All of the national housing initiatives and community housing policy relies heavily on tier categories for funding eligibility.
- h) Investigating whether the above occur in other regulatory regimes could be warranted.

- i) Are the regimes that have replaced multiple pre-existing regulatory frameworks been successful (comparison with internal and external organisation, e.g. Western Australia and Victoria) If so, how were they achieved?
- j) How do stakeholders rate the successor scheme effectiveness?
- k) What models of regulatory system governance (oversight, accountability, control) are operated in other regimes and how successful are these in maintaining Registrar independence, ensuring consistency, having the flexibility to respond to changing operating environments & giving tenants a voice?
- l) CHOs vary considerably in size, functions and specialism, e.g. disability providers, Aboriginal organisations, specialist homelessness orgs and large developers. A criticism has been that the NRSCH system to assess risk and thus determine the degree of engagement has not worked well and that the regulatory burden on small providers (T3s) is too much. Others would argue that there is no difference between the T1 / T2 categories.
- m) Are there international examples where other regimes have been able to accommodate differences in CHO size, scale and function more successfully?
 - i. What methods do regulators use to inform their risk-assessment of regulated housing providers?
 - ii. How do these influence regulatory engagement (the amount of regulatory attention devoted to each organisation)?
 - iii. How have regulatory systems responded/adapted to marked changes in industry scale of operation or changes in structure (for example the introduction of new providers, increasingly diverse business activities; fewer larger organisations resulting from mergers)?
 - iv. How do regulatory systems maintain openness to tenant priorities and concerns?
 - v. How does the regulatory system specifically address tenant concerns and protect tenant interests?
 - vi. How do tenant representative groups view the effectiveness of regulation?

- vii. How is the management of mid-market rental (or affordable (rather than social) housing) regulated?
- viii. What performance data does the regulator publish about individual CHOs or the sector as a whole?
- ix. Are there examples of how the regulator worked with the sector to bring about more transparency?
- x. How much of role is played by self-regulation / industry-led standards,
- xi. how have self-regulation practices been introduced and with what degree of success?
- xii. To what extent are not-for-profit and public housing providers regulated according to common performance standards/expectations and under common regulatory regimes?
- xiii. What are the pros and cons of the approach as currently operated?
- xiv. Where there are different regulatory bodies with an interest in particular aspects of housing provider operation (e.g. financial viability versus maintenance of charitable obligations),
- xv. how well do such bodies work together (e.g. in minimising duplication)?
- xvi. How is such complementary operation achieved?
- xvii. To what extent is the regulatory system valued by the financial sector (CHO lenders/investors) and why?
- xviii. How far does the regulatory system have the capacity (e.g. resources and staff of suitable calibre) to effectively discharge responsibilities and add value?
- xix. How sophisticated/fit for purpose are regulatory systems enabling housing provider performance and financial data submission?
- xx. Are for-profit providers of social/affordable housing represented and,
- xxi. if so, how are these accommodated within the regulatory system?

4.6. Various Third-Party Study Papers

The intent of this study was to provide some guidance to the community housing sector in a review of the current NRSCH System and to provide some empirical quantitative and qualitative data to test the industry rhetoric as outline in the report.

Reference should be made to detailed analysis of Australia’s affordable housing industry as detailed in the April 2017 AHURI report “Developing the scale and capacity of Australia’s affordable housing industry”. The report highlights several the issues raised by the community housing sector rhetoric and provide a detailed set of international and Australian third-party references.

The following section of the study provides a brief review of several international community housing comparisons to guide future research.

5.0. International Review Linked to key Questions

5.1. Principles for Good Regulator

Different jurisdictions value different principles. Following table represents the principles given in regulatory systems for community housing at selected countries.

Country	Proportionality	Accountability	Transparency	Consistency	Capability	Value for Money	Innovations/ Best Practice
New Zealand	√	√	√	√	√	×	×
England and Wales	√	√	√	×	×	√	×
Scotland	√	√	√	×	×	×	√
Ireland	√	√	√	×	×	×	×

Proportionality, Accountability and Transparency are the common principles among the selected countries. These are mainly principles of good governance. Moreover, Ireland, England and Wales specifically value Tenants Focussed delivery though this can be considered under the accountability. Further England and Wales consider value for money as a principle while Scotland considers Innovations and best practices as principles.

However, Martens (2011) explains guiding principles for a new affordable housing policy from the practitioner’s perspective.

1. A single tired housing policy
2. Tax policy and incentives to make rental housing more appealing
3. Meaningful and substantial deregulation (due to lack of resources)
4. Targeting of the greatest need (Mixing the income with a creative use of internal subsidies)
5. Underwrite services as part of every affordable housing project
6. Public ownership and stewardship of the assets
7. Excellent project design that integrates into, and improves neighbourhoods

Except accountability, none of the other principles has been addressed here. Those are more likely the requirements of affordable housing providers.

Further Cave (2007) identifies followings as the attributes of a regulatory system for social housing.

- a. Ensure a clear system of accountability and responsiveness to tenants
- b. Be robust
- c. Be able to adapt to future policy demands
- d. Be capable of dealing with different organisational forms as the future social housing domain develops
- e. Minimise regulatory burdens to encourage innovation and encourage new providers and increased investment into the social housing sector; and
- f. Not impede the future flow of private finance into housing associations or other bodies which might be able to access such funding

5.2. Purpose of Social Housing Regulations

Regulation refers to government intervention in markets (Hood & Scott, 2000) which involves setting and enforcing rules of behaviour for organisations. It also can be a collective understanding of norms (McDermont,2010) as given in Gilmour & Pawson (2010).

The Housing Law regulate the housing quality and provide a framework for the provision of financial government support to housing associations (Hoekstra, 2017). There are many justifications for a regulatory framework as Hoekstra discussed. All these justifications can be aligned to the Mullins (1992) classification as economic Objectives and social objectives. **Social objectives** refer to quality regulation which is aimed at improving services or providing assurance that minimum service standards are met. **Economic Objectives** refer to economic regulation that prevent customer exploitation in monopolistic or otherwise uncompetitive markets where provider agencies might otherwise abuse their power (i.e. Rental price controls, Tax Credits etc.). It may involve controls on prices or corporate profits, promotion of competition or influence over market entry or exit (Mullins, 1997).

. Housing determines the wider quality of life in a neighbourhood, it has effects on communities as well as individuals (Cave, 2007).

Further, Gilmour & Pawson (2010) and a consultation report produced to the Ireland government identify following specific justifications for regulating social housing.

1. The inherent scarcity of rental accommodation at below market rates leaves tenants with limited bargaining power. (Tenants Protection and empowerment)
2. Some of the work of social housing providers is a public good and therefore safeguard public investment in the sector.
3. Protection of public funds as the substantial taxpayer investment in social housing Fourth.
4. Creating a credibility

Assurance of borrower organisations are effectively and prudently managed is required to give comfort to private lenders.

5. Encourage private investment in the sector and potential investors

6. Encourage long-term strategic thinking and facilitate collaboration, alliances and mergers within the sector
7. Help housing providers to manage risk and to focus on achieving best outcomes for tenants
8. Contribute to the overall sustainability of the sector

Need for regulations could be minimised if households are subsidised fully. However in social housing markets houses are provided at an affordable rent. This creates a system in which tenants cannot switch and are put at risk of poor treatment by providers (Cave, 2007). At the same time Gilmour (2017) argues that the primary driver of regulation seems to be protecting assets and bank loans, with tenant ‘voice’ and ‘choice’ a secondary but important feature. Therefore, striking a balance between stakeholder requirements is paramount important when a national regulatory system is developed.

Further, we should emphasis why and how the prevailing framework should be changed. The main justification for change is, regulation needs to be periodically reviewed and updated (Cave, 2007). Trigger factor’ for regulatory reform in England in 2004 was the move to allow for-profit providers to compete for social housing grant (Zitron, 2006). Government Expects the housing associations to invest in new house building and keeping the rents at a moderated level rather than spending by the government (Hoekstra, 2017). Therefore, when we open the market for for-profit providers or private investors regulations must be reengineered as social housing is a public good. Following sections consider about how the regulatory system for social housing can be changed.

5.3. Who is Regulator?

Following table shows the regulatory body for each country selected for the study.

Country	Regulator	Remarks
New Zealand	Community Housing Regulatory Authority	Councils and central government have an agreement
England and Wales	Homes and Communities Agency (“the HCA”).	Covers both private and NPF
Scotland	The Scottish Housing Regulator, Scottish Social Housing Charter, The Register of Social Landlords	Risk based engagement
Ireland	Housing Agency	More self- regulated (Voluntary Regulation Code)
Netherlands	Amsterdam Federation of Housing Associations	Both Local and central government monitor and guarantee
Canada	Canadian Housing Finance Authority (CHFA)	A network of asset renewal intermediaries (ARIs)

Gilmour (2017) proposes to have a strong regulator, fully at arm's length from government, prepared to take action. In terms of independence Netherland housing law is stronger as it has a separate housing authority though it is tied to the central government. This authority strictly supervises the activities, financial management and governance of the housing associations.

Murphy (2013) explains the type of independence expected for a better regulator.

1. **Financial independence:** if there is undue control from the parent Department in relation to the financing of an independent regulator.
2. **Personnel independence:** important that the independent regulator can appoint its own staff, particularly for those regulators who need specialised staff. Following staffing terms and conditions of the parent Department can place a restriction on the freedom to appoint and dismiss.
3. **Operational independence:** important that the objectives of regulation set by government are clear, confused policy objectives led to a confused delivery.
4. **Enforcement independence:** an important aspect of independence is the ability of the regulator to decide for itself how to enforce their decisions in line with clearly set out guidelines.

However, it is crucial that an independent regulator is accountable to Government Ministers and should be called to account if necessary by relevant parliamentary committees (Murphy E. , 2013). England had a system which was not independent before 2006 as Housing corporation controlled both the development of funding and regulation. After the Cave's report this corporation was segregated to Homes and Communities Agency (HCA) and Tenant Service Authority (TSA). Then TSA had responsibility for regulating social housing providers in both the local authority and housing association sectors. HCA was given the role to support the development of new social housing and the renovation of existing social housing through the National Affordable Housing Programme. (Jarman, 2012). Within the HCA a statutory Regulation Committee has been created (with appointments overseen by the Secretary of State) to ensure that potential conflicts of interest between investment and regulation activity are properly addressed (Jarman, 2012). In Further, state regulation has been seen as a crucial component of the new governance settlement for public services delivered at arms' length (Bundred, 2006) (Gilmour & Pawson, 2010). English regulation is operated by a quasi-autonomous public body with an independent board appointed by Ministers with the operational and statutory autonomy to make regulatory decisions free from political interference. The regulator is not a landlord or developer and its decision-making process is governed by statute and is independent from the national housing department. (Williams, 2011).

Local authorities have a range of roles in relation to housing. These include statutory housing responsibilities, their strategic function, homelessness, housing in multiple occupation, planning and, in many cases, direct housing service provision. The relationship between the regulator, housing providers and local authorities should focus strategic housing

responsibilities (Cave, 2007). New Zealand has a housing accord to make sure the strategic partnership between central government and the Auckland council. Regulation of local authority landlord services are carried out regulation of local housing authorities independently of other regulatory/scrutiny bodies in England. In Scotland, extensive works with Scottish Government bodies and others on oversight of local housing authorities (Jarman, 2012). Northern Ireland Housing Executive, a non-departmental public body, manages the province's public housing as well as administering housing associations development funding (Gilmour & Pawson, 2010).

However, the fact that most state governments retain their regulatory functions embedded in housing departments – with the conflict of interest inherent in an approach which does not give the private sector the necessary confidence - shows the need for radical regulatory reform (Williams, 2011). Netherlands being the country with the world's largest share of social housing has firmly retaken control over the Dutch social rental sector to the central government in 2011 (Hoekstra, 2017)

The UK's four kingdoms all have their own housing regulation, a good example of regional divergence (Gilmour, 2017). UK – with a relatively mature not-for-profit housing sector – is moving towards 'enforced self-regulation' and, at the same time, re-emphasising a primary concern with economic as opposed to consumerist objectives (Gilmour & Pawson, 2010)

Co-regulation is also another type of regulatory system where landlords, the regulator and tenants work together, rather than simply where the regulator prescribes all the rules' (TSA, 2009) (Gilmour & Pawson, 2010)

5.4. Who is Regulated?

Scope of the regulatory system is critical for its success. Currently we identify two folds of scope as who is regulated and what is regulated. Here we discuss who is regulated or domain focussed approach. A key choice under "who/domain" is whether to focus on organisations of a specific legal type such as not-for-profit, profit, community, social or affordable housing providers. English housing associations welcomed the prospect of 'domain regulation' because it implied a narrowly targeted remit (Gilmour & Pawson, 2010)

Further, we observe that certain countries like England tries to integrate the social housing and commercial housing markets for the purpose of regulating. Many governments open the social housing markets for private investors as social housing creates a fiscal pressure. Therefore, consistency across the housing markets are timely important. The Scottish Housing Regulator (SHR) is not responsible for the regulation of the private rented sector (Jarman, 2012). English regulator a narrowly targeted remit not encompassing their increasingly diverse non-social housing activities (commercial and social enterprise) (Gilmour & Pawson, 2010). However, encompassing all forms of social housing provider would promote consistent service standards for tenants irrespective of landlord type (Gilmour & Pawson, 2010).

In the Netherlands and Sweden, all rental housing is regulated by the national government. Rents are centrally regulated in the social and private markets, such that it is hard to differentiate between the two (Gilmour, 2017). For many European countries for the last decade government involvement to the social housing market has worked and made stable rather privatization.

5.5. What is Regulated?

New trend in housing regulations is what is regulated instead of who is regulated. Here the focus is specified activities such as the provision of publicly subsidised housing. This is called 'domain'-focused approach. Domain focus means the regulator should have powers over the ownership and management of social housing across the whole domain. By encompassing all forms of social housing provider Cave (2007) argued that, such a system for England would promote consistent service standards for tenants irrespective of landlord type. However, the weakness of this remit is difficulty to address the increasingly diverse non-social housing activities (commercial and social enterprises) (Gilmour & Pawson, 2010). Here the challenge is, how regulator will regulate activities of private organizations whose activities are funded by themselves. Therefore, organisational regulation spanning both social and private landlords, who are major providers of lower cost rental accommodation and boarding houses, is rare (Jarman, 2012). However, in Netherlands and Sweden, all rental housing is regulated by the national government. Rents are centrally regulated in the **both social and private markets**, such that it is hard to differentiate between the two (Gilmour, 2017)

In Netherlands, all other activities considered as non- Services of General Economic Interest (SGEI) should be transferred to commercial parties or be separated from the SGEI activities in a distinct administrative or juridical entity that works on a commercial basis (Hoekstra, 2017).

Cave Report 2007 presents specific elements that can be regulated.

-  Level of tenant satisfaction, tenant involvement and choice
-  Supply and the standard of housing and service provided,
-  Financial projections (for housing associations only)
-  Average operating costs
-  Rents

5.6. The Way Forward

Cave report has given the following very important recommendations for the social housing market.

- Apply common principles, where practicable, across the whole social housing domain
- Strengthen tenant empowerment and choice
- The regulator should be independent of government with that independence defined by statute. But there are certain defined matters for which the government should have the power to issue directions to the regulator.
- Government should be able to establish strategic direction for the Decent Homes Standard
- regulator have the statutory power to set rent levels across the domain
- Attracting new providers and increasing the efficiency of existing providers by Reducing the regulatory burden and increasing regulatory certainty (Cave, 2007)

Another important trend is **sector consolidation**. It means that rather having many providers with a small scale each, better to have few providers with a larger scale each (Pomeroy, 2017). Here small providers can merge into larger scales which will provide them with strong financial capacity, resilience, good governance and strategic partnerships.

6.0. Appendices

Appendix 1

National Regulatory System for Community Housing

Lessons from other Jurisdictions

Research Brief

This document sets out a brief for undertaking a short investigation of other regulatory systems to inform the community housing industry's contribution to the official National Regulation System for Community Housing (NRSCH) review.

Introduction

The NRSCH review is being conducted by the NSW Government on behalf of the Commonwealth and other States and Territories. The review was required by the original enabling legislation. The scope of the review is set out in a terms of [reference](#) and is focused primarily on:

- Overcoming barriers to WA and Victoria joining the NRSCH
- Assessing whether the NRSCH has fulfilled its objectives which include supporting the community housing industry's growth
- Whether key aspects including the tier classification and performance standards remain fit for purpose.

A discussion [paper](#) issued in December 2018 guided interested parties towards answering key questions in their written submissions. The deadline for receipt was 5 April 2019. During March and early April the review team held consultative workshops with community housing organisations (CHOs), the private sector, other non-profit organisations and community housing representative groups.

During the representative groups' workshop and in many submissions issues have been raised that are currently outside the review's scope. These include:

- The impact of overall regulatory burden (including contractual compliance associated with ex-public housing transfers)
- Inclusion of public housing in the NRSCH
- the potential reliance on industry standards (or at the least a recognition of self regulation as an intrinsic part of regulation).

While it will be some time before a report summarising stakeholder views from the discussion paper consultative process will be available, consistent themes from the community housing industry responses are emerging.

There is overwhelming support for one national system and a preference that it is led by a National Registrar albeit with state-based offices. The system's governance arrangements are ripe for overhaul. The industry is of one voice in insisting that Registrars should be located in agencies that afford them independence from government. There is general support for a National Registrar reporting to an independent board.

The industry recognises that while prudential regulation should be strengthened in response to larger CHOs' increasing business complexity, this should not be at the expense of consumer interests.

There is concern that NRSCH does not adequately assess risk with its avowed measure, the tier categories focusing on a CHO's scale only – although tier is frequently mistaken as a guide to a CHO's performance too. It is unclear how Registrars use risk assessment to influence their regulatory engagement and a concern that smaller organisations are not sufficiently distinguished in risk terms from larger CHOs. The value of all CHOs being within the NRSCH is largely accepted as it is seen as one way to protect the industry's diversity but the regulatory engagement needs to be tailored to the risk different CHO 'cohorts' present.

Very little is published by the NRSCH and industry data is reported on an aggregate basis. There is recognition by CHOs that more transparency is necessary. Data quality and comparability issues possibly constrain how quickly this can be achieved.

There is acceptance that the NRSCH should encompass 'for profit' social/affordable housing providers but a strong sentiment that the term 'community housing' should be reserved for not for profits.

Lastly, the NRSCH review should be taken as an opportunity to both look forwards to how the community housing industry may change, and also outwards to how other regulatory systems have addressed similar challenges, so that the options put forward in the second stage of the review are those that will secure the NRSCH's objective to support a well performing and expanded community housing industry.

The next stages of the review are not yet finalised but it is anticipated that at some point between May and November 2019 an options paper will be produced by the NRSCH review team and a further round of consultative workshops will be held. The review team will need to report to Ministers by April 2020. Whether and if so what additional research and analysis will be carried out by the NRSCH review team is unclear – including to the team itself. Hence CHIA's wish to commission this work.

The Brief

CHIA intends to commission (NAHC) to carry out a short and targeted investigation of a select number of well-established and generally strong performing (not for profit housing) regulatory regimes to identify how these systems have responded to similar issues to those raised by the community housing industry about NRSCH, and, also to make recommendations for a reformed system.

CHIA envisages that, rather than provide a comprehensive review of different national systems, the investigation will focus on a series of questions. A preliminary list is given as a guide but is subject to input both from other community housing representative groups and NAHC. We also assume that the final list and associated interview topic guide will draw on a review of the published discussion paper consultation submissions. It would be useful to read a sample from other stakeholders including the financial industry, any for profit providers, tenants groups and the Registrars.

The preliminary questions (in no particular order) are as follows:

- Are there regimes that (as intended in the case of NRSCH in relation to Victoria and WA), have replaced multiple pre-existing regulatory frameworks and, if so, were they successful at incorporating all of the latter. How was this achieved? How do stakeholders rate successor scheme effectiveness?

- What models of regulatory system governance (oversight, accountability, control) are operated and how successful are these in (a) maintaining Registrar independence, (b) ensuring consistency, (c) having the flexibility to respond to changing operating environments and (d) giving tenants a voice
- CHOs vary considerably in size, functions and specialism eg disability providers, Aboriginal organisations, specialist homelessness orgs and large developers. A criticism has been that the NRSCH system to assess risk and thus determine the degree of engagement has not worked well and that the regulatory burden on small providers (T3s) is too much. Others would argue that there is no difference between the T1 / T2 categories. Are there examples where other regimes have been able to accommodate differences in CHO size, scale and function more successfully
- What methods do regulators use to inform their risk-assessment of regulated housing providers and how do these influence regulatory engagement (the amount of regulatory attention devoted to each organisation)
- How have regulatory systems responded/adapted to marked changes in industry scale of operation or changes in structure (e.g. influx of new providers, increasingly diverse business activities; fewer larger organisations resulting from mergers)?
- In the UK over-regulation led to NFP providers being (temporarily) reclassified as public bodies in 2015 – what was required to reverse this classification and what lessons are there for Australia?
- How do regulatory systems maintain openness to tenant priorities and concerns? How does the regulatory system specifically address tenant concerns and protect tenant interests? How do tenant representative groups view the effectiveness of regulation?
- How is the management of mid-market rental (or affordable (rather than social) housing) regulated?
- What performance data does the regulator publish about individual CHOs or the sector as a whole? Are there examples of how the regulator worked with the sector to bring about more transparency?
- How much of role is played by self-regulation / industry-led standards, how have self-regulation practices been introduced and with what degree of success?
- To what extent are not-for-profit and public housing providers regulated according to common performance standards/expectations and under common regulatory regimes? What are the pros and cons of the approach as currently operated?
- Where there are different regulatory bodies with an interest in particular aspects of housing provider operation (e.g. financial viability versus maintenance of charitable obligations), how well do such bodies work together (e.g. in minimising duplication)? How is such complementary operation achieved?
- To what extent is the regulatory system valued by the financial sector (CHO lenders/investors) and why?
- How far does the regulatory system have the capacity (e.g. resources and staff of suitable calibre) to effectively discharge responsibilities and add value?
- How sophisticated/fit for purpose are regulatory systems enabling housing provider performance and financial data submission?
- Are for-profit providers of social/affordable housing represented and, if so, how are these accommodated within the regulatory system?

The regimes that are possibly worth examining will be determined by CHIA, NAHC and other industry experts but are likely to include:

- The Social Housing Regulator – England
- Scottish Housing Regulator
- Ireland
- Netherlands – a largely industry-led regulatory system has been subject to substantially increased government oversight in recent years OR Austria where national regulation has been particularly effective in a federalised setting
- New Zealand

We considered Canada but there is no national or provincial system that as far as we are aware is operational. The Cities of Toronto and Vancouver probably the best practice but are unlikely to produce better insights than the selection proposed above.

It is assumed that there will be a preliminary desk top review of documents followed by skype interviews with appropriately knowledgeable research participants, guided by a topic list drawing on the questions above. Participants could possibly include regulators and regulated organisations themselves, but academics and other national sector experts (e.g. consultants, peak bodies) should also be prioritised. The number and type of interviews will be guided by the available resources. The individuals to be interviewed will be selected by the project group and where possible introductions will be facilitated by the group members.

Project Management and Timescale

The project will be overseen by the community housing peaks group and have one academic member with an involvement in regulation research.

Ideally the project will commence in May and complete in July 2019.

7.0. References

- Byrne, M., & Norris, M. (2018). Procyclical Social Housing and the Crisis of Irish Housing Policy: Marketization, Social Housing, and the Property Boom and Bust. *Housing Policy Debate Vol 28 (1)*, 50-63.
- Cave, M. (2007). *Every Tenant Matters: A Review of Social Housing Regulation*. West Yorkshire: Communities and Local Government.
- Gilmour, T. (2017). *Learning from the wider world of social housing regulation*. York: HQN.
- Gilmour, T., & Pawson, H. (2010). Taming Complexity: De-coding Changing Approaches to Social Housing Regulation in the UK and Australia. *European Network for Housing Research (ENHR) Conference Proceedings*. Istanbul.
- Government, I. (2019, 07 15). <https://www.housing.gov.ie/housing/social-housing/>. Retrieved from <https://www.housing.gov.ie>: <https://www.housing.gov.ie/housing/social-housing/voluntary-and-cooperative-housing/building-future-voluntary-regulation-code-2>
- Hoekstra, J. (2017). Reregulation and Residualization in Dutch social Housing: a critical Evaluation of new Policies. *Critical Housing Analysis Vol 4 (1)*, 31-39.
- Jarman, R. (2012). *All change! An evaluation of the new frameworks for regulating social housing in England and Scotland*. York: HQN.
- Milligan, V., Pawson, H., Phillips, R., Martin, C., & Elton Consulting. (2017). *Developing the scale and capacity of Australia's affordable housing industry: Inquiry into affordable housing industry capacity*. Melbourne, Australia: Australian Housing and Urban Research Institute Limited .
- Mullins, D. (1997). From regulatory capture to regulated competition: An interest group analysis of the regulation of housing associations in England. *Housing Studies*, 301-319.
- Murphy, E. (2013). *The Regulation of Registered Housing Associations*. Belfast: Research and Information Service, Northern Ireland Assembly.
- Murphy, L. (2016). The politics of land supply and affordable housing: Auckland's Housing Accord and Special Housing Areas. *Urban Studies, Vol.53 (12)*, 2530-2547.
- Pomeroy, S. (2017). *Envisioning a Modernized Social and Affordable Housing Sector in Canada*. Ottawa: Carleton University Centre for Urban Research and Education.
- Williams, T. (2011). *Doublling Delliivery: How national housing regulation can lever in extra finance to deliver greater public benefit at lower public cost*. Fairlight NSW: Publicani Consulting.