



Family &  
Community  
Services

# The Review of the National Regulatory System for Community Housing

Discussion Paper

NRSCH Review Working Group

# Consultation

Following the 2017-18 Mid-Year Economic and Fiscal Outlook, the Commonwealth and state and territory governments, through the Housing and Homelessness Senior Officials' Network, established a National Regulatory System for Community Housing (NRSCH) Working Group (Working Group) to review the NRSCH (the Review).

The Working Group seeks your feedback and comments on the issues outlined in this Discussion Paper and any other relevant matters. The information obtained through this process will be used to develop an Options Paper, examining issues in detail and suggesting potential reforms, for further consideration and comment by interested parties. Final recommendations for reform will then be considered by Commonwealth and state and territory Housing Ministers.

While submissions may be lodged electronically or by post, electronic lodgement is preferred. For accessibility reasons, please email responses in a Word or RTF format. An additional PDF version may also be submitted.

All information contained in submissions will be made available to the members of the Working Group (the Commonwealth, New South Wales (NSW), Victorian (Vic), Queensland (Qld), Western Australian (WA), South Australian (SA) and Australian Capital Territory (ACT) Governments).

Unless you indicate a preference for all or part of your submission to remain in confidence, it will be publicly available on the NSW Department of Family and Community Services website, available at:

<https://www.facs.nsw.gov.au/about/reforms/NRSCH/review-of-the-national-regulatory-system-for-community-housing>.

Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment. Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

**Closing date for submission: 5pm, Friday, 15 February 2019**

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# 1 Introduction

## 1.1 Background

The Inter-Government Agreement (IGA) for a National Regulatory System for Community Housing Providers (NRSCH) requires a review of the NRSCH after five years, or as otherwise agreed.<sup>1</sup> The need to review the NRSCH has also been identified by interested stakeholders on a number of occasions. As part of the Productivity Commission's inquiry into the increased application of competition, contestability and informed user choice to human services,<sup>2</sup> a range of community housing providers (CHPs) expressed a desire for reform of the NRSCH.

More recently, the Australian Housing and Urban Research Institute (AHURI), as part of its inquiry into affordable housing industry capacity, highlighted that *“Industry regulation needs a major overhaul to complete national coverage, refine the regulatory framework, enhance regulatory capacity, curb regulatory burden (e.g. duplicate contractual regulation) and align regulatory effort with a new policy direction.”*<sup>3</sup>

On 1 March 2018, the Commonwealth and state and territory governments established a Working Group comprised of Commonwealth Department of Social Services and Commonwealth Treasury officers, and State and Territory Housing policy officers to undertake a three-stage review of the NRSCH.

## 1.2 Overview of the Review

The NRSCH framework contains several purposes and objectives, including those identified in the IGA, National Law and National Charter (the Charter) (**see Appendix A**). The Review will:

- provide an assessment of whether the purpose and objectives of the IGA and the National Law are still relevant
- provide an assessment of whether the purpose and objectives of the IGA and the National Law have been met
- assess whether the NRSCH has been implemented effectively to achieve those objectives

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<sup>1</sup> Clause 8.1 IGA. Available at:

<[https://ris.pmc.gov.au/sites/default/files/posts/2013/05/Appendix-4\\_NRS-Inter-Government-Agreement.pdf](https://ris.pmc.gov.au/sites/default/files/posts/2013/05/Appendix-4_NRS-Inter-Government-Agreement.pdf)>.

<sup>2</sup> Australian Government 2018, Productivity Commission, Reforms to Human Services. Inquiry submissions are available at: <<https://www.pc.gov.au/inquiries/completed/human-services/reforms/submissions>>.

<sup>3</sup> Milligan, V., Pawson, H., Phillips, R. and Martin, C. with Elton Consulting 2017, 'Developing the scale and capacity of Australia's affordable housing industry', AHURI Final Report No. 278, Australian Housing and Urban Research Institute Limited, Melbourne, p.2. Available at: <<https://www.ahuri.edu.au/research/final-reports/278>>.

- identify potential options to update the NRSCH to ensure that it remains able to support the growth of the community housing sector, taking into account the operating environment of providers and changes in the funding and policy settings of the Commonwealth and state and territory governments
- assess what changes to the NRSCH, or other options for a future national regulatory system, might be required to support the introduction of the Affordable Housing Bond Aggregator (bond aggregator), as part of the National Housing Finance and Investment Corporation (NHFIC)<sup>4</sup>
- assess what changes to the NRSCH, or other options for a future national regulatory system, might be required to support any future decision for Victoria and Western Australia to join the NRSCH
- outline the best method to implement any reforms that are identified as part of the Review.

In reviewing the NRSCH, the Working Group will consider the purpose of sector regulation as outlined in the IGA, including creating a framework to:

- improve tenant outcomes and protect vulnerable tenants
- protect present and future government funding and equity in social and affordable housing
- enhance confidence for persons (including investors and financiers) having dealings with registered CHPs.

As part of this process, the NRSCH Secretariat, with the assistance of state and territory registrars, will also undertake a project to examine current and future financial reporting requirements.

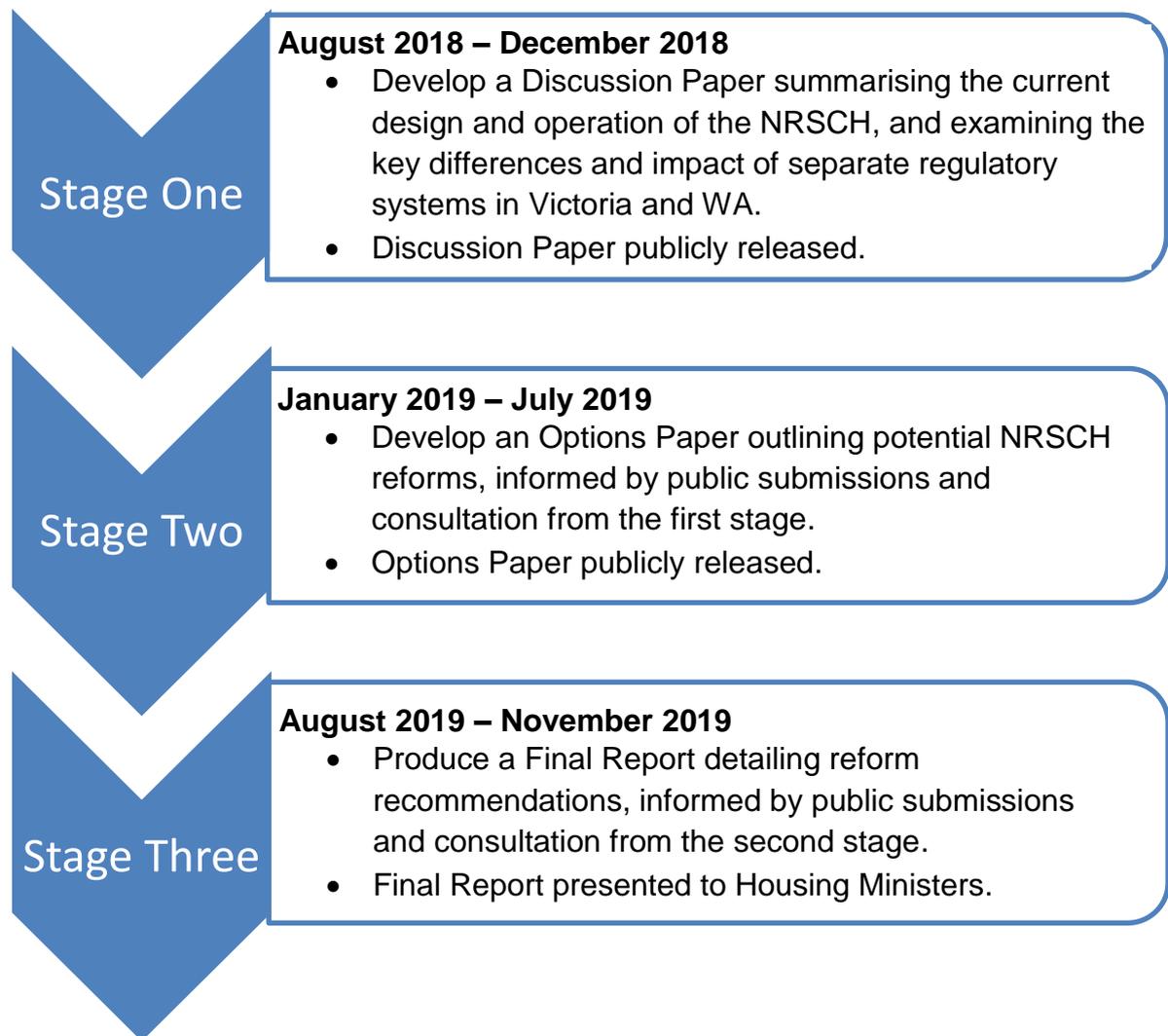
The Working Group will not examine the regulation of government owned and managed public housing, Specialist Disability Accommodation funded under the National Disability Insurance Scheme, performance-based contracting, or the National Community Housing Standards. Where these matters are raised as part of submissions, they will only be considered to the extent that they facilitate the effective implementation and operation of an improved NRSCH.

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<sup>4</sup> The NHFIC includes the Affordable Housing Bond Aggregator, which aims to provide cheaper and longer-term secured loan finance to CHPs by aggregating their borrowing requirements and issuing bonds in capital markets. Further information is available at <<https://www.nhfic.gov.au/bond-aggregator>>.

## 1.3 Overview of the Review Process

Figure 1.1 – Review Timeline



## 1.4 Purpose of the Discussion Paper

The purpose of this Discussion Paper is to:

- summarise the current design and operation of the NRSCH
- examine the key differences between the NRSCH and the Vic and WA regulatory systems, and the implications of having different regulatory systems operating across Australia
- provide sufficient context to allow interested parties to provide submissions on what is and is not working well, including ideas for how the NRSCH could be improved.

The consultation questions at **Chapter 6** are framed to focus submissions to this Discussion Paper. Issues identified in submissions and through consultation will inform the development of an Options Paper for consultation in 2019.

## 1.5 Consultation

The Working Group acknowledges the diversity of organisational models and scale among CHPs, ranging from bespoke providers of specialist services for specific clientele, to larger scale, growth providers.

Representatives of the Working Group have provided the community housing Regulatory Advisory Group (RAG) Forum with a preliminary overview of the intended Review. The Working Group will continue to update the sector through the RAG and the community housing Registrars' Forum.

The Working Group will consult widely using a variety of engagement mechanisms to ensure the Review addresses the key concerns of tenants, providers, registrars, investors and governments. Written submissions will be sought from interested stakeholders following the release of both the Discussion and Options Papers. The Working Group will also conduct targeted roundtables at both stages with a variety of stakeholders.

## 1.6 Expert Panel

During the Review, the Working Group will draw upon the expertise of an Expert Panel consisting of:

- two Community Housing Registrars
- an Aboriginal and Torres Strait Islander community housing industry representative
- a community housing industry representative
- an academic with community housing expertise
- a financial expert
- a representative of the NHFIC
- a regulation expert.

The purpose of the Expert Panel is to provide high-quality and technical advice to the Working Group. Expert Panel members will use their experience in their given area of expertise to advise the Working Group on the relevance and importance of issues identified during the Review, and the potential costs, benefits and suitability of any recommended reforms.

The technical advice provided by the Expert Panel will supplement information received from the sector through written submissions and targeted roundtables.

## 2 Purpose of Community Housing Regulation

Regulation is broadly defined as the set of instruments, including laws, orders and rules, by which governments place requirements on enterprises and citizens.<sup>5</sup> Regulation can help manage risk, solve marketplace problems and protect individuals, society and the environment,<sup>6 7</sup> which is why there is broad support among stakeholders, including CHPs,<sup>8</sup> for community housing regulation. The regulatory purpose of the NRSCH, as defined in the IGA, is outlined below.<sup>9</sup>

### 2.1 To Protect Vulnerable Tenants and Improve Tenant Outcomes

The provision of affordable housing has significant economic and social benefits for tenants. It can improve education and health outcomes, increase workforce participation and reduce welfare dependency. The community housing sector, while a small part of the overall housing continuum, plays a significant and growing role<sup>10</sup> in the provision of housing, protecting vulnerable tenants and improving social outcomes.

In 2016-17, over 143,000 Australians lived in mainstream community housing,<sup>11</sup> and registered and non-registered CHPs provided 6.9 million emergency and transitional accommodation nights to people who sought specialist homelessness assistance.<sup>12</sup>

Regulating the sector can contribute to assuring governments and tenants that CHPs have the organisational capacity to manage their portfolios

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<sup>5</sup> OECD 2012, Recommendation of the Council on Regulatory Policy and Governance. Available at: <<http://www.oecd.org/gov/regulatory-policy/2012-recommendation.htm>>.

<sup>6</sup> Australian Government 2014, Department of the Prime Minister and Cabinet, Office of Best Practice Regulation, 'The Australian Government Guide to Regulation'. Available at: <<https://pmc.gov.au/resource-centre/regulation/australian-government-guide-regulation>>.

<sup>7</sup> Freiberg, A 2010, 'The Tools of Regulation', The Federation Press, Annandale, NSW, Australia.

<sup>8</sup> Joint Community Housing Peaks 2018, 'National Regulation – An Outline Proposal'. Available at: <<http://www.shelertas.org.au/joint-community-housing-peaks-national-regulation-an-outline-proposal>>.

<sup>9</sup> Section 3.2 of the IGA. Available at: <[https://ris.pmc.gov.au/sites/default/files/posts/2013/05/Appendix-4\\_NRS-Inter-Government-Agreement.pdf](https://ris.pmc.gov.au/sites/default/files/posts/2013/05/Appendix-4_NRS-Inter-Government-Agreement.pdf)>.

<sup>10</sup> Australian Government 2018, AIHW, Data tables: Social housing dwellings, Table 1. Available at: <<https://www.aihw.gov.au/reports-statistics/health-welfare-services/housing-assistance/data>>. Data should be understood in the context of the 2016-17 Data Quality Statement, available at: <<http://meteor.aihw.gov.au/content/index.phtml/itemId/677769>>.

<sup>11</sup> Ibid. Refer to Data tables: Social housing tenants, Table 6.

<sup>12</sup> Australian Government 2018, AIHW, Specialist homelessness services annual report 2016-17. Available at: <<https://www.aihw.gov.au/reports/homelessness-services/specialist-homelessness-services-2016-17/contents/clients-services-and-outcomes>>.

effectively and sustainably. When a high level of organisational capacity is applied to everyday activities, it can contribute to safeguarding tenants against mismanagement and poor quality services. Regulation also contributes to a framework for consistent service delivery and performance improvement.

## 2.2 To Protect Government Assets and Funding

From 2006 to 2017, the number of dwellings owned or managed by mainstream CHPs grew from 32,349 to 82,902 – an increase of more than 250 per cent.<sup>13</sup> This growth was largely driven by increased capital funding,<sup>14</sup> public housing stock transfers from state and territory housing agencies, new dwellings developed through the National Rental Affordability Scheme, and debt-financed development and acquisition.

State and territory governments also fund CHPs to deliver a range of housing and support services, including specialist homelessness assistance. Funding for these services is received through a variety of mechanisms, including the National Housing and Homelessness Agreement (NHHA) and Commonwealth Rent Assistance.

Accordingly, Commonwealth and state and territory governments retain a significant stake in the sector. Regulation aims to ensure that regulated entities within the sector continue to develop on a sustainable foundation and that regulated CHPs have the capacity to responsibly manage government funding and assets.

## 2.3 To Facilitate Private Sector Investment

Australian governments have long recognised the need to attract increased levels of private investment into the community housing sector given the competing priorities for new funding faced by Commonwealth, state and territory, and local governments.

The Affordable Housing Working Group (AHWG), which culminated in the establishment of the NHFIC, highlighted the important role strong governance arrangements play in providing investors with the confidence to invest in the sector.

A number of submissions provided as part of the AHWG process highlighted the practical benefits of regulation. For example, SGS Economics and Planning noted the need for:

“...strong prudential supervision arrangements for the social and affordable housing provider sector, recognising, firstly, that substantial

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<sup>13</sup> Australian Government 2018, AIHW, Data tables: Social housing dwellings, Table 1. Available at: <<https://www.aihw.gov.au/reports-statistics/health-welfare-services/housing-assistance/data>>.

<sup>14</sup> Social Housing Initiative Review. Available at: <[http://www.nwhn.net.au/admin/file/content101/c6/social\\_housing\\_initiative\\_review.pdf](http://www.nwhn.net.au/admin/file/content101/c6/social_housing_initiative_review.pdf)>.

amounts of Government capital will be entrusted to non-government providers and, secondly, that institutional investors will only contemplate large scale involvement in the sector if they are convinced of the financial robustness and management capabilities of not-for-profit providers”.<sup>15</sup>

Effective regulation has the capacity to provide investors with the confidence to invest in the sector, while also assuring financiers of CHP creditworthiness. The experience of housing associations in the United Kingdom illustrates how effective regulation can assist CHPs access longer-term finance at a lower cost.<sup>16</sup>

### **Consultation Questions**

You may like to consider:

1. Is regulation still required and relevant for the community housing sector? Why/why not? What do you think regulation of this sector should aim to achieve?
2. Should community housing regulation apply to all forms of affordable housing, including for-profit providers? What modifications to the NRSCH would be required to appropriately support their inclusion?
3. What do you think the vision for regulation of the sector should be moving forward and how could the design and operation of the NRSCH support this? What role should the National Industry Development Framework have in the NRSCH?

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<sup>15</sup> Affordable Housing Working Group, Final Report October 2016, Innovative Financing Models to Improve the Supply of Affordable Housing, p.19. Available at: <[https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-050\\_Final\\_report.pdf](https://static.treasury.gov.au/uploads/sites/1/2017/06/C2016-050_Final_report.pdf)>.

<sup>16</sup> Barbato, C., Clough, R., Farrar, A. and Phibbs, P. 2004, 'Could regulating community housing make a difference to affordable housing?', AHURI Research and Policy Bulletin No. 34, Australian Housing and Urban Research Institute Limited, Melbourne. Available at <<https://www.ahuri.edu.au/research/research-and-policy-bulletins/34>>.

## 3 Overview of Regulation and Community Housing in Australia

### 3.1 Current regulatory arrangements across Australia

There are currently three different regulatory systems for CHPs across jurisdictions in Australia:

- The NRSCH, which operates in New South Wales, Queensland, Tasmania, South Australia, the Northern Territory and the Australian Capital Territory
- The Victorian Regulatory System (VRS)
- The Western Australian Community Housing Regulatory Framework.

#### Consultation Question

You may like to consider:

4. What is the impact (positive or negative) of having three different regulatory systems across Australia? Would there be benefits in WA and Victoria joining the NRSCH?

In 2012, the Commonwealth and each state and territory, except Victoria and Western Australia, signed the IGA. Through the IGA, participating jurisdictions agreed to develop a nationally consistent system of community housing regulation. While Western Australia did not sign the IGA, they created a policy-based system consistent with the NRSCH.

Similarly, Victoria chose to continue using the VRS established in 2005. In June 2016, the Victorian Minister for Finance commissioned a review of the effectiveness of the VRS. A major recommendation from the VRS review, which the Minister accepted in principle, was to:

Pursue resolution of the administrative and other barriers to Victoria's adoption of the national scheme, and explore options to achieve agreement between jurisdictions to mutually recognise registrations and simplify all reporting requirements.<sup>17</sup>

While each regulatory system seeks to provide a strong regulatory approach to risk management, and have the ultimate goal of growing the sector, their specific objectives vary (as outlined in Table 3.1).

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<sup>17</sup> Victorian Government 2017, Department of Treasury and Finance, 'Outcomes of the Ministerial review of Victorian housing regulation'. Available at: <<http://www.housingregistrar.vic.gov.au/News/Outcomes-from-the-Ministerial-review-of-housing-regulation-are-now-available>>.

**Table 3.1: Key Objectives of the Regulatory Systems**

<b>NRSCH (IGA)<sup>18</sup></b>	<b>VRS<sup>19</sup></b>	<b>WA Regulation<sup>20</sup></b>
<ol style="list-style-type: none"> <li>1. Provide a consistent regulatory environment to support the growth and development of not-for-profit CHPs.</li> <li>2. Provide an avenue for regulated participation by for-profit CHPs.</li> <li>3. Reduce the regulatory burden for CHPs working across participating jurisdictions.</li> <li>4. Provide a level playing field for CHPs seeking to enter new participating jurisdictions.</li> <li>5. Implement a system that is interpreted and implemented in ways that are proportionate, accountable, consistent, transparent, flexible and targeted.</li> </ol>	<ol style="list-style-type: none"> <li>1. Ensure that each registered agency is well governed, well managed and financially viable.</li> <li>2. Protect and ensure accountable use of government assets managed by the affordable housing sector.</li> <li>3. Build confidence in the public and private sector to invest in and grow affordable rental housing.</li> <li>4. Ensure quality and continuous improvement in service delivery and outcomes for tenants.</li> </ol>	<ol style="list-style-type: none"> <li>1. Ensure that oversight of providers is targeted to key areas of sector risk and to the aims and intended outcomes of social housing.</li> <li>2. Provide a consistent regulatory environment to support the growth and sustainable development of the community housing sector.</li> <li>3. Ensure public investment in community housing is adequately protected against inappropriate use and retained for legitimate sector purposes.</li> <li>4. Provide confidence to governments and financial institutions that organisations are financially viable and well governed.</li> </ol>

### 3.2 The NRSCH

Prior to the introduction of the NRSCH, in participating jurisdictions, community housing regulatory arrangements varied across all states and territories.<sup>21</sup> The design and operation of the systems differed significantly regarding risk assessment, intervention and enforcement powers, registration and incorporation requirements, the process to appoint registrars and the structure of registration tiers.

A national system was considered necessary to reduce regulatory complexity and increase stakeholder confidence in the sector. As part of the National Affordable Housing Agreement, signed by Housing Ministers in 2008, the Commonwealth and the states and territories agreed to support the capacity

<sup>18</sup> IGA – section 3.1. Available at: <[https://ris.pmc.gov.au/sites/default/files/posts/2013/05/Appendix-4\\_NRS-Inter-Government-Agreement.pdf](https://ris.pmc.gov.au/sites/default/files/posts/2013/05/Appendix-4_NRS-Inter-Government-Agreement.pdf)>.

<sup>19</sup> VRS Regulatory Framework Series - Introduction. Available at: <<http://www.housingregistrar.vic.gov.au/Publications/Regulatory-framework-series>>

<sup>20</sup> Community Housing Regulatory Framework. Available at: <[http://www.dhw.wa.gov.au/investorsandpartners/communityhousingorganisations/Regulation/Documents/Community\\_Housing\\_Regulatory\\_Framework.pdf](http://www.dhw.wa.gov.au/investorsandpartners/communityhousingorganisations/Regulation/Documents/Community_Housing_Regulatory_Framework.pdf)>.

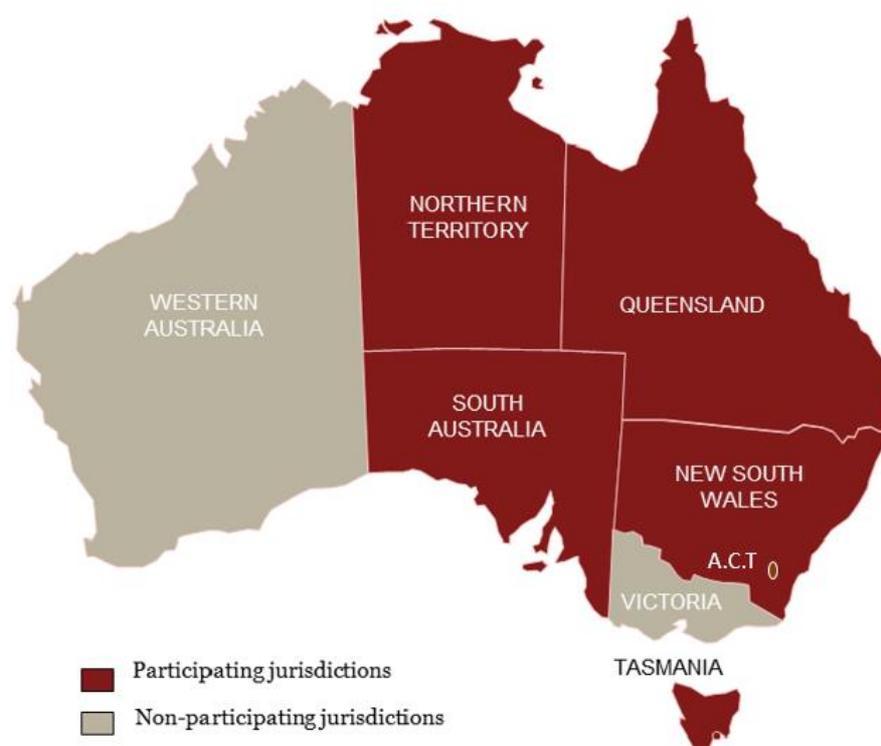
<sup>21</sup> Australian Government 2010, 'Regulation and Growth of the Not-For-Profit Housing Sector: Discussion Paper'. Available at: <<http://apo.org.au/node/21116>>.

and growth of the community housing sector through a nationally consistent regulatory framework.<sup>22</sup>

In December 2010, following consultation on a discussion paper canvassing different options for national regulation, Housing Ministers agreed a nationally consistent framework would be enacted in one jurisdiction and adopted and applied by the other jurisdictions.<sup>23</sup> In 2012, Housing Ministers signed the IGA to establish a national community housing regulatory system.<sup>24</sup>

In August 2012, the NSW Parliament enacted the National Law for the NRSCH by passing the *Community Housing Providers (Adoption of National Law) Act 2012*.<sup>25</sup> The legislation commenced on 1 January 2014. As of 2018, all states and territories, except Vic and WA, have adopted the National Law through the passage of mirrored or amended legislation.

**Figure 3.1: Jurisdictions' Participation in the NRSCH**



<sup>22</sup> Council on Federal Financial Relations, National Affordable Housing Agreement, Clause 21(i). Available at: <[http://www.federalfinancialrelations.gov.au/content/npa/national\\_agreements/national-housing-agreement.pdf](http://www.federalfinancialrelations.gov.au/content/npa/national_agreements/national-housing-agreement.pdf)>.

<sup>23</sup> Joint Communique – Meeting of the Housing Minister’s Conference, 16 December 2010. Available at: <<https://formerministers.dss.gov.au/1017/joint-communique-meeting-of-the-housing-ministers-conference-melbourne>>.

<sup>24</sup> IGA. Available at: <[https://ris.pmc.gov.au/sites/default/files/posts/2013/05/Appendix-4\\_NRS-Inter-Government-Agreement.pdf](https://ris.pmc.gov.au/sites/default/files/posts/2013/05/Appendix-4_NRS-Inter-Government-Agreement.pdf)>.

<sup>25</sup> National Law. Available at: <<https://www.legislation.nsw.gov.au/#/view/act/2012/59/full>>.

### The NRSCH Framework

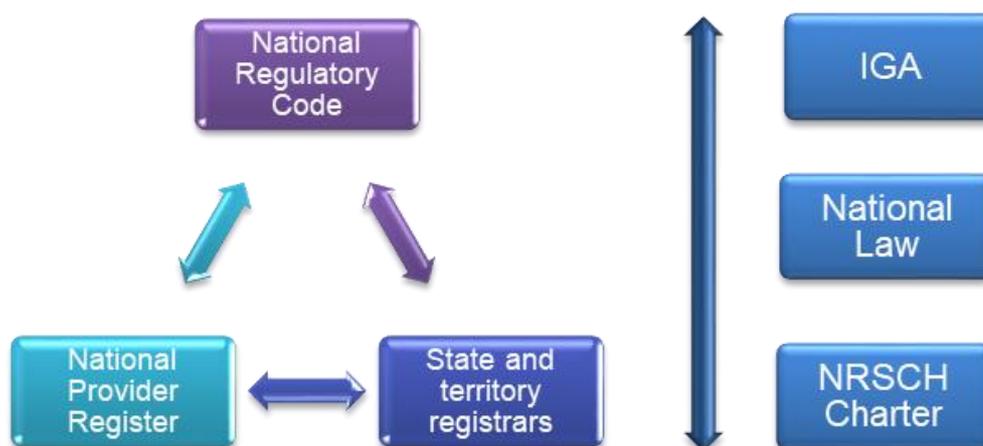
The vision of the NRSCH is to ensure a well governed, well managed and viable community housing sector that meets the housing needs of tenants and provides assurance for government and investors.

The NRSCH framework was established through the IGA, National Law and the Charter,<sup>26</sup> and consists of several components (see Figure 3.2).<sup>27</sup>

The IGA sets out governance arrangements and the roles and responsibilities for implementing the NRSCH. The National Law provides the legislative foundation for the functions of registrars, conditions of registration, enforcement powers, the appeals process, and the National Regulatory Code (the Code).<sup>28</sup> The Charter outlines the vision, objectives, regulatory principles and philosophy of the NRSCH.

The NRSCH also contains Operational Policies to guide the operations of registrars.<sup>29</sup> The NRSCH is further supported by the National Industry Development Framework for Community Housing.<sup>30</sup>

**Figure 3.2: The NRSCH Framework**



Source: Adapted from the NRSCH Charter.

<sup>26</sup> National Charter. Available at:

<[http://www.nrsch.gov.au/\\_\\_data/assets/file/0011/288218/D\\_Charter.pdf](http://www.nrsch.gov.au/__data/assets/file/0011/288218/D_Charter.pdf)>.

<sup>27</sup> NRSCH Framework. Available at:

<[http://www.nrsch.gov.au/\\_\\_data/assets/file/0004/420871/NRSCH-Regulatory-Framework-Amended-27-July-2017.pdf](http://www.nrsch.gov.au/__data/assets/file/0004/420871/NRSCH-Regulatory-Framework-Amended-27-July-2017.pdf)>.

<sup>28</sup> National Regulatory Code. Available at:

<[http://www.nrsch.gov.au/\\_\\_data/assets/file/0007/284650/National\\_Regulatory\\_Code.pdf](http://www.nrsch.gov.au/__data/assets/file/0007/284650/National_Regulatory_Code.pdf)>.

<sup>29</sup> NRSCH Operational Policies. Available at: <<http://www.nrsch.gov.au/publications/nrsch-operational-policies>>.

<sup>30</sup> National Industry Development Framework for Community Housing. Available at:

<[http://www.nrsch.gov.au/\\_\\_data/assets/file/0006/284604/Industry\\_Development\\_Framework.pdf](http://www.nrsch.gov.au/__data/assets/file/0006/284604/Industry_Development_Framework.pdf)>.

## Consultation Questions

You may like to consider:

5. Are the purpose and objectives of the NRSCH and the IGA still relevant? Do they appropriately address current and future challenges (such as those outlined in this paper)? Why/why not? What changes might be needed?
6. Is there sufficient flexibility in the NRSCH to achieve its purpose and objectives? Why/why not?

## The NRSCH Elements

The NRSCH consists of three main elements: the Code, the National Provider Register (the Register),<sup>31</sup> and state and territory registrars.

### The Code

The Code sets out the performance outcomes and requirements that CHPs must meet to register and maintain their registered status with the NRSCH.

The performance outcomes are:

1. Tenant and housing services
2. Housing assets
3. Community engagement
4. Governance
5. Probity
6. Management
7. Financial viability.

### The National Provider Register

The Register is a publicly searchable database with the details of all NRSCH-registered CHPs. This includes entity type, Australian Business Number, primary jurisdiction, other jurisdictions of operation, registration number, category of registration, date registered, the status of the provider's registration and their Standard Conditions of Registration.

### State and Territory Registrars

Each participating state and territory appoints a registrar to apply the National Law and regulate providers, while state and territory housing agencies remain responsible for housing policy and funding.<sup>32</sup> Registrar responsibilities include:

- assessing evidence provided by CHPs for registration<sup>33</sup>

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<sup>31</sup> NRSCH National Provider Register. Available at: <[http://www.nrsch.gov.au/national\\_register](http://www.nrsch.gov.au/national_register)>.

<sup>32</sup> Tasmania has referred their regulatory powers to the NSW Registrar.

<sup>33</sup> NRSCH Evidence Guidelines. Available at: <<http://www.nrsch.gov.au/publications/nrsch-operational-guidelines/evidence-guidelines>>.

- registering CHPs and placing them onto the Register in one of three tiers according to the scale and scope of their activities (see **Appendix B** for an overview of the registration process)<sup>34</sup>
- monitoring and enforcing compliance with the National Law through regular compliance assessments (annually for tiers 1 and 2, biennially for tier 3) and, if required, triggered compliance assessments and enforcement action.<sup>35</sup>

### Consultation Questions

You may like to consider:

7. Are there existing forms of regulation that overlap with the NRSCH (e.g. the ACNC)? What is the impact of this? What should community housing regulation offer that is not covered by existing schemes?
8. Is there any other role the NRSCH should be undertaking that it is currently not?

## 3.3 Victorian Regulatory System

The VRS<sup>36</sup> was introduced in January 2005 through a new part to the *Housing Act 1983* (the Act) and the establishment of the Registrar of Housing Agencies.

The Registrar's regulatory powers are underpinned by the Act, and gazetted Performance Standards and Intervention Guidelines. The Performance Standards detail the expectations for registered housing agency operations. The Intervention Guidelines describe the Registrar's approach in cases such as severe financial difficulty, mismanagement or misconduct.

The Victorian regulatory approach provides a platform to support a well managed, well governed and financially viable affordable housing sector, establishing:

- a clear set of criteria that agencies must meet to achieve registration
- the Register of Housing Agencies, containing public information on all registered agencies
- powers of investigation and intervention for the Registrar to use where a registered agency is in breach of legislation, or fails to meet Performance Standards
- annual reporting requirements and declarations
- a complaints process for tenants (or prospective tenants) affected by an agency's decision on a rental housing matter.

<sup>34</sup> NRSCH Tier Guidelines. Available at: <<http://www.nrsch.gov.au/publications/nrsch-operational-guidelines/tier-guidelines>>.

<sup>35</sup> NRSCH Compliance Process. Available at:

<[http://www.nrsch.gov.au/regulation\\_and\\_policy/compliance/compliance\\_process\\_overview](http://www.nrsch.gov.au/regulation_and_policy/compliance/compliance_process_overview)>.

<sup>36</sup> Victorian Community Housing Regulation System. Available at:

<<http://www.housingregistrar.vic.gov.au>>.

In 2014, Victoria updated its performance standards to better align with the NRSCH performance outcomes.<sup>37</sup> Victoria has sought to pursue resolution of the administrative and other barriers to the NRSCH, and explore options to achieve agreement between jurisdictions to mutually recognise registrations and simplify all reporting requirements.<sup>38</sup>

However, while the NRSCH and the VRS are similar, key differences include:

- **Registration eligibility** – the NRSCH allows for the registration of for-profit providers under the NRSCH, whereas the VRS strictly registers not-for-profit entities. Also, if an entity seeking registration in Victoria is a subsidiary, approval is required for a registered agency to operate in a corporate group where the parent is not a registered agency. In practice, Victoria has a number of agencies in this category. The VRS also requires that the rental housing agency must not act as trustee for any person other than a registered agency without the written approval of the Registrar. This issue is managed in the NRSCH by requiring registered CHPs with affiliated entity arrangements to demonstrate that it maintains control over activities and decisions that affect their ability to comply with the NRSCH. In addition, multi-jurisdiction CHPs wanting to operate in Victoria are required to have a separate entity operate their housing operations.
- **The tiered registration system** – the VRS operates a two-tier registration system, while the NRSCH uses three tiers. The two tier system in Victoria allows for two categories of registration: housing association and housing provider. In practice, housing associations are larger, more complex businesses with the skills, expertise and resources to manage, maintain and grow a viable social housing portfolio. They expand new housing through construction, purchase or acquisition. Housing providers range in size and primarily manage rental housing portfolios for other parties, such as the Director of Housing. Some housing providers own properties; however, their growth is small scale compared with housing associations. Housing providers often specialise in particular client groups which may include disability housing, aged tenants and youth housing.
- **The wind-up clause** – in the event of a registered Victorian CHP winding up, all its surplus assets are to be transferred to another VRS registered agency. Under the National Law, only those nominated "community housing assets" (being only those assets linked to an agreement with a Housing Agency) are to be transferred to another NRSCH-registered CHP or to the Housing Agency in the jurisdiction in which the assets are located.

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<sup>37</sup> VRS – How we regulate. Available at: <<http://www.housingregistrar.vic.gov.au/How-we-regulate>>.

<sup>38</sup> Victorian Government 2017, Department of Treasury and Finance, 'Outcomes of the Ministerial review of Victorian housing regulation'. Available at: <<http://www.housingregistrar.vic.gov.au/News/Outcomes-from-the-Ministerial-review-of-housing-regulation-are-now-available>>.

- **Asset classification and control** – all social and affordable housing assets of a Victorian CHP are within the scope of the VRS, with the NRSCH having technical differences about what assets are included and how they are defined.
- **Investigation powers** – the Victorian Registrar has greater investigative powers than registrars under the NRSCH, and is able to apply for search warrants and enter and seize documents from registered CHPs.
- **Intervention powers** – a Primary Registrar under the NRSCH does not specifically have the power of the Victorian Registrar to order the winding up of a registered CHP, a transfer of nominated assets or a merger. However, a Registrar under the NRSCH may issue binding instructions to address non-compliance with the National Law or the Code.

### 3.4 Western Australian Regulatory Framework

The Western Australian Community Housing Regulatory Framework (the Framework)<sup>39</sup> commenced on 1 April 2017. The Framework is a policy-based<sup>40</sup> administrative system and is consistent with the NRSCH.

The Framework is outcomes focused and adopts a risk based approach to monitor and respond to risks that have serious consequences for tenants, funders and investors, community housing assets and the reputation of the sector.

The Framework is administered by the Community Housing Registration Office (CHRO) and is underpinned by objectives adopted from the NRSCH to ensure the regulation of CHPs is proportionate, accountable, consistent, transparent, flexible and targeted.

The CHRO is managed by the Community Housing Registrar and its functions are limited to regulatory activities only, including:

- assessing applications for registration from providers
- monitoring the compliance of registered providers with the Framework
- providing information and advice regarding regulatory requirements and processes
- maintaining a register of registered providers.

Administration of the Framework is separated from the policy and funding decisions made by the WA Department of Communities.

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<sup>39</sup> The WA Community Housing Regulatory Framework. Available at: <http://www.dhw.wa.gov.au/investorsandpartners/communityhousingorganisations/Regulation/Pages/default.aspx>.

<sup>40</sup> Policy-based administration is an approach used to simplify the management of a system, which outlines what a government hopes to achieve. Legislation sets out standards, principles and procedures that must be followed.

## 4 Issues for Consideration

A well-designed regulatory system can generate significant social and economic benefits, which outweigh the costs of that system.<sup>41</sup> When reviewing regulation, it is important to determine whether the system is adequately targeting the risk it was designed to address, and whether potential deficiencies stem from the system's design or operation.<sup>42</sup> This chapter seeks to examine the current design and operation of the NRSCH against best practice regulation. Comparative international community housing regulatory systems are outlined at **Appendix C**.

### 4.1 Design of the NRSCH

The NRSCH is a decentralised regulatory system, which relies on individual jurisdictions applying a common set of rules and practices consistently across jurisdictions. The system was designed to provide direction to participants to ensure that this approach did not result in significant inconsistencies in the application of the National Law across jurisdictions. Further, the system was designed to ensure a graduated approach to registration and compliance in line with the complexity and size of the individual CHP.

Aspects of the NRSCH Framework were not established as envisaged, including a formal Ministerial Council and Ministerial Advisory Committee (MAC), as well as a National Regulatory Council (NRC). In its place, and to support the effective operation of the system, mechanisms such as the RAG and Registrars Forum have allowed registrars, policy officials and sector representatives to discuss and perform a number of the functions proposed for the NRC and MAC.

However, these informal mechanisms do not entirely replace the roles envisaged for the MAC and NRC. For example, the ability of the RAG to review the performance of registrars to ensure participating jurisdictions are meeting the agreed performance standards and national guidelines is limited. There is also little scope for the RAG to approve changes to the National Law or resolve disputes related to cross-jurisdictional issues where agreement cannot be reached. These factors may have impeded the achievement of the NRSCH purposes and objectives in an efficient manner.

These informal mechanisms represent another element in what could be described as a fragmented regulatory framework. While individually playing important roles, the number of elements that come together to make up the NRSCH has the potential result of overlap and confusion about its purpose and objectives. They also have the potential to cause difficulties for new

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<sup>41</sup> OECD 2012, Recommendation of the Council on Regulatory Policy and Governance. Available at: <<http://www.oecd.org/gov/regulatory-policy/2012-recommendation.htm>>.

<sup>42</sup> Australian Government 2014, Department of the Prime Minister and Cabinet, Office of Best Practice Regulation, 'The Australian Government Guide to Regulation'. Available at: <<https://pmc.gov.au/resource-centre/regulation/australian-government-guide-regulation>>.

entrants navigating the system and third parties seeking to understand how the regulatory system operates.

This may also impact on the function of the registrars. While registrars meet monthly to share their experience and promote good practice, registrar operations may benefit from being clarified and streamlined to support consistent application across all states and territories.

Additional potential confusion could arise from the design of the tier structure. NRSCH participants have reported informally that the tier structure has been misinterpreted by third parties, including financiers, investors and occasionally government agencies. Sector participants may view the tier structure as a CHP performance ranking system, with tier 1 CHPs regarded as more capable and viable than other CHPs. Similarly, investors and financiers may interpret tiers as a measure of creditworthiness. This would obscure the effectiveness of the system to monitor and manage risk.

While the NRSCH in its current form may not hinder the achievement of the system's purposes and objectives, there may be an opportunity to reduce the overall number of elements in the system without diminishing the overall effectiveness of the system.

### **Consultation Questions**

You may like to consider:

9. Is the current design of the NRSCH conducive to efficient and effective regulation of the sector? Could the design of the NRSCH be improved or streamlined? If so, how?
10. Is there currently sufficient oversight over the operation of the NRSCH, or are the governance arrangements listed in the IGA required (a Ministerial Council, a Ministerial Advisory Committee and a National Regulatory Council)? Why/why not?
11. Should the NRSCH be modified to better regulate smaller CHPs? What would be needed to achieve this?

## **4.2 Operation of the NRSCH**

Using the Office of Best Practice (OBPR)<sup>43</sup> Regulator Performance Framework,<sup>44</sup> the NRSCH's operation is considered below against key performance indicators designed to ensure regulators undertake their

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<sup>43</sup> The OBPR is part of the Department of the Prime Minister and Cabinet, and administers the Australian Government and Council of Australian Government's best practice regulation requirements.

<sup>44</sup> The OBPR Regulator Performance Framework. Available at: <https://www.pmc.gov.au/resource-centre/regulation/regulator-performance-framework>.

functions through a consistent, risk-based approach and with the minimum impact necessary to achieve their regulatory objectives<sup>45</sup>.

**a) Regulators do not unnecessarily impede the efficient operation of regulated entities**

Effective regulatory administration should be appropriately flexible, seeking to restrict regulatory burden, especially for smaller entities. Through the tiered registration system and the Evidence Guidelines, the NRSCH targets compliance requirements to different CHPs based on an assessment of their potential risk derived from the nature, scale and scope of CHPs' activities. The NRSCH also allows CHPs to use a range of evidence sources to demonstrate compliance against each performance indicator. In instigating regulatory action against a CHP, the NRSCH allows registrars to tailor their investigations and enforcement action to the specific areas of a CHP's operations that require attention.

Registrars undertake periodic assessments of the Evidence Guidelines and other supporting guidelines and documentation, such as annual reviews of Operational Policies. This ensures their ongoing currency and allows consideration of the balance between a robust regulatory system and compliance burden on providers. Registrars also conduct a service evaluation survey after CHPs submit their registration and compliance assessments to seek to gauge the performance of their own operations.

**Consultation Questions**

You may like to consider:

12. Are the indicators and thresholds in the Evidence Guidelines appropriate for demonstrating compliance with the National Regulatory Code and do they provide sufficient confidence to stakeholders regarding CHP financial viability, governance and management? Why/why not?
  
13. Are registrars' enforcement and investigative powers sufficient to protect tenants and public assets allocated to CHPs? Why/why not? How could this be improved?

**b) Communication with regulated entities is clear, targeted and effective**

Clear communication is vital for the efficient delivery of regulatory services and the reduction of compliance burden. The NRSCH provides CHPs with a suite of guidance materials, including overarching guidelines for the operation of the NRSCH and Provider Guides on registration, compliance, and the Community Housing Regulatory Information System (CHRIS). Registrars periodically review and update these documents.

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<sup>45</sup> A risk-based approach promotes the most efficient use of resources and improves the effectiveness of the regulatory framework through minimising burden on those who are voluntarily compliant and ensuring that enforcement action is proportionate and undertaken only when necessary.

NRSCH guidelines clearly state the expected timeframes for assessing applications and making regulatory and enforcement decisions, as well as the expected timeframes for CHPs to respond to registrar requests for information.

Some documents on the NRSCH website have not been updated since the establishment of the NRSCH, potentially supplying CHPs and stakeholders with out-of-date information.<sup>46</sup> In addition, as noted informally by sector stakeholders, the NRSCH tiered registration system is often misinterpreted by third parties, including financiers, investors and government agencies.<sup>47</sup> AHURI researchers in 2017 found that this obscures the effectiveness of the system to monitor and manage risk,<sup>48</sup> and suggests NRSCH communications must be amended to minimise future miscommunication.

### **c) Actions undertaken by regulators are proportionate to the regulatory risk being managed**

Efficient regulatory engagement takes into account the activities undertaken by the regulated entity, the nature of their operations, their compliance history, and any other external factors. Proportionality within regular compliance assessment in the NRSCH is achieved through the tiered registration system.

The NRSCH allows registrars to adopt a graduated approach to regulatory engagement and enforcement action, providing clear guidance before taking steps to enforce compliance, such as issuing binding instructions and appointing a statutory manager. The registrars' approach to enforcement is publicly available on the NRSCH website, listed in the Enforcement Guidelines and the Regulatory Engagement, Assessment, Investigation and Enforcement Action policies.

### **d) Compliance and monitoring approaches are streamlined and co-ordinated**

The collection of information and data from regulated entities imposes administrative costs. The NRSCH allows registrars to maintain a minimum level of regulatory engagement over CHPs, such as through the use of targeted compliance assessments. However, the reporting required of CHPs continues to grow. Beyond the NRSCH, CHP reporting requirements may include funding and finance agreements with housing agencies, banks and potentially the NHFIC; tripartite agreements with housing agencies and financiers; and reporting to the Australian Charities and Not-for-profits

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<sup>46</sup> For instance, guidance on reviews and appeals is inconsistent regarding the range of decision within the scope of internal reviews (ranging from all administrative decisions to strictly enforcement decisions) and the period a CHP has to request an internal review following receiving written notice of the original decision (either 14 or 28 days).

<sup>47</sup> Milligan, V., Pawson, H., Phillips, R. and Martin, C. with Elton Consulting 2017, 'Developing the scale and capacity of Australia's affordable housing industry', AHURI Final Report No. 278, Australian Housing and Urban Research Institute Limited, Melbourne. Available at: <<http://www.ahuri.edu.au/research/final-reports/278>>.

<sup>48</sup> Ibid.

Commission (ACNC) and the Australian Securities and Investments Commission. There may be scope to streamline compliance processes.

### **Consultation Questions**

You may like to consider:

14. Has the NRSCH been implemented in a way that is consistent with its regulatory principles (namely that it is proportionate, accountable, consistent, transparent, flexible and targeted) and the regulatory philosophy and practice articulated in the National Regulatory Code? Why/why not?
15. How could CHPs' data reporting requirements be better streamlined to reduce compliance burden, including overlap with other regulatory systems?

### **e) Regulators are open and transparent in their dealings with regulated entities**

Transparency is vital for increasing confidence in the sector and ensuring regulators are accountable to government and the entities they regulate. The NRSCH website provides CHPs with information regarding the operation of the NRSCH and how decisions are made. There is less information available that catalogues decisions across the sector. This can make it difficult to assess the consistency of decision making between registrars and the relative performance of CHPs.

### **Consultation Questions**

You may like to consider:

16. Does the NRSCH provide sufficient information to stakeholders, including tenants, providers, investors and governments? Why/why not? What ways could it be improved?
17. Are NRSCH communications with stakeholders effective in demonstrating the purpose, operation and performance of the NRSCH and relative performance of CHPs? Why/why not?

### **f) Regulators actively contribute to the continuous improvement of regulatory frameworks**

Efficient and effective regulation incorporates a cycle of continuous improvement through clear communication with both the regulated entities, policy departments and sector representatives. Registrars regularly review and seek feedback on operational guidelines, policies and guidance to continually improve the performance of the system. This process is informed by service surveys that cover registrar communication, the effectiveness of resources and CHRIS.

Given many of the intended governance arrangements for the NRSCH have not been established, there are few official feedback mechanisms for Commonwealth and state and territory Ministers to gauge the performance of the NRSCH and registrars. This could limit transparency within the system and restrict the development of mechanisms to drive system and sector performance to the point that achievement of the system's purposes and objectives are compromised.

### **Consultation Questions**

You may like to consider:

18. Does the NRSCH provide CHPs with clear guidance and feedback regarding registration, compliance assessment and enforcement? Are there any issues with the operation of CHRIS or of any user guidance or forms? Why/why not?
  
19. How has the NRSCH affected tenant outcomes? Have tenant outcomes improved?

## 5 Current and Future Challenges for Community Housing Regulation

The community housing sector has evolved since the development of the different regulatory systems across Australia. As policy and market settings continue to change, it is important that regulation adapts to ensure effective sector regulation into the future. Governments need to be flexible, but also work towards a long term vision to support a diverse and changing sector.<sup>49</sup>

### 5.1 A Consistent National Regulatory System

National application of regulation is important to support the growth and development of the community housing sector. Currently there are three different regulatory systems in operation that may result in different eligibility, compliance and reporting requirements for cross-jurisdictional providers. In addition to differences in the requirements that need to be met by CHPs, multiple systems can result in differences in interpretation by registrars as well as variations in the level of compliance and enforcement action undertaken by registrars.

For cross-jurisdictional providers, subtle variations from system to system may result in an increase in the administrative costs associated with providing their services. For tenants, variations can lead to differences in the quality of the accommodation and services they can access across jurisdictions. For investors, minor variations may contribute to increased complexity in both understanding the viability of investments and valuing the effectiveness of the regulatory framework protecting that investment.

A consistent regulatory framework, whether that be in a single system or in three more closely aligned systems, may be beneficial for governments, CHPs, tenants and investors.

### 5.2 Aboriginal and Torres Strait Islander Community Housing Providers<sup>50</sup>

To date, few Aboriginal or Torres Strait Islander CHPs have registered under the NRSCH despite the original intentions of the scheme. Current impediments to their participation that have been identified include conflicting legal obligations regarding the disposal of assets in the event of winding up, and the evidence requirements that CHPs need to meet to achieve registration. The Review will examine and seek to address if there are any

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<sup>49</sup> Milligan, V., Pawson, H., Phillips, R. and Martin, C. with Elton Consulting 2017, 'Developing the scale and capacity of Australia's affordable housing industry', AHURI Final Report No. 278, Australian Housing and Urban Research Institute Limited, Melbourne. Available at: <<http://www.ahuri.edu.au/research/final-reports/278>>.

<sup>50</sup> Note that different terminology may be used across each state and territory, e.g. Aboriginal Community Housing Providers (ACHP) in NSW.

further impediments to Aboriginal and Torres Strait Islander CHPs registering and remaining compliant under the NRSCH.

From January 2018, the issue of the wind up clause has been addressed in NSW through the creation of a Local Scheme for organisations that are unable to be registered under the NRSCH. This maintains the NRSCH framework as far as reasonably practical, but has removed the wind up clause problematic to Aboriginal Community Housing Providers (ACHPs), while ensuring appropriate protection of any assets provided by the NSW Government.<sup>51</sup> The Aboriginal Housing Office in the NSW Government introduced a new policy in 2018 that requires ACHPs to be registered under the NRSCH or the Local Scheme by December 2022 to remain registered with them.<sup>52</sup>

Aboriginal Housing Victoria is registered as a Housing Association under the VRS and is the largest non-government Aboriginal housing organisation in Australia, managing over 1,530 properties in Melbourne and regional Victoria.<sup>53</sup>

### **Consultation Question**

You may like to consider:

20. Should the NRSCH be modified to better regulate Aboriginal and Torres Strait Islander CHPs? What would be needed to achieve this?

## **5.3 Sector Complexity**

There is wide variance between CHPs regarding their organisational and governance models, the services they provide, such as Indigenous, disability or aged care, and their capacity to develop and acquire new stock. The tenant profile of the sector is also changing responding to the varying demographics of the Australian population, with CHPs disproportionately providing support to older Australians.<sup>54</sup> Governments face a difficult regulatory challenge when considering how best to regulate and monitor the performance of a sector with such a large degree of provider variance and complexity. This complexity also affects the appropriateness of the current tier structure design.

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<sup>51</sup> NSW Local Scheme. Available at: <<http://www.rch.nsw.gov.au/nsw-local-scheme>>.

<sup>52</sup> Aboriginal Housing Office (NSW Government) Registration Policy 2018 Question and Answers. Available at: <[https://www.aho.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0007/584152/AHO-Policy-Question-and-Answers-Registered-Providers-May-2018.pdf](https://www.aho.nsw.gov.au/__data/assets/pdf_file/0007/584152/AHO-Policy-Question-and-Answers-Registered-Providers-May-2018.pdf)>.

<sup>53</sup> Aboriginal Housing Victoria. Available at: <<http://ahvic.org.au>>.

<sup>54</sup> Australian Government 2018, AIHW, 'Housing assistance in Australia 2018'. Available at: <<https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2018/contents/social-housing-tenants>>.

## Consultation Questions

You may like to consider:

21. Is the current risk management approach to the NRSCH appropriate given the current and emerging community housing environment? Do you think the current tiered registration system is adequately targeted and flexible enough to capture the level of risk for CHPs of varying sizes? How could this be improved?
22. Has the NRSCH reduced regulatory compliance costs for multi-jurisdiction and/or multi-function CHPs?
23. How has the NRSCH impacted CHPs' decisions to enter new jurisdictions? Have barriers to entry been reduced? Has it encouraged registration across participating jurisdictions?

## 5.4 Sector Scale

Continued transfers of public housing stock have increased governments' reliance upon the sector for managing their assets and delivering vital community services.<sup>55</sup> For example, the NSW Government is transferring the management of around 14,000 social housing tenancies to CHPs. This will bring the total percentage of social housing properties managed by NSW CHPs to 32 per cent.<sup>56</sup>

To advance self-determination for Aboriginal people, the Victorian Government has transferred the ownership and management of almost 1,500 social housing properties to Aboriginal Housing Victoria. The Victorian Government also committed in 2017 to transfer the management responsibility for 4,000 public housing dwellings to community housing agencies on a long term basis. This is to support community housing organisations to create more housing and provides more localised management to promote improved and more tailored services.<sup>57</sup>

## 5.5 Increasing Private Investment in the Sector

Access to private finance has increased, with many lending institutions now providing specialised products to the not-for-profit sector and the Commonwealth Government supporting institutional investment through Managed Investment Trusts and the NHFIC. Further detail is provided at **Appendix D**.

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<sup>55</sup> Council on Federal Financial Relations 2017, Affordable Housing Working Group, 'Supporting the Implementation of an Affordable Housing Bond Aggregator'. Available at: <<https://treasury.gov.au/consultation/council-on-federal-financial-relations-affordable-housing-working-group-innovative-financing-models>>.

<sup>56</sup> NSW Government – Management Transfer Program. Available at: <<https://www.facs.nsw.gov.au/about/reforms/future-directions/reforms/management-transfer-program>>.

<sup>57</sup> Victorian Government – Community housing sector capacity. Available at: <<https://www.vic.gov.au/affordablehousing/social-housing/community-housing-sector-capacity.html>>.

The NRSCH has a key role in protecting tenants and investors against CHP mismanagement and organisational failure. This could be better supported through transparent and timely oversight, and the dissemination of publicly available data.

### **Consultation Questions**

You may like to consider:

24. What role should the NRSCH have in building organisational capacity in the sector?
  
25. Could CHPs' data reporting requirements better support increased investment in the sector? For example, do NRSCH reporting requirements need to be more regular and more responsive? Why/why not? What is a reasonable level of regular reporting?
  
26. Has the NRSCH impacted sector growth and development? For example, has the NRSCH contributed to increased access to private finance and improved organisational capacity within CHPs?

## 6 Consultation Questions

The Working Group invites interested parties to provide comments and feedback on any aspect of this Discussion Paper – in particular on any of the questions below. Submissions could focus on what is working well, as well as what is not working well and how this could be improved or addressed. Submissions do not need to respond to all the questions below.

### **Regulation of Community Housing**

1. Is regulation still required and relevant for the community housing sector? Why/why not? What do you think regulation of this sector should aim to achieve?
2. Should community housing regulation apply to all forms of affordable housing, including for-profit providers? What modifications to the NRSCH would be required to appropriately support their inclusion?
3. What do you think the vision for regulation of the sector should be moving forward and how could the design and operation of the NRSCH support this? What role should the National Industry Development Framework have in the NRSCH?
4. What is the impact (positive or negative) of having three different regulatory systems across Australia? Would there be benefits in WA and Victoria joining the NRSCH?

### **Design of the NRSCH**

5. Are the purpose and objectives of the NRSCH and the IGA still relevant? Do they appropriately address current and future challenges (such as those outlined in this paper)? Why/why not? What changes might be needed?
6. Is there sufficient flexibility in the NRSCH to achieve its purpose and objectives? Why/why not?
7. Are there existing forms of regulation that overlap with the NRSCH (e.g. the ACNC)? What is the impact of this? What should community housing regulation offer that is not covered by existing schemes?
8. Is there any other role the NRSCH should be undertaking that it is currently not?
9. Is the current design of the NRSCH conducive to efficient and effective regulation of the sector? Could the design of the NRSCH be improved or streamlined? If so, how?

10. Is there currently sufficient oversight over the operation of the NRSCH, or are the governance arrangements listed in the IGA required (a Ministerial Council, a Ministerial Advisory Committee and a National Regulatory Council)? Why/why not?
11. Should the NRSCH be modified to better regulate smaller CHPs? What would be needed to achieve this?
12. Are the indicators and thresholds in the Evidence Guidelines appropriate for demonstrating compliance with the National Regulatory Code and do they provide sufficient confidence to stakeholders regarding CHP financial viability, governance and management? Why/why not?
13. Are registrars' enforcement and investigative powers sufficient to protect tenants and public assets allocated to CHPs? Why/why not? How could this be improved?

### **Operation of the NRSCH**

14. Has the NRSCH been implemented in a way that is consistent with its regulatory principles (namely that it is proportionate, accountable, consistent, transparent, flexible and targeted) and the regulatory philosophy and practice articulated in the National Regulatory Code? Why/why not?
15. How could CHPs' data reporting requirements be better streamlined to reduce compliance burden, including overlap with other regulatory systems?
16. Does the NRSCH provide sufficient information to stakeholders, including tenants, providers, investors and governments? Why/why not? What ways could it be improved?
17. Are NRSCH communications with stakeholders effective in demonstrating the purpose, operation and performance of the NRSCH and relative performance of CHPs? Why/why not?
18. Does the NRSCH provide CHPs with clear guidance and feedback regarding registration, compliance assessment and enforcement? Are there any issues with the operation of CHRIS or of any user guidance or forms? Why/why not?
19. How has the NRSCH affected tenant outcomes? Have tenant outcomes improved?

## **Current and Future Challenges**

20. Should the NRSCH be modified to better regulate Aboriginal and Torres Strait Islander CHPs? What would be needed to achieve this?
21. Is the current risk management approach to the NRSCH appropriate given the current and emerging community housing environment? Do you think the current tiered registration system is adequately targeted and flexible enough to capture the level of risk for CHPs of varying sizes? How could this be improved?
22. Has the NRSCH reduced regulatory compliance costs for multi-jurisdiction and/or multi-function CHPs?
23. How has the NRSCH impacted CHPs' decisions to enter new jurisdictions? Have barriers to entry been reduced? Has it encouraged registration across participating jurisdictions?
24. What role should the NRSCH have in building organisational capacity in the sector?
25. Could CHPs' data reporting requirements better support increased investment in the sector? For example, do NRSCH reporting requirements need to be more regular and more responsive? Why/Why not? What is a reasonable level of regular reporting?
26. Has the NRSCH impacted sector growth and development? For example, has the NRSCH contributed to increased access to private finance and improved organisational capacity within CHPs?

## Appendix A – Purpose and Objectives of the NRSCH

### **Inter-Government Agreement (IGA) for a National Regulatory System for Community Housing Providers**

#### Clause 3.2

The purpose of this agreement is to create a framework for establishing and maintaining ongoing arrangements for a NRSCH that:

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

#### Clause 3.1

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
- 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
  - 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.

## **Community Housing Providers (Adoption of National Law) Act 2012**

### **Schedule 2, Section 3**

The object of this Law is to provide for a national system of registration, monitoring and regulation of community housing providers:

- a) to encourage the development, viability and quality of community housing
- b) to promote confidence in the good governance of registered community housing providers so as to facilitate greater investment in that sector
- c) to make it easier for community housing providers to operate in more than one participating jurisdiction.

The Law also lists a purpose of regulation as identifying appropriate entities to which government funding for community housing might be provided under other legislation or policies of a jurisdiction.

### **NRSCH Charter (the Charter)**

#### **Vision**

A well governed, well managed and viable community housing sector that meets the housing needs of tenants and provides assurance for government and investors.

#### **Objectives**

The key objectives of the NRSCH are to:

- provide a consistent regulatory environment to support the growth and development of the community housing sector
- pave the way for future housing product development
- reduce the regulatory burden on housing providers working across jurisdictions
- provide a level playing field for providers seeking to enter new jurisdictions.

#### **Regulatory Principles**

The NRSCH will be implemented to ensure that the regulation of CHPs is:

- Proportionate – reflecting the scale and scope of regulated activities
- Accountable – able to justify regulatory assessments and be subject to scrutiny
- Consistent – based on standardised information and methods
- Transparent – clear and open processes and decisions
- Flexible – avoiding unnecessary rules about how housing providers organise their business and demonstrate compliance with the National Regulatory Code
- 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.

### **National Regulatory Code (the Code)**

The National Regulatory Code for the NRSCH from Schedule 1 in the National Law sets out the performance requirements that registered CHPs must comply with. This includes:

1. **Tenant and housing services** – The CHP is fair, transparent and responsive in delivering housing assistance to tenants, residents and other clients
2. **Housing assets** – The CHP manages its community housing assets in a manner that ensures suitable properties are available at present and in the future
3. **Community engagement** – The CHP works in partnership with relevant organisations to promote community housing and to contribute to socially inclusive communities
4. **Governance** – The CHP is well-governed to support the aims and intended outcomes of its business
5. **Probity** – The CHP maintains high standards of probity relating to the business of the provider
6. **Management** – The CHP manages its resources to achieve the intended outcomes of its business in a cost effective manner
7. **Financial viability** – The CHP is financially viable at all times.

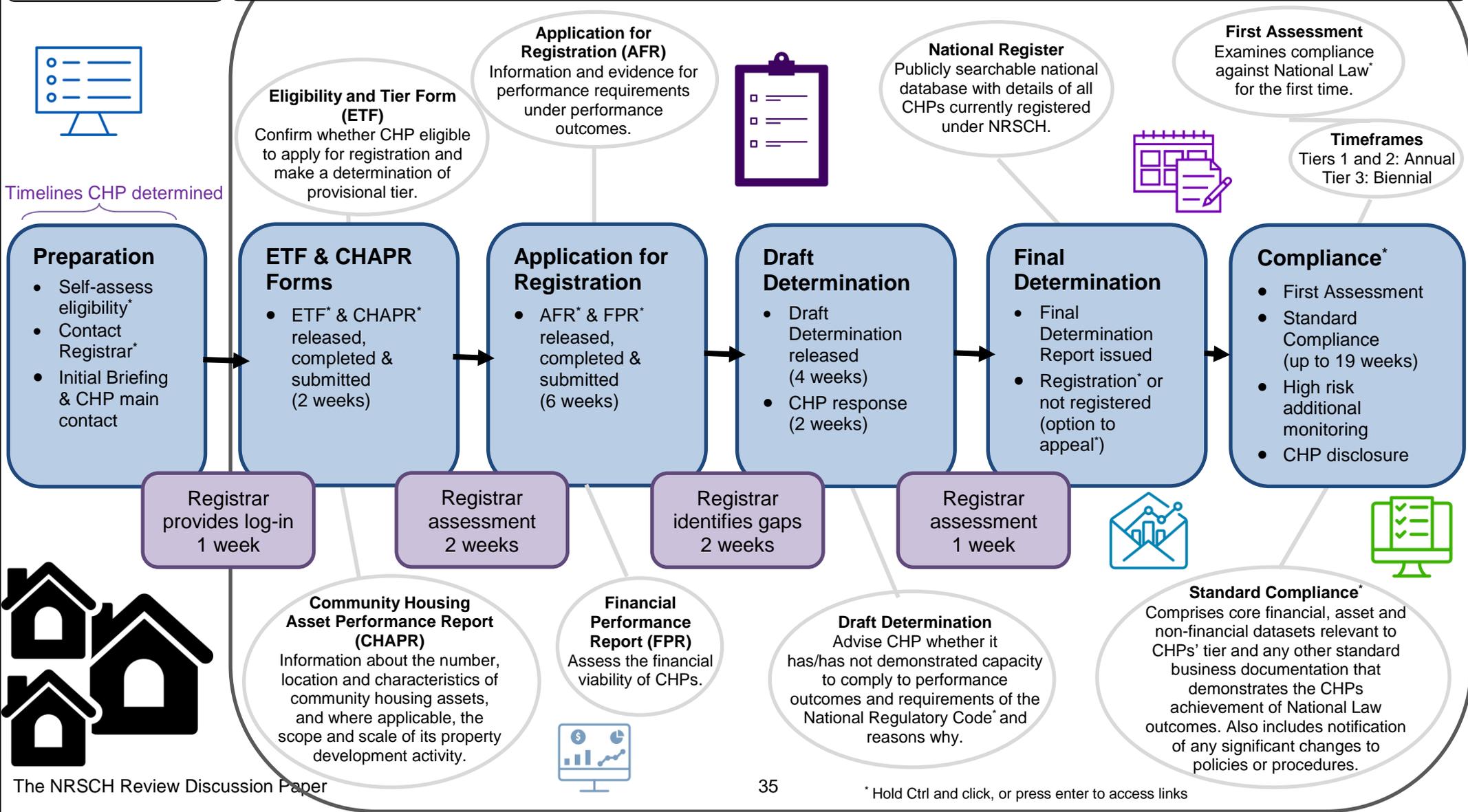
# Appendix B – NRSCH Registration Process



NRSCH\* website



Community Housing Regulatory Information System (CHRIS)\*



## Appendix C – International Community Housing Regulatory Systems

### England

Social housing is provided by councils and not-for-profit (NFP) organisations such as housing associations.<sup>58</sup>

The Homes and Communities Agency (HCA) is responsible for regulating social housing providers to make sure that they are well managed and financially secure.<sup>59</sup> Regulatory standards contain the outcomes that providers are expected to achieve. The standards are classified as either 'economic' or 'consumer'. The regulator has no power to set economic standards for local authorities.<sup>60</sup>

Providers retain primary responsibility for compliance with the standards. The HCA has a responsibility to assess whether there is sufficient assurance that those standards are being met. This is done through quarterly surveys, stability checks, and periodic in-depth assessments.

Registered social housing providers are regulated and funded by the government through the HCA, which builds affordable homes for rent and sale, and homes for rent and sale at market prices. Funding for NFP organisations is through donations and legacies, statutory and grant funded activities and investments.

### Scotland

Social housing is provided by local authorities and NFP organisations.<sup>61</sup> The Scottish Housing Regulator (SHR) is the independent regulator of registered social landlords (RSLs) and local authority services in Scotland.<sup>62</sup>

The SHR approves which organisations can be listed on the register and can access the benefits and responsibilities that come with registration.<sup>63</sup>

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<sup>58</sup> United Kingdom, What is social housing? Available at: <[http://england.shelter.org.uk/campaigns\\_/why\\_we\\_campaign/Improving\\_social\\_housing/what\\_is\\_social\\_housing](http://england.shelter.org.uk/campaigns_/why_we_campaign/Improving_social_housing/what_is_social_housing)>.

<sup>59</sup> Homes and Communities Agency UK. Available at: <<https://www.gov.uk/government/organisations/homes-and-communities-agency/about#our-responsibilities>>.

<sup>60</sup> The UK Regulatory standards that registered providers of social housing must meet are available at: <<https://www.gov.uk/government/publications/regulatory-standards>>.

<sup>61</sup> Housing in Scotland explained. Available at: <<http://www.housing-rights.info/housing-in-scotland-explained.php>>.

<sup>62</sup> Scottish Housing Regulator. Available at: <<https://www.scottishhousingregulator.gov.uk/about-shr>>.

<sup>63</sup> Scottish Housing Regulator – how we regulate. Available at: <<https://www.scottishhousingregulator.gov.uk/what-we-do/how-we-regulate>>.

The SHR regulates social landlords to protect the interests of people who receive services from them. They do this by assessing and reporting on:

- how social landlords are performing their housing services
- RSLs' financial well-being
- RSLs' standards of governance.<sup>64</sup>

### **New Zealand**

The Community Housing Regulatory Authority (CHRA) registers and regulates CHPs, aims to ensure that tenants are in appropriate housing, and supports the growth of a fair, efficient and transparent community housing sector.<sup>65</sup> As of June 2018, there were 47 registered housing providers.<sup>66</sup> Housing New Zealand is responsible for public housing, and the Ministry of Social Development contracts with CHPs for the provision of tenancy management services, for which it pays CHPs an income-related rent subsidy.<sup>67</sup> To receive the Government's income-related rent subsidy, CHPs must first be registered with the CHRA.<sup>68</sup>

CHRA provides assurance to government that registered CHPs are well governed, viable, and deliver appropriate housing services to their client group. One of CHRA's functions is to maintain a public, searchable register of all registered CHPs.<sup>69</sup>

### **Canada**

The Canada Mortgage and Housing Corporation (CHMC) operates as a national housing agency. It provides federal funding in support of housing programs for Canadians in need, as well as offering housing policy, research and advice to Canadian governments, consumers, and the housing industry.

CHMC provides consumers with mortgage loan insurance; programs and financial assistance; and information on renting, home buying and planning, and managing mortgages. Its offerings for business, government and housing organisations include mortgage loan insurance, housing market information, affordable housing in Canada, accessible and adaptable housing, research highlights, mortgage-backed securities, investments, and Canadian registered

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<sup>64</sup> Scottish Housing Regulator. Available at:

<<https://www.scottishhousingregulator.gov.uk/about-shr>>.

<sup>65</sup> NZ Community Housing Regulatory Authority. Available at: <<https://chra.mbie.govt.nz/>>.

<sup>66</sup> NZ Community Housing Regulatory Authority Register. Available at:

<<http://chra.mbie.govt.nz/about-chra/register/?start=10>>.

<sup>67</sup> NZ Operational Arrangement for the Regulation and Provision of Community Housing.

Available at: <<http://chra.mbie.govt.nz/assets/Uploads/Operational-Agreement-10-August-2015.pdf>>.

<sup>68</sup> NZ Ministry of Social Development – Information for housing providers. Available at:

<<http://housing.msd.govt.nz/information-for-housing-providers/index.html>>.

<sup>69</sup> NZ Community Housing Regulatory Authority – what we do. Available at:

<<https://chra.mbie.govt.nz/about-chra/what-we-do>>.

covered bonds. CHMC also provides housing programs and financial assistance to First Nations communities.<sup>70</sup>

According to its 2017 Annual Report, CMHC invested \$3.2 billion that year toward creating housing units for low and middle income Canadians and provided mortgage loan insurance for more than 250,000 homes, 65 percent of which supported first-time homebuyers.<sup>71</sup>

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<sup>70</sup> Bloomberg. Company Overview of Canada Mortgage and Housing Corporation. Available at: <<https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=3590698>>.

<sup>71</sup> Canada Mortgage and Housing Corporation. Available at: <<https://www.cmhc-schl.gc.ca>>.

## Appendix D – National Housing Finance and Investment Corporation

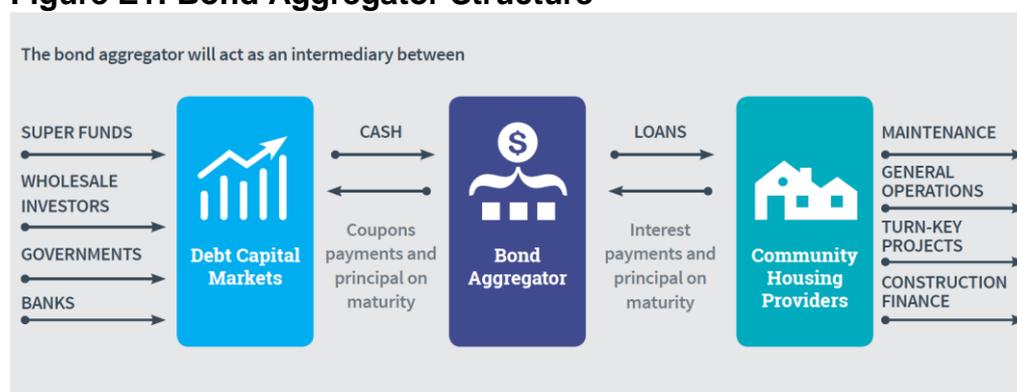
The Australian Government announced it would establish the National Housing Finance and Investment Corporation (NHFIC) as part of the 2017-18 Budget. The NHFIC commenced operations on 30 June 2018 and includes the Affordable Housing Bond Aggregator (bond aggregator) and the National Housing Infrastructure Facility (NHIF).

### Affordable Housing Bond Aggregator

The bond aggregator aims to provide registered CHPs with finance at a lower cost and for a longer term than traditional bank finance. It will do so by aggregating CHPs' borrowing requirements and issuing bonds into the wholesale market, as shown below in Figure E1.

The bond aggregator is supported by a government guarantee, further reducing the NHFIC's borrowing costs. Accessing finance on better terms will help CHPs expand the supply of affordable housing for those most in need. The NHFIC will also provide registered CHPs with support services to assist in developing their capability, to encourage the growth of the sector. This is funded by up to \$1.5 million of the \$175 million NHIF grant money.

**Figure E1: Bond Aggregator Structure**



### National Housing Infrastructure Facility (NHIF)

The NHIF will provide \$1 billion for critical housing related infrastructure to accelerate the supply of housing, particularly affordable housing. The NHIF will use tailored financing (\$825 million split between loans and equity, and up to \$175 million in grants) to partner with eligible recipients to fund new or upgraded infrastructure such as water, transportation, sewerage and electricity, as well as site remediation works.

Eligible recipients include state or territory governments, local governments, local government-owned investment corporations and utility providers, state or territory government-owned utility providers, registered CHPs, or a special purpose vehicle involving at least one core eligible recipient previously listed.

Further information on the NHFIC is available at <https://nhfic.gov.au/>.