

Stakeholder perspectives on the regulation of affordable housing providers

REGULATION OF THE NOT-FOR-PROFIT HOUSING SECTOR IS RECOGNISED BY STAKEHOLDERS AS A NECESSARY CONDITION FOR GROWTH. HOWEVER, SIGNIFICANT CHALLENGES EXIST IN BALANCING THE DIFFERING INTERESTS OF HOUSING PROVIDERS, INVESTORS, NON-GOVERNMENT ORGANISATIONS REPRESENTING TENANTS' INTERESTS AND EXISTING REGULATORY BODIES.

KEY POINTS

- The expansion of the role of the not-for-profit housing sector, including welfare, cooperative, religious, community, Indigenous, local authority and charity based housing organisations, highlights the differing regulatory systems across the states.
- Regulation is a necessary condition for growth of affordable housing, alongside strategic investment. However, it is not in itself a primary growth strategy.
- Regulation serves four main purposes: accountability, risk reduction, investor confidence and protection of tenants. Stakeholders have different perspectives on the value and efficacy of regulation for these purposes.
- Stakeholders also differ on the perceived impacts of regulation. While some providers are concerned about administrative burdens and ritualistic processes, regulators believe that providers are not sufficiently conscious of the risks of business failure.
- Debates over the purpose and nature of regulation have been over-shadowed by the push to develop a national system of regulation. Regulators note that any changes to the regulatory framework need to reflect the available resources and be appropriate to the scale and maturity of the sector.

This bulletin is based on research by Dr Max Travers, Dr Tony Gilmour, Associate Professor Keith Jacobs, Associate Professor Vivienne Milligan and Ms Rhonda Phillips of the AHURI Southern, UNSW-UWS and Queensland Research Centres, with help from Professor Bill Randolph, Dr Julie Lawson and Dr Heather MacDonald. The research reviews the role of regulation in supporting the expansion of the not-for-profit sector in Australian housing.

- The overseas experience suggests that it will not be easy to establish and maintain a balance between the interests of different stakeholders. These tensions are already discernible in the Australian context. A mechanism for regular reviews of the regulatory system and feedback from stakeholders could address some of the potential risks associated with regulation.

CONTEXT

It is broadly accepted that there is an affordable housing crisis in Australia, and that one of the main strategies for addressing the housing needs of lower income households is by expanding the

role of the not-for-profit sector. The rationale is that these providers will be able to leverage investment from the private sector, as has occurred in other countries. This research project was pursued in the context of a proposal by the Australian Government to establish a national regulatory system for not-for-profit housing organisations. The aim of the project was to review evidence of the strengths and weaknesses of regulation both internationally and in some states within Australia. It examined the role of regulation in supporting the ongoing viability and growth of not-for-profits in providing affordable housing. In the current Australian context there are diverse regulatory bodies operating within each jurisdiction (see Table).

TABLE: AUSTRALIAN REGULATION BY JURISDICTION

	Regulatory features compared	Position of regulator in government
NSW	Regulatory code. The registrar has limited intervention powers compared to Victoria.	Registrar is appointed by and reports directly to the Minister for Housing and has full operational responsibility for regulatory functions. Appointed registrar has moved to increase independence from housing policy and funding through physically separate premises and formal protocols.
Vic	Performance standards. Strong powers to intervene in the case of provider failure. Victorian assets carefully ring-fenced.	Registrar appointed by the Governor-in-Council and reports to the Minister for Housing. Office of the Registrar co-located within wider department. Current registrar has dual responsibilities for housing policy and regulation. Lack of separation between policy and regulation criticised by Auditor-General (VAGO 2010).
Qld	Prescribed requirements. Intervention powers greater than in NSW, less than Victoria and ACT.	No separate registrar. Regulatory functions undertaken by public servants appointed by the host department through normal public sector procedures. No robust separation of regulatory functions.
SA	Mandated requirements. Historic controls (e.g. debentured assets) highly prescriptive and not aligned with current developments in other jurisdictions.	Independent community housing funding and regulatory agency (South Australian Cooperative and Community Housing Agency) abolished in 2008 and registry functions reabsorbed into mainstream housing agency. No separate registrar. No robust separation of regulatory functions.
WA	Prescribed requirements.	No separate registrar. Administrative function within mainstream housing agency.
ACT	Standards.	Registrar is a delegate of the Commissioner for Housing operating within the mainstream housing agency.
Tas		No direct regulation, with control exercised through government contract. Changes under consideration.
NT		No direct regulation, with control exercised through government contract.

RESEARCH METHOD

This research involved a review of the academic literature on regulation, and reports by specialists on housing regulation in England, the Netherlands and the USA. The findings of the research are based on 46 interviews conducted with providers, regulators, investors and non-government organisations (NGOs) representing tenants' interests in four states; Victoria, New South Wales, Queensland and Tasmania. The stakeholders included representatives of both large and small not-for-profit housing organisations, government regulators, peak bodies, tenants' advocacy groups and investors.

FINDINGS

The purpose of regulation

- Providers recognise that the central purpose of regulation is to make providers accountable to government and the public; they understand the value and importance of maintaining standards in the industry.
- The research highlighted that regulation should not be viewed as a primary growth strategy, but rather as a necessary condition for affordable housing growth alongside strategic investment.
- The information deemed necessary for accountability and the maintenance of standards varies across providers and regulators. All stakeholders did, however, agree that information should be meaningful and useful for assessment purposes both internally and externally.
- Another purpose of regulation, emphasised by regulators, was that it reduced risks. There were, however, different views on how to assess and manage the risk of business failure. In Victoria, there was also concern that some providers were not taking enough risks or being sufficiently entrepreneurial.
- All interviewees accepted that one objective of regulation is to improve confidence among potential investors. However, some interviewees believed that banks made decisions purely on financial grounds and had little awareness of the regulations or, more generally, affordable housing as a potential area for investment.

- The most striking difference of viewpoints arose in relation to protecting tenants. While protecting tenants was seen as a primary purpose of regulation by all stakeholders, many providers believed that some of the measures employed, such as surveys or tenants' representation on Boards, were ritualistic or burdensome.
- NGOs representing tenants' interests also argued that, to protect tenants rights, more information was required on the affordability of new housing developments and other social policy outcomes. They advocated for a much tougher form of regulation.

The impact of regulation

- Finding a clear-cut and objective way of measuring the effects and impact of regulation of affordable housing is difficult. While the affordable housing sector has grown and professionalised alongside regulation, this may have occurred naturally in response to commercial pressures and opportunities.
- There was some concern expressed by providers about overlapping regulation, accreditation and other government requirements. Smaller providers complained most about excessive bureaucracy. A number of providers also complained about the absence of timely or thorough feedback.

The development of regulation

- In Australia, debates over regulation have been over-shadowed by the Australian Government's push to develop a national system of regulation. A review of responses to a discussion paper, *Regulation and growth of the not-for-profit housing sector*, on the options for a national regulatory system, released by the Australian Government in June 2010 shows that there are significantly divergent viewpoints.
- One driver for a national approach has been to promote the independence of the regulator, given the close ties between the regulator and State Housing Authorities that exists in many states.
- Providers also argued that regulators should regulate public housing, in addition to not-for-profit housing, in order to create a level playing field.

- Regulators highlighted that any emerging changes to the regulatory framework needed to be appropriate to the scale and maturity of the sector, and reflective of the resources available.

International developments

- Although the systems to provide affordable housing differ considerably between countries, there are common problems in balancing the interests of stakeholders.
- Overseas experience has shown the dangers of too little or too much regulation and/or government support and intervention. These problems could also arise in Australia.

POLICY IMPLICATIONS

The move to put in place specialised regulation for the not-for-profit housing sector is generally supported across the social housing system. Although the form of regulation and the consequent issues that may arise are hard to predict, there are some considerations and measures that should be taken into account or undertaken now to reduce current and future regulatory risks.

- Regulation should not be viewed as a panacea, but rather as a necessary condition alongside strategic investment.
- Regulators should provide greater oversight of the social policy outcomes of housing, including affordability; the tenant mix and the range of products offered by not-for-profit providers.

- Regulators with sound understanding of the sector and from a position of independence, could take on the role of promoting providers of affordable housing to the private sector and the community.
- Regulators, in determining information requirements, should consult and reflect on potential administrative burdens in order to minimise them.
- Regulators should aspire to be independent from State Housing Authorities and should seriously consider broadening their scope to take on responsibility for public housing in addition to the not-for-profit sector.
- A mechanism for regular reviews and obtaining feedback from stakeholders should be prescribed within legislation. This would guard against potential problems and ensure that the regulatory function remains responsive to changing policy, organisational and housing market contexts.

FURTHER INFORMATION

This bulletin is based on AHURI project 40559, *Regulatory frameworks and their utility for the not-for-profit housing sector*.

Reports from this project can be found on the AHURI website: www.ahuri.edu.au or by contacting the AHURI National Office on +61 3 9660 2300.

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