

**Stakeholder  
requirements for  
enabling regulatory  
arrangements for  
community housing in  
Australia**

authored by

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## Abbreviations

AGPS	Australian Government Publishing Service
CFV	Central Housing Fund (Dutch acronym)
CHO	community housing organization
CML	Council of Mortgage Lenders (UK)
COAG	Council of Australian Governments
CSHA	Commonwealth State Housing Agreement
NCHF	National Community Housing Forum
OECD	Organisation for Economic Co-operation and Development
OCH	Office of Community Housing (NSW)
ORR	Office of Regulation Review (Australia)
PUMA	Public Management program (OECD program on Public management and Governance)
RIS	Regulatory Impact Statement
RSL	Registered Social Landlord (UK)
SACHA	South Australian Community Housing Authority
SHIP	Social Housing Innovations Project

# EXECUTIVE SUMMARY

A range of work has recently been undertaken or initiated, that indicates a review of regulatory arrangements for the community housing sector is timely. Five jurisdictions – Queensland, New South Wales, the ACT, Victoria and Tasmania – have already indicated the policy relevance of research into regulatory arrangements for community housing by undertaking co-operative research through the NCHF (the Kennedy Report) to identify the potential structure and ‘regulatory tools’ of a regulatory framework for community housing. The specific policy relevance of this research relates to the character and purpose of a regulatory framework. A number of State Governments are currently reviewing their regulatory arrangements.

The main aim of this project is to attempt to develop a regulatory framework that would optimise the flexibility, efficiency and capacity of providers (i.e. to enable the development of the sector) as well as managing the risks to government. Two important objectives of the regulatory framework are:

- To support access to sources of finance in addition to government grants for social housing generally and affordable housing in particular.
- To enhance the capacity of locally based housing providers to link housing activities to wider community building strategies.

## *Aims of the Research*

The specific aims of this research are:

- To identify the outcomes looked for from a community housing regulatory system by external stakeholders – private financiers, local government, developer or church partners, and central agencies;
- To identify any advantages to community housing providers that might flow from such outcomes and the limitations of the current arrangements;
- To identify the criteria for regulation that would optimise the flexibility and efficiency of providers as well as robust and transparent accountability that would also be acceptable to Government administrators;
- To identify the aspects of the operations of UK and other international community housing regulatory systems that provide similar benefits to those being sought by the above stakeholders and to assess their applicability to the Australian context;
- To familiarise administrators and providers with the findings and to test their applicability in the existing community housing systems – including Indigenous housing.

## *Key findings of this paper*

This positioning paper reviews the policy context and available literature on regulating community housing including work to-date in three jurisdictions and the overseas experience (the UK and Netherlands particularly). It also summarises the role of key partners who will be interviewed for this project and outlines the findings of the NCHF project on regulation, on which this research explicitly builds.

- The UK Better Regulation Taskforce has developed five principles of good regulation: transparency, accountability, proportionality, consistency and targeting.
- Performance based regulation is regulation that focuses on the outcomes to be achieved, rather than the processes employed to control the risk. Performance based legislation, for example, prescribes the desired outcomes, rather than detailing the precise steps with which businesses must comply. In this sense, performance based regulation is *enabling*

rather than *prescriptive* black letter regulation. Performance based regulation involves greater industry involvement in determining outcomes. Importantly, its principal advantage is that it allows greater flexibility and innovation in approach.

- In keeping with broader regulatory trends, the human services are now experiencing a shift away from prescriptive regulatory processes to a flexible and less interventionist approach. In particular, attention is being directed to the quality of regulatory instruments and service delivery outcomes.
- Apart from the project co-funded through NCHF (the Kennedy Report), three jurisdictions are doing research and development. In Victoria the Social Housing Innovation Project report recommended "a legislative framework for the sector which establishes a Community Housing Authority with regulative functions and powers". In NSW, the Office of Community Housing is exploring a Performance Management Framework that is outcome focussed and aims to introduce greater flexibility and innovation. In Queensland, a new Housing Act has empowered the Department to develop regulations for housing agencies, which will again focus on outcomes and attracting additional resources to the sector, whilst safeguarding public assets.
- In the UK, The Housing Corporation is both funder and regulator of Registered Social Landlords (RSLs). In April 2002 it introduced a new Regulatory Code which aims for: viable organisations that are well governed and well managed. The code is outcome focused and individual organisations are responsible for demonstrating how they meet and exceed standards. Performance reports are publicly available. The regulatory system has underpinned significant private investment and growth of housing associations in the UK.
- The chief instrument of regulation in the Netherlands is the Social Rental Sector Management Decree, which covers all functions of housing associations in the largest non-government housing sector in the western world. It is complemented by the Social Housing Guarantee Fund which is a private institution established by housing associations to obtain private finance. The Central Housing Fund operates as the regulator of financial risks.
- The financial criteria used by financial systems in the UK to make social housing decisions include: Adequate business plans and funding prospectus - prepared by an officer with sufficient financial expertise; valuation of housing stock (in stock transfer market); transparent processes from which to determine a realistic 'asset value to loan ratio'; stock surveys; sufficient warranties and indemnities (business, title and environmental warranties); and sound Governance structures. The UK criteria may be broadly relevant to the Australian context. Its applicability will be assessed following the interview stage of the project.
- The Kennedy Report concluded that overall, regulation of community housing in Australia is somewhat underdeveloped. Funding agreements currently form the principal regulatory tool. However, as a regulatory mechanism, they are relatively limited – most notably in relation to dealing with contract breaches and specifying performance outcomes. Further, the report notes that whilst key areas of business are captured under existing regulatory arrangements (tenancy management and business practices), there are significant gaps in adequately addressing qualitative issues such as performance against funded objectives and the effective use of funds and assets.
- The literature showed there was very little work to date on community housing and regulation in Australia, particularly work that addressed the needs of a range of key stakeholders.
- Based on a review of comparable industries in Australia and of community housing in other countries, the Kennedy Report focuses attention on a range of common (and often

complementary) regulatory tools aimed at ensuring appropriate social outcomes for governments, providers and consumers. They are: legislation, registration and licensing, codes of practice, standards, accreditation and funding agreements.

- The proposed regulatory model in the Kennedy Report recommended that legislation make provision for a statutory-based charge on capital assets as an alternative to headleases or mortgages. The report also proposed that a tiered approach to regulation of community housing be adopted. This would be designed to accommodate the vast differences that characterise the community housing sector – differences in size, location, management models and client-bases.

### *Methodology*

The research will largely seek to build on the results contained in the Kennedy Report on a regulatory framework for community housing. The research will be comprised of four elements: field research with key external stakeholders (private finance industry, developers, churches, local government and central agencies), evaluation of international regulation through literature and key informants, a provider focus group/ workshop and two seminars toward the end of the project to review key findings – first with administrators and then with a broader constituency.

The selection of informants for interview in the field research stage is specifically targeted to organisations with sufficient familiarity with community housing to enable an informed response. The number of informants in each stakeholder group will range between three and seven. The variation is primarily related to the existing degree of engagement with community housing and the extent to which it might be anticipated that there will be regional differences.

Outputs are this positioning paper, a progress report following the interview stage and a final report and findings paper. The project will be completed in November 2002.

# 1. INTRODUCTION

## 1.1 Introduction

This paper describes research funded by the Australian Housing and Urban Research Institute and being undertaken by the Sydney Research Centre in partnership with the AHURI Associate, the National Community Housing Forum (NCHF). The research examines stakeholder requirements for enabling regulatory arrangements for community housing in Australia.

This positioning paper is the first of a series of outputs from this AHURI project. The paper outlines the current policy context and, in particular, the drivers determining the relevance of this research to national housing policy development. It provides a review of recent literature, a brief overview of complementary (Australian) initiatives and international experience, and outlines the proposed methodology.

Further outputs from this project will include a Work in Progress report, Research and Policy Bulletin and Final report. The project will be completed in November 2002.

## 1.2 Background

Community Housing forms a small but increasing component of the social housing sector in Australia. Its proponents argue that community housing can address a number of key social housing objectives including:-

- the attraction of additional sources of investment (including investment in affordable housing)
- more flexible, locally based solutions to housing needs,
- an ability to respond in rural areas,
- a capacity to play a role in community building and
- in meeting the needs of specific tenant groups more responsively.<sup>1</sup>

As the sector has expanded, Governments have been paying increasing attention to the regulation of the sector. There are a number of policy projects in the regulation area that are currently underway which are detailed in section 3.2.

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<sup>1</sup> See for example: Bisset Hal (2000) *Social Housing: Building a New Foundation – Social Housing Innovations Project Report* and NCHF (2001) *Viability and Community Housing* Discussion series: paper no.5

The sector itself considers that an effective regulatory framework is required as a precondition for enabling providers to take more effective control of their business and, hence, as a precondition for community housing playing a larger role in the social and affordable housing system. It is also acknowledged that the lack of regulation also constrains the achievement of other conditions for growth: the development of a robust market for mortgage finance for investment in community housing, and effective partnerships for development projects.

This project explicitly builds on research recently completed by the NCHF on behalf of five state housing authorities.<sup>2</sup> The joint state project developed a 'toolkit' of regulatory options, which could manage the public risks associated with community housing and the objectives of community housing administrators.

The completed NCHF project (hitherto called the Kennedy Report) takes the first step in identifying the regulatory options for community housing. It identifies the public risks involved in community housing, the current administrative mechanisms for managing these and the needs of community housing government administrators. It then evaluates the effectiveness of existing mechanisms and reviews the regulatory arrangements in related industries – including Indigenous housing – and provides some preliminary information on housing regulation in the UK and the Netherlands.

On this basis, the Kennedy Report proposes a 'tool kit' of regulatory options that could be adopted by state governments to regulate community housing. It also identifies some of the implementation issues related to these options.

This AHURI funded project is specifically intended to add the information that will be required to determine *which* of the options should be implemented and in what way. Specifically, while the former project highlighted the needs of government administrators, this project also focuses on the requirements of the other stakeholders who are crucial to the expansion of the community housing system. These stakeholders are:

- *Potential investors* – in the UK, the dramatic expansion of investment in housing associations followed the establishment of a new regulator – the Housing Corporation – in 1987. Investors also rely on the information provided through the regulatory agency to make decisions about the risks of investment with particular agencies. Such information is currently not available in Australia.
- Potential joint venture partners  
*Local government* - the future growth of affordable housing in Australia is likely to be driven by partnerships between developers and providers and supported by local government planning instruments. Similarly partnerships with developers have the

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<sup>2</sup> The project – *A Regulatory Framework for Community Housing in Australia* - was funded by the QLD Department of Housing, the NSW Office of Community Housing, the ACT Department of Urban Services, the VIC Office of Housing and the Housing Tasmania. The project was managed by the NCHF and the research undertaken by Robyn Kennedy & Co.

potential to both increase the supply of affordable housing and to place greater emphasis on the creation of sustainable communities.

*Churches* - the role of churches as both investors and as partners bringing assets to social housing is also being seen as an important ingredient in the future development of social housing – particularly in Victoria. The key question for this research is to identify the aspects of a regulatory framework that would enable such arrangements and which might act as a barrier.

- *Providers* – the touchstone for a regulatory framework is whether it is effective in enabling greater flexibility and efficiency as well as more robust and transparent accountability by providers. The project will not seek to hold consultations with providers on the approach to implementation in a given jurisdiction, but will explore the criteria that must be met if regulation is to increase rather than restrict capacity.
- *Central agencies* – the ultimate acceptability of a regulatory framework will rest on whether it meets the requirements of efficient public administration as perceived by central agencies.

Throughout this project a distinction is made between internal and external stakeholders. For the purposes of this research we understand internal stakeholders to mean organizations, individuals and agencies who are directly involved in the provision or administration of community housing (state housing authorities and community/affordable housing managers). External stakeholders are those players whose (potential) role in community/affordable housing are as investors or partners – the private finance sector, developers, local government and church agencies.<sup>3</sup>

The Kennedy Report provided a preliminary description of the regulatory arrangements in the UK and the Netherlands. However, it did not have the capacity to evaluate the effectiveness of these approaches or the practical issues of their operations in a way that would inform the implementation of regulatory arrangements in Australia. The current project will explicitly address this question.

Finally, some aspects of a regulatory system can have very clear application to Indigenous housing. The Kennedy research examined the regulatory arrangements – such as registration – already in operation for Indigenous providers in some jurisdictions. The exploration of criteria with providers in this project should be relevant to Indigenous providers and the project will seek to include Indigenous providers in the workshop. However, most of the external stakeholders identified are not currently involved in Indigenous housing. Nonetheless, there would be considerable benefit in exploring the applicability of the findings to Indigenous housing systems either in the proposed final joint findings seminar or as part of the ongoing dissemination of the research findings.

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<sup>3</sup> It is important to note that in some instances local government and church agencies do directly manage community housing. Our principal concern in the interview stage is, however, to understand the requirements of these stakeholders in their role as partners or investors in community/affordable housing (for example, through land or stock contributions).

## 1.3 Aims of the Research

The specific aims of this research are:

- To identify the outcomes looked for from a community housing regulatory system by external stakeholders – private financiers, local government, developer or church partners, and central agencies;
- To identify any advantages to community housing providers that might flow from such outcomes and the limitations of the current arrangements;
- To identify the criteria for regulation that would optimise the flexibility and efficiency of providers as well as robust and transparent accountability that would also be acceptable to Government administrators;
- To identify the aspects of the operations of UK and other international community housing regulatory systems that provide similar benefits to those being sought by the above stakeholders and to assess their applicability to the Australian context;
- To familiarise administrators and providers with the findings and to test their applicability in the existing community housing systems – including Indigenous housing.

## 1.4 Defining Community Housing

Community housing is rental housing for low to moderate income or special needs households, managed by not-for-profit community based organisations whose operations have been at least partly subsidised by government (usually through funds provided under the Commonwealth State Housing Agreement).<sup>4</sup>

The sector is small (approximately 0.4% of all households)<sup>5</sup> but over the past decade has grown rapidly. It now includes a number of larger, more professional organisations, as well as many smaller (often tenant or volunteer managed) organisations.

Community housing is delivered through three main types of organisations:

- Tenant managed co-operatives
- Specialist housing associations
- Other organisations (church, welfare, local government) that manage housing as part of their business

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<sup>4</sup> Robyn Kennedy & Co. (2001) *A Regulatory Framework for Community Housing in Australia – Volume 1: Risk Management* NCHF, p.3

<sup>5</sup> SCRCSSP (2002) *Report on Government Services 2002: Volume 2* AusInfo, Canberra

While all of these organisational types target a wide range of tenant groups, there are very distinct boarding housing, crisis or transitional accommodation models of housing delivery.

However, with the exception of CHOs managing transitional/exit housing as part of their long-term business and longer-term (3 months or more) supported housing, crisis accommodation falls outside of the scope of this project. This is consistent with the Kennedy Report, which excluded CAP (crisis accommodation program) and SAAP (Supported Accommodation Assistance Program).<sup>6</sup>

On the basis that boarding houses often provide long-term housing as well as short term and transitional accommodation, boarding houses are considered to fall within the parameters of community housing for the purposes of this project.

Traditionally, community housing has targeted low-income households. However, the growing crisis in affordable housing in Australia for a wider range of income brackets has opened community housing management to moderate-income households – with the potential to further expand service delivery to this income-group in the future. For this reason, affordable housing is considered within the scope of this project.

### *The objectives of community housing*

Broadly, the objective of community housing is the provision of safe, secure and affordable housing to low-moderate income and special needs households.

The following objectives were identified in the Kennedy Report:

- “affordability, choice and satisfaction in housing
- quality of service delivery
- equity, security and sustainability of tenancies
- flexibility and innovation in service delivery
- adding to the strength and vitality of communities
- providing opportunities for tenant participation and empowerment”<sup>7</sup>

These objectives are interrelated and of equal importance. Within the context of this project, however, the following two can be highlighted: flexibility and innovation in service delivery and adding to the strength and vitality of communities. As we will see in section 1.5 the capacity for flexibility and innovation in service delivery is underpinned by appropriate and enabling regulatory arrangements. In turn, community housing’s aim to add to the strength of communities is consistent with current policy objectives. Again, taking advantage of

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<sup>6</sup> Crisis accommodation programs are excluded on the basis that crisis accommodation in all jurisdictions is not covered by the Residential Tenancies Acts as the person in crisis is regarded as a licensee not a tenant. In turn, the purpose of crisis accommodation is to provide immediate relief from homelessness not to provide longer-term rental housing. See, Robyn Kennedy & Co (2001) *A Regulatory Framework for Community Housing in Australia – Volume 1: Risk Management* NCHF, p.3

<sup>7</sup> The objectives are based on stakeholder consultation during the NCHF project, and the aims of community housing outlined in the *National Community Housing Standards Manual*. Robyn Kennedy & Co. (2001) *A Regulatory Framework for Community Housing in Australia – Volume 1: Risk Management* NCHF, p.7

community housing's strengths will rely on a more flexible approach to regulation. This will be discussed in section 2.2.

### *The business of community housing*

Recent research identifies the following components that make up the broad framework of business activities:

- *“Procurement and disposal* – property identification, inspection, purchase, project management, conveyancing, identification of properties for disposal, sale;
- *Asset management* – asset registers, monitoring of condition, asset management planning, authorisation & supervision of responsive and cyclical maintenance;
- *Tenancy management* – access to housing, enquiries, referral, assessment, waiting lists, lettings agreements, bond administration, rent collection and administration and administration, ending tenancies, tribunal appearances;
- *Sustaining tenancies* – Responding to changing needs, brokering support services, referral, advice and assistance, establishing referral and support links and agreements, management of grievances.
- *Community development* – tenant participation, involvement in community programs, involvement in employment and other programs, links to local government and other key agencies;
- *Community housing service management* – organisational administrative systems, IT, funding applications, compliance, auditing, participation in industry body activities, staff and volunteer, training and management, office environment management.
- *Financial management* – capital funding arrangements and management, accounting systems, financial reporting and monitoring, budget management, long-term financial planning.
- *Governance* – Community ownership, policy setting, needs assessment, business planning and monitoring, risk management for all aspects of the organisation.”<sup>8</sup>

The research further notes that some business activities are undertaken by other parts of the system – government, peak bodies, resourcing agencies, secondary co-ops. These activities are summarised as follows:

- *“Sectoral policy development and implementation* – needs assessment and program design, program/ contract administration, liaison with government and government agencies;
- *Sectoral supervision* – statutory and regulatory compliance, quality assurance and monitoring, data collection;
- *Sector support* – management advice and support, training, IT support, brokerage services (e.g., insurance, finance).”<sup>9</sup>

It is important to note that there are also a range of intersecting variables that may impact on the ways that business functions are undertaken and the associated risks. These include:

- “The size of the organisation
- The nature of the managing agency
- The location of the organisation
- Financing of the organisation and ownership of the assets
- The availability of other infrastructural supports”<sup>10</sup>

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<sup>8</sup> NCHF (2001) *An Overview of the community housing business and key functions: A background paper for the National Community Housing Regulatory Framework project* p.2

<sup>9</sup> NCHF (2001) *An Overview of the community housing business and key functions: A background paper for the National Community Housing Regulatory Framework project* p.2

## 1.5 Defining Regulation

Loosely described, regulation can be understood as the implementation of a set of rules or processes, achieved through various instruments, to ensure specific social and/or economic outcomes. One definition describes regulation as “sustained and focused control exercised by public agencies over activities that are socially valued.”<sup>11</sup>

Regulations can be divided into three categories:

- Economic regulations – intervene directly in market decisions such as pricing and competition;
- Social regulations – protect public interests, for example, the environment, health and safety;
- Administrative regulations – ‘red tape’ or administrative mechanisms through which governments collect information and monitor industries.<sup>12</sup>

This research is concerned with the third of these – administrative regulations. It is worth noting that while rent formulae of social housing providers - including community housing - may be prescribed, this is imposed to achieve social rather than economic outcomes. It is also important to point out that community housing organisations are subject to a wide range of regulation that affect businesses in general (e.g. Fair Trading Regulation). However, this research is primarily concerned with regulation applied to the specific business of community housing.

Regulation can be most usefully understood as a continuum or ‘spectrum’ of options. This spectrum is captured in the chart on the following page. The least intrusive form is self-regulation, where there is no government involvement and compliance with industry-determined regulatory measures is voluntary. An intermediate approach is quasi or co-regulation – where industry and government determine and implement regulation through a collaborative approach. Within this type of arrangement a mix of regulatory components is used, some of which are voluntary and some of which are enforced. At the end of the spectrum is prescriptive government (‘black-letter law’) regulation. Of course, some industries are unregulated. That is, there is no industry or government regulation and competitive market forces prevail.

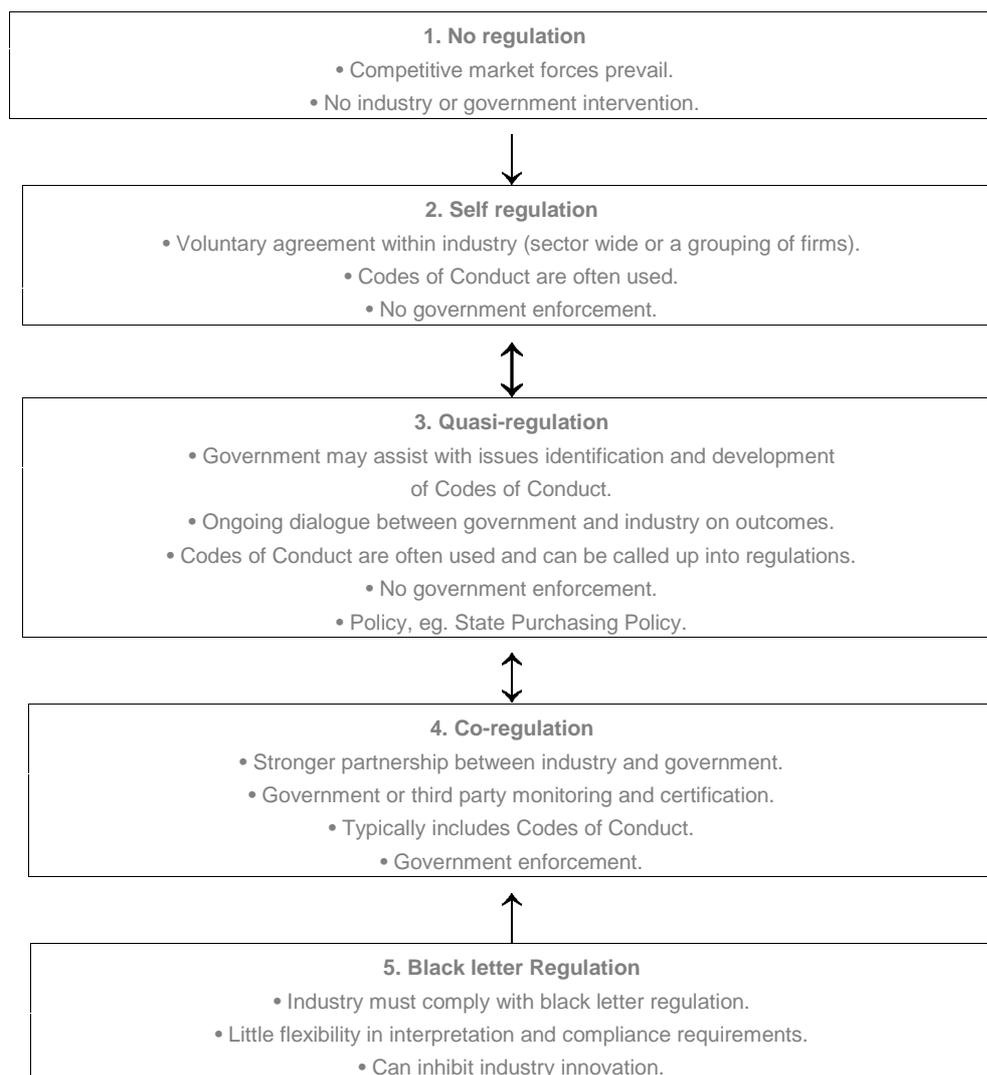
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<sup>10</sup> NCHF (2001) *An Overview of the community housing business and key functions: A background paper for the National Community Housing Regulatory Framework project* p. 3

<sup>11</sup> Selznick cited in Robyn Kennedy & Co (2001) ‘Appendix 1: An Introduction to Regulation’, *A Regulatory Framework For Community Housing in Australia* NCHF, vol.1, p.25

<sup>12</sup> OECD (2000) *Reducing the Risk of Policy Failure: Challenges for Regulatory Compliance* p.9

## THE REGULATORY SPECTRUM OF OPTIONS



*Chart source: Qld Department of State Development *Guidelines on Alternatives to Prescriptive Regulation**

Current regulatory arrangements for community housing will be discussed in section 4.1. However, it is worth noting at this point that for community housing systems in a number of jurisdictions the shift from public provision to regulated non-government provision has not yet occurred for key aspects of the business; in particular, procurement, asset management and allocation.<sup>13</sup> In other words, rather than devolving these functions to the community housing sector with a set of regulatory controls in place, government still directly controls them.

Experience of self-regulated industries both within Australia and overseas has shown that while there are some successful examples,<sup>14</sup> in general it is uncommon for regulation to work

<sup>13</sup> See, for example, NCHF (2002) *System-wide business structures for Community Housing*, discussion series, paper no. 7, September

<sup>14</sup> See, for example, a case study of the advertising industry in the United Kingdom in a recent OECD publication. It is important to note that the success of this case is, in part, attributed to the development of the Advertising Standards Authority (ASA) – an independent body from government and industry, whose purpose is to raise public awareness of the industry codes, create incentives to comply with the codes and investigate complaints. Government reviews are also noted as key in encouraging continuous quality improvement in the codes and their administration. Crawford C. (1997) 'The Advertising Standards Authority

without some minimal form of government or industry 'control' over its members. At the other end of the spectrum, experience has also shown that traditional 'black-letter' regulation can stifle innovation and has difficulty in responding to changing industry circumstances.<sup>15</sup>

Within this context, it is important to note that deregulation does not necessarily refer to the reduction or wholesale removal of regulatory structures. The concept of deregulation is sometimes employed to signify the shift from *prescriptive* government controlled regulation to *non-prescriptive* alternatives.

### *Why regulate?*

Economic theory proposes that without regulation some sort of 'market failure' would occur. In turn, this market failure would impose costs on society – particularly on consumers.<sup>16</sup> Translated into a wider context, the need for regulation is based on the premise that in its absence a problem or risk would arise. Seen in this way, the major objective of regulation is the protection of consumer (and to a lesser extent, government and industry) interests through the management of risk.

Based on this understanding, contemporary approaches to regulation weigh up the advantages and the outlay for the implementation of a regulatory system. That is, they "focus on an assessment of whether the benefits of regulation are greater than the costs".<sup>17</sup> In other words, the evidence of market failure is not in and of itself a sufficient condition for introducing regulation. The following conditions are considered:

1. The size of the risk (or market failure)
2. The probability of the proposed regulation reducing the size of the problem
3. The costs of regulations – for government, industry and consumers<sup>18</sup>

In the event that the risk is seen as significant and that the benefits will outweigh the costs, regulation is introduced. The perceived risks are managed by the enforcement of a set of rules.

However, this is not to say that regulation is only about stopping 'bad' things or problems occurring. Regulation is also about encouraging particular sets of positive outcomes occurring.<sup>19</sup>

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and the System of Self-Regulation in the United Kingdom' in OECD *Co-operative Approaches to Regulation* Occasional Papers: No. 18, pp.21-28

<sup>15</sup> QLD Department of State Development (n.d) *Guidelines on Alternatives to Prescriptive Regulation* p.13

<sup>16</sup> See, Selznick P (1985) 'Focussing Organisational Research on Regulation' in R. Noll (ed.) *Regulatory Policy and the Social Sciences* and Ogus A (1994) *Regulation – Legal Form and Economic Theory* Clarendon Press, Oxford

<sup>17</sup> Robyn Kennedy & Co (2001) 'Appendix 1: A Regulatory Framework For Community Housing in Australia' NCHF, vol.1, p.5

<sup>18</sup> Robyn Kennedy & Co (2001) 'Appendix 1: An Introduction to Regulation', *A Regulatory Framework For Community Housing in Australia* NCHF, vol.1, p.25

<sup>19</sup> In this case the risk that is being managed is the possibility that without regulation the positive outcome will not occur.

This project is specifically concerned with identifying the regulatory framework that would optimise the flexibility, efficiency and capacity of providers (i.e. to enable the development of the sector) as well as managing the risks to government. In this context, appropriate regulation may provide the precondition for the establishment of new business relationships such as access to private investment or new partnerships. An enabling focus, therefore, could mean the introduction of regulatory 'tools' that support the continued development and growth of the community housing sector.

### *Good practice in regulation*

The UK Better Regulation Taskforce has developed the following five principles of good regulation:<sup>20</sup>

- Transparency
  - Clear purpose and objectives
  - Proper consultation with relevant stakeholders
  - Penalties for non-compliance are clearly understood
  - Regulations are expressed in clear and accessible language
  - Those covered by regulations clearly understand their obligations and are given support and time to comply
- Accountability
  - Regulators and enforcers are clearly accountable to government, citizens and parliament
  - Those covered by regulation clearly understand their responsibilities
  - Accessible and fair appeals processes are established
- Proportionality
  - Enforcement action (e.g. inspections) are in proportion to the risk
  - Penalties are in proportion to the harm
  - Alternatives to prescriptive regulation are first considered
- Consistency
  - New regulations are consistent with existing regulations
  - Where possible, encourage consistency between government regulators and similar industries
  - Enforcement agencies apply regulations consistently
- Targeting
  - Regulations are clearly aimed at the problem or risk
  - Where possible, a goals based approach is employed
  - Regulations should be regularly reviewed to ensure their ongoing applicability and affectivity
  - Where regulations unfairly impact on small businesses (or organisations), support options or alternatives are considered.

## **1.6 Conclusion**

This section has covered the motivating factors for this project and the research aims. It has also provided a brief overview of the purpose and characteristics of regulation. The next chapter builds on this by considering the policy context – specifically: recent regulatory trends and their application to the human services; and the current policy relevance of this research project.

## 2. POLICY CONTEXT

### 2.1 The broad regulatory environment and associated trends

A significant increase in regulation was experienced in many countries during the 1970s. However, while this increase resulted in some positive social and economic outcomes, overall the results were less than adequate with, at times, dramatic regulatory failures.<sup>21</sup> As a result, governments were prompted to re-examine their approaches to regulation. This subsequent period is characterised as a time of deregulation, which is often perceived as the decline of regulation. Literature produced through the 1990s, however, signifies a strong international movement in regulatory reform, with a shift from prescriptive regulation to less interventionist methods and forms.<sup>22</sup> In other words, we have seen a transition from explicit government regulation (black-letter law) toward quasi or co-regulation, in which government influences compliance with a range of rules or arrangements such as codes of conduct. The trend is, therefore, a move to an *alternatively* rather than *unregulated* environment.

The Organisation for Economic Co-operation and Development (OECD),<sup>23</sup> describes a shift from “deregulation to regulatory quality management – improving the efficiency, flexibility, simplicity, and effectiveness of individual regulations and non-regulatory instruments.”<sup>24</sup> This approach is broadly reflected in a number of developed countries, evident in the introduction of regulatory reform or review programs.<sup>25</sup> Governments are increasingly aware of the disadvantages of traditional black-letter or “command and control” regulation – the high monitoring and enforcement costs, difficulty in responding to rapidly changing circumstances, high compliance costs to industry and inhibition of innovation in turn eroding competitiveness.

The following trends<sup>26</sup> in the move toward non-prescriptive regulation can be highlighted:

- Minimising government intervention (weighing up the risks, the benefits and the costs<sup>27</sup>)

<sup>20</sup> Better Regulation Taskforce (2000) *Principles of Good Regulation* [www.cabinet-office.gov.uk/regulation/task.htm](http://www.cabinet-office.gov.uk/regulation/task.htm), pp. 8-9. It should be noted that these principles of good practice are largely reflected in Australian state and Commonwealth government generated guidelines. See, for example, Victorian Office of Regulation Reform (nd) *Principles of Good Regulation*

<sup>21</sup> PUMA (2000) *Reducing the Risk of Policy Failure: Challenges for Regulatory Compliance* OECD, p.9

<sup>22</sup> Robyn Kennedy & Co (2001) ‘Appendix 1: An Introduction to Regulation’, *A Regulatory Framework For Community Housing in Australia* NCHF, vol.1, p.25

<sup>23</sup> In 1995, OECD Ministers requested that the OECD examine the significance and methods of regulatory reform in OECD member countries. The outcomes of this work are contained in the following report, OECD (1997) *The OECD Report on Regulatory Reform*. In addition, PUMA – the OECD Public Management Program – undertakes a range of work – governance, human resource management and so on – including work on regulatory reform.

<sup>24</sup> PUMA (2000) *Reducing the Risk of Policy Failure: Challenges for Regulatory Compliance* OECD, p.9

<sup>25</sup> Within an Australian context, see for example, Office of Regulation Review (1998) *A Guide to Regulation (second edition)*; Queensland Department of State Development (n.d) *Guidelines on Alternatives to Prescriptive Regulation*; Office of Regulation Reform, Victoria (n.d) *Regulatory Alternatives*; and Deighton-Smith R, Harris B & Pearson K, National Competition Council (2001) *Reforming the Regulation of the Professions: Staff Discussion Paper*

<sup>26</sup> These trends are identified in QLD Department of State Development (n.d) *Guidelines on Alternatives to Prescriptive Regulation* p.7

<sup>27</sup> To ensure that the risks, the benefits and the costs are adequately assessed, the Council of Australian Governments (COAG) requires that all Ministerial Council and intergovernmental standard setting bodies prepare a Regulatory Impact Statement (RIS) prior to new regulations being developed or existing regulations revised. The RIS is prepared by the government body in question following consultation with relevant parties. It requires an assessment of the costs and benefits of options, followed by a recommendation supporting the most efficient and effective option. The purpose of the RIS is to encourage exploration of alternatives to prescriptive regulation. See, COAG (1997) *Principles and Guidelines for National Standards Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* and Office of Regulation Review (December 1998), 2<sup>nd</sup> edition *A Guide to Regulation*

- Encouraging greater industry involvement in regulatory design and management to help ensure that regulations are relevant to the industry and as efficient as possible.
- Greater exchange of information across jurisdictions to achieve optimal outcomes.
- Development of flexible regulatory systems to encourage more innovative and efficient processes within industry to achieve intended regulatory outcomes.

### *Performance based regulation*

Performance based regulation is regulation that focuses on the outcomes to be achieved, rather than the processes employed to control the risk. Performance based legislation, for example, prescribes the desired outcomes, rather than detailing the precise steps with which businesses must comply. In this sense, performance based legislation is *enabling* rather than *prescriptive* black letter regulation.

Performance based regulation involves greater industry involvement in determining outcomes. Importantly, its principal advantage is that it allows greater flexibility and innovation in approach. Additionally, it reduces the chance of problems “falling between the cracks”, as can sometimes happen with highly specific black letter legislation.<sup>28</sup>

Typically, performance based regulation is better suited to medium to large organisations, who have the resources and capacity to design effective programs for achieving the prescribed outcomes. Inversely, performance-based regulation is less suitable for smaller organisations, who may have limited internal capacity to develop performance plans.

### *Types of regulation*

There are a range of types or ‘tools’ of regulation that are available to regulators:

- Legislation
- Codes of Conduct
- Standards
- Registration
- Licensing/accreditation
- Negative Licensing

Different combinations of these tools can be used to accommodate specific industry requirements. These tools and their applicability to the community housing sector will be discussed in detail in sections 4.3 and 4.4.

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<sup>28</sup> QLD Department of State Development (n.d.) *Guidelines on Alternatives to Prescriptive Regulation* p.14

## *Regulatory tiering*

In contrast to 'uniform regulation' – that is, regulation that imposes the same requirements on all businesses despite their differences – regulatory tiering involves using different regulatory approaches to different segments of an industry. It is commonly used in industries where there is considerable variation in the size and sophistication of participating bodies. The rationale underpinning a tiered approach is that tiering can ease the regulatory burden for smaller organisations that do not have the resources to meet compliance costs.<sup>29</sup>

Adopting this approach means that regulations do not have to be developed for the lowest common denominator. Additionally, a tiered system can reward good performance. For example, an organisation that holds a strong and consistent compliance record can be rewarded by reducing the frequency of reporting. In turn, rewarding good behaviour provides positive encouragement to achieve regulatory outcomes.

According to the Kennedy Report, the advantages of a tiered approach include:

- "Caters for small 'operators';
- Preserves flexibility without disadvantaging some sectors;
- Recognises different experience in the sector"

In turn, the disadvantages include:

- "Can be more complex and hence misunderstood;
- Can increase enforcement costs for government"<sup>30</sup>

## *Australian context*

Consistent with other developed countries, the 1980s is characterised as a period of deregulation in Australia. As the following study of regulation in Australia undertaken by the OECD in 1996 states:

Regulatory reform in Australia has, since the 1980s, been at the centre of microeconomic and structural adjustment policies intended to improve the competitiveness of an economy that had become, in post-war years, highly regulated and dominated by numerous protected producer groups.<sup>31</sup>

Against a post-war protectionist period, reform has focused on removing obstacles to competition and creating performance incentives. However, an OECD study of regulatory reform in Australia describes reform during 1980s to early 1990s as slow – impeded, in part, by the need to coordinate multiple layers of government arising from Australia's federal system.<sup>32</sup>

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<sup>29</sup> For more information on the rationale, impacts on small businesses and suggested approaches to regulatory tiering see, Bickerdyke I, Lattimore R (1997) *Reducing the Regulatory Burden: Does Firm Size Matter?* Industry Commission Staff Research Paper, AGPS, Canberra

<sup>30</sup> Robyn Kennedy & Co (2001) 'Appendix 1: An Introduction to Regulation', *A Regulatory Framework For Community Housing in Australia* NCHF, vol.1, p.28

<sup>31</sup> OECD (1996) *Regulatory Reform: A Country Study of Australia* OECD, Paris, p. 5

<sup>32</sup> OECD (1996) *Regulatory Reform: A Country Study of Australia* OECD, Paris, p. 5

The OECD report notes two key trends:

1. In the early 1980s regulatory reform focused on the deregulation of economic activities.
2. Since the mid-1980s, concerns to preserve social regulation (where deregulation is not deemed desirable) has focused attention on the quality of regulatory instruments.<sup>33</sup>

Following the release of a report on National Competition Policy in 1993, regulatory reform was once again placed at the centre of economic reform. The report found that existing regulatory arrangements continued to restrict competition and argued that major reform was required if national living standards were to improve. The report was presented to the heads of Australian Governments, resulting in the COAG endorsement of the *Competition Principles Agreement* in April 1995. The agreement explicitly took account of the report recommendations around regulatory reform.<sup>34</sup>

At the federal level, regulation has been reviewed and reform progressed through the Office of Regulation Review.<sup>35</sup> At a state level, specialised units for regulatory reform were established.

### *Regulation in the human services*

Recent regulatory trends in the Australian human services are starting to reflect the broader regulatory trends outlined above. Whilst regulatory reform has principally been driven by micro-economists, the OECD study of Australia notes that the public sector reform movement has also been instrumental in progressing and shaping regulatory reform. Since the mid-1980s, public sector reform has focused on 'new managerialism' principles. That is, increasing administrative efficiency, improving service delivery and a focus on outcomes.

Early links between public sector and regulatory reform were limited to "budget-cutting measures" – for example reducing business licensing programs – in order to minimise inflated regulation implementation costs to government. However, more recently, regulatory reform and public sector reform are viewed - by some parties at least - as co-extensive. That is, the move toward more efficient, effective and outcome-based regulatory systems is consistent with the shift to improve efficiency and focus on performance management in the public sector.<sup>36</sup>

In keeping with broader regulatory trends, the human services are now experiencing a shift away from prescriptive regulatory processes to a flexible and less interventionist approach.

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<sup>33</sup> OECD (1996) *Regulatory Reform: A Country Study of Australia* OECD, Paris, p. 18

<sup>34</sup> OECD (1996) *Regulatory Reform: A Country Study of Australia* OECD, Paris, p. 7

<sup>35</sup> The Office of Regulation Review (ORR) is part of the Productivity Commission, which is responsible for assessing regulation and advising Australian governments on how to improve regulatory arrangements.

<sup>36</sup> OECD (1996) *Regulatory Reform: A Country Study of Australia* Paris, p.10

In particular, attention is being directed to the quality of regulatory instruments and service delivery outcomes.<sup>37</sup>

As noted in the introduction, the Kennedy Report compared the current regulatory arrangements for the community housing sector with other comparable industries in Australia. The industries reviewed included: residential aged care, home and community care, out of home care, supported housing, Aboriginal community housing and the real estate industry.<sup>38</sup>

With the exception of the real estate industry, all these industries fall within the category of the human services. The report highlighted an increase in stronger regulatory controls and/or a greater focus on outcomes-based performance and quality improvement. The following broader set of trends were identified:

- All industries work within an overarching legislative framework.
- In most cases, the legislation is primarily enabling, detailing arrangements for financial assistance to the relevant service or program. More recent forms of legislation clearly state the objects and principles of funded programs.
- In many cases, legislation also includes regulatory powers. These powers vary and include a mix of certification, monitoring, assessment and inspection powers, controls over specific practices, specification of obligations, penalties for breaches and revocation of licensing.
- In all industries, standards form a key regulatory component. Compliance varies – in some cases organisations must comply as part of their funding/service agreement. In other cases compliance is achieved through mandatory accreditation.
- The format of standards is increasingly focused on outcomes rather than processes – in respect to both clients and service quality.<sup>39</sup>

The implications of these trends for the community housing sector will be considered in chapters 3 and 4.

## 2.2 Policy Relevance

A range of work has recently been undertaken or initiated that indicates a review of regulatory arrangements for the community housing sector is timely. Five jurisdictions – Queensland, New South Wales, the ACT, Victoria and Tasmania – have already indicated the policy relevance of research into regulatory arrangements for community housing by undertaking co-operative research through the NCHF to identify the potential structure and ‘regulatory tools’ of a regulatory framework for community housing. As noted in the introduction, this research is documented in the Kennedy Report.

In Victoria, the current development of the sector in line with the recent Social Housing Innovations report has explicitly identified the need for a regulatory framework that will

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<sup>37</sup> See, for example, QLD Department for State Development *Guidelines for Improving Service Delivery in Government Agencies*

<sup>38</sup> The industries were selected for the following reasons: they provide accommodation and/or residentially based services; the primary providers of these services are non-government organizations; they represent a range of regulatory approaches.

support the partnerships and private investment approaches recommended by the report.<sup>40</sup> In NSW draft legislation to support new regulatory arrangements was prepared, but not introduced due to concerns expressed by provider representatives that the needs and concerns of providers were inadequately represented. However, appropriate regulatory arrangements are now part of the terms of reference of an upper house inquiry into the role of community housing. In Queensland, the development of regulatory arrangements has been given Ministerial approval and a number of consultations and discussion papers have recently been completed.

However, the specific policy relevance of this research relates to the character and purpose of a regulatory framework that will promote particular outcomes in the sector whilst managing the risks to government and taking into account the concerns/attitudes of key stakeholders. That is, it is to provide an 'enabling' regulatory framework. Two of the most important of these outcomes or objectives are:

- To support access to sources of finance in addition to government grants for social housing generally and affordable housing in particular.<sup>41</sup> Access to more effective forms of investment is one of the central issues under consideration in the current re-negotiation of the Commonwealth State Housing Agreement.<sup>42</sup> The effective use of many of the options to attract additional investment requires funds to be raised off-budget or in partnership with non-government partners. In both cases, community housing (including new not-for-profit delivery vehicles) seems well placed to utilise such resources. However, there are a number of threshold issues to be resolved before this can be achieved: the current lack of control over assets prevents community housing organisations from gearing or actively managing assets to provide additional resources; the lack of appropriate prudential controls increases risks and the cost of finance and reduces the entry of a competitive range of lenders; there is no transparent financial information on the sector performance or information about government support for organisational viability; there is no simple information to enable local authorities developing affordable housing through a range of mechanisms to choose an appropriate housing manager; similarly there is no information about which providers might have the capacity to enter into joint venture partnerships with either agencies bringing assets or developers.
- Enhance the capacity of locally based housing providers to link housing activities to wider community building and social inclusion strategies. Community building is now a priority for most governments. Housing agencies too have an increasing interest in a number of manifestations of 'community building' – community renewal (particularly on estates and in Indigenous communities), social inclusion (ensuring that disadvantaged groups are able to access or retain access to housing in favourable locations), and community consolidation (particularly the prevention of population drift and the consequent loss of services and economic activity in rural communities). Community housing providers are demonstrating a potential to play a role in these areas. At the same time, their capacity to

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<sup>39</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, p. 6

<sup>40</sup> Bisset Hal (November 2000) *Social Housing: Building a New Foundation – Social Housing Innovations Project Report*

<sup>41</sup> A growing body of research and on-the-ground initiatives reflect the policy significance of attracting other forms of investment. For example, see: Brian Elton & Associates (2000) *Private Finance and Community Housing: recent initiatives*, NCHF, Sydney, May; NCHF (forthcoming), *Private Financing Models for Social and Affordable Housing – Summary of Proceedings*, Sydney; Affordable Housing National Research Consortium (2001) *Affordable Housing in Australia: Pressing Need, Effective Solution (Policy Options for Stimulating Private Sector Investment in Affordable Housing Across Australia)*, Sydney

<sup>42</sup> Increasing private sector investment in the supply of social/affordable housing was identified as a priority in the development of a new CSHA in a joint communiqué of Australian housing ministers earlier this year.

play an active role in reconfiguring their assets to meet changing needs, to achieve economies of scale that support 'housing plus' activities or to undertake an active development role which can strategically important in local economic development are all circumscribed by the lack of management flexibility under the current regulatory arrangements.

In order to achieve a regulatory framework that could meet these objectives, three main barriers would need to be addressed. First, it would need to provide government, in both line and central agencies, with the level of effective assurance about the use of the asset and service quality required to enable the transfer of more effective control over the asset and the business to providers. As discussed in the previous section, current best practice in regulation and performance management is to strike a balance between effective assurance and enabling flexibility and innovation.

Second, it would need to provide potential partners or investors with the information needed to assess risks and certainty that these risks are managed through the regulatory system and not borne by the partner. Finally, it would need to support, rather than constrain the viability of providers and must not unnecessarily constrain the providers' capacity for flexibility and innovation.

Developing the regulatory framework that achieves these objectives, therefore, has a very high policy importance. To date there has been little or no investigation with the appropriate stakeholders about how this might occur.

### *Affordable housing*

While a detailed exploration of these requirements is timely for the development of community housing's role in further social housing, the same considerations apply to the new policy interest in affordable housing. The emergence of a growing gap in the supply of affordable housing has been identified as a major housing policy issue since the report of the NSW Ministerial Taskforce on Affordable Housing in 1998, the work of Yates and Wulff in 2000 and the National Affordable Housing Research Consortium report in 2002.

The growing crisis in affordability has prompted a number of affordable housing initiatives to address the gap between social housing and the private market. There is a significant amount of work emerging across jurisdictions that explores community housing's capacity to play a role in affordable housing, which, perhaps adds urgency to the need to resolve the issues discussed above.

Affordable housing units have now been established in two states – NSW and Queensland – supporting partnerships between local and state governments, the community and the private

sectors. Affordable housing is also on the agenda in other jurisdictions and financing options developed by the National Affordable Housing Research Consortium are under discussion. While much of the work is in the early stages, it does indicate that there is scope for community housing to expand its role in the delivery of affordable housing, if the barriers discussed above can be overcome.

In summary, affordable housing initiatives around the country include:<sup>43</sup>

- NSW – the Affordable Housing Service, located in the NSW Department of Housing (formerly located in Department of Urban Affairs and Planning), is setting up partnership demonstration projects with community housing providers amongst other stakeholders. The Peak body, the NSW Federation of Housing Associations, was funded in 2000-01 to ensure that community housing providers have the skills and support to manage affordable housing. Amendments to the Environmental Planning and Assessment Act (EPA) could potentially generate considerable affordable housing. A role for community housing to manage affordable housing is envisaged, supported by both the Office of Community Housing and the NSW Affordable Housing Service.
- Queensland – the Department of Housing has recently established an Affordable Housing Unit and a strategic action plan was endorsed by State Cabinet in June 2001. The establishment of the Brisbane Housing Company will involve partnerships with community groups.
- WA – There has been community housing involvement in drafting a Social Housing Strategy by a local government authority, which includes measures for affordable housing. The peak has been promoting the strategy to other local government bodies.
- Victoria – The Social Housing Innovations Project (2000) considered affordable housing options within the context of partnerships. Following this, an Affordable Housing Steering Committee was established (mid-2001) with the responsibility of preparing a report to the Minister outlining the ways in which state and local governments could work in closer partnership to improve housing outcomes for those Victorians whose needs aren't currently being met. A draft report has been released for local government consultation, *Toward a State and Local Government Affordable Housing Strategy*. Following the recommendations of the SHIP report, community housing is considered as a player in potential partnership arrangements.
- SA – a low-cost accommodation plan is being developed for the Adelaide city and Adelaide City Council is exploring options to pilot financing approaches developed by the Consortium.
- ACT - In February 2002 the ACT Minister for Housing, Mr Bill Wood, established an Affordable Housing Task Force. The role of the Task Force is to examine the extent and impact of housing stress in the community. It will make recommendations to the Minister by 31 October 2002.

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<sup>43</sup> With the exception of the ACT, the information below is from a 'stocktake' of community housing research and development, undertaken by the NCHF in late 2001 – see, NCHF (2002) *Community Housing Research and Development: working with the strategic framework*, Sydney, January. Information on the ACT was provided by Ginny Hewlett, Executive Officer, Coalition of Community Housing Organisations of the ACT.

### **3. THE REGULATION OF COMMUNITY HOUSING IN AUSTRALIA AND OVERSEAS**

This chapter provides a brief overview and analysis of recent research that specifically considers regulation and community housing. The first section considers international experience – specifically, UK, and the Netherlands. It also provides a brief overview of the criteria used by financial institutions in the UK to make social housing financial decisions. The second section focuses on the Australian experience. This is complemented by a more detailed examination of the Kennedy Report in chapter 4. Finally, section 3 provides background information to the external stakeholder groups included in this research – that is, private investors, and joint venture partners (churches, local government and developers) - and gives a brief overview of their current engagement with the community housing sector. It also covers the information currently available on the quality assurance needs of these stakeholders. However, it appears that there is very little literature, in Australia or internationally, that explores the way regulatory arrangements affect the participation of external stakeholders or the potential of community housing organisations.

#### **3.1 International experience: an overview**

Following their research of financing arrangements for social housing in Europe, Larkin & Lawson surmise that a "powerful regulatory and monitoring role for Government agencies... allows associations to be clear about the expectations of government and other stakeholders, and to operate more autonomously as a result".<sup>44</sup> They go on to conclude that the challenge in Australia is "marshalling consistent and national support for the types of strategies [including regulation] needed to take community housing into its next phase of development".<sup>45</sup>

The requirement for regulation to achieve growth has been evident overseas and within parts of the local sector for some time. But, it is even more relevant now - with the policy emphasis on private finance in the current CSHA re-negotiation - than it was in early 1998 when this report was first published.

This section provides a preliminary overview of regulatory arrangements in two overseas jurisdictions: the UK and the Netherlands. While the scale of community housing in these countries is much larger than Australia there are lessons to be drawn from the regulatory frameworks and infrastructure in place, and the consolidation and significant growth that has been achieved as a result. The third stage of this project will produce a more detailed

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<sup>44</sup> Larkin A & Lawson J (1998) *Financing Arrangements for Social Housing in England, The Netherlands, Denmark and Germany*, NCHF, Sydney, p 9

analysis of overseas arrangements to complement the findings from interviews with local stakeholders on their requirements for an enabling regulatory system.

## UK

In England, there are currently more than 2,000 housing associations that manage, in total, approximately 1.45 million dwellings. While the majority of associations manage less than 250 dwellings, the largest 7% own 78% of the sector's stock (each with over 2,500 dwellings). Growth has been achieved through central government funding and large-scale stock transfers from local authorities. But it is private finance that has played the key role with close to £20 billion in private investment in housing associations since 1989. Title to stock is held by housing associations.<sup>46</sup>

The legislative umbrella for the regulation of social housing in the UK is the *Housing Act 1996 (UK)*. It applies to housing associations known as registered social landlords (RSLs), housing trusts and local housing authorities. The Act grants wide-ranging authority to the administering authority, which in England is the Housing Corporation.

The Housing Corporation is both a funder and regulator of housing associations. It provides capital funds for housing acquisitions and up-grades; operating subsidies for schemes providing housing for tenants with high support needs; and builds on individual private finance arrangements of housing associations through partnerships and the forward committal of funds to specific projects.<sup>47</sup>

The Housing Corporation is overseeing the introduction of a new Regulatory Code, as per the principles of the UK Better Regulation Task Force (see page 10). It came into effect in April 2002. The regulatory outcome the Housing Corporation is striving for is: viable organisations that are well governed and well managed. The approach reflects contemporary methods of regulation. It is outcome focussed and organisations are responsible for demonstrating how they meet and exceed standards. This objective is underpinned by a commitment to continuous improvement in services. The code takes into account the context and environment in which organisations work and is “tailored, appropriate and proportionate to the risks associations face”.<sup>48</sup>

The Regulatory Code was developed with input from housing associations with the recognition that they are “independent bodies, responsible for their own performance and

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<sup>45</sup> Ibid

<sup>46</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, p.30. For a breakdown of gross social housing investment from 1987/88 to 2003/04 see Williams P & Wilcox S (nd) *Funding Social Housing: Changing Times, Changing Markets* p.5

<sup>47</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia– Volume 2: Regulatory Options* NCHF, NCHF, Sydney, p.30

<sup>48</sup> The Housing Corporation (2002) *The Way Forward: Our Approach to regulation* London [www.housingcorp.gov.uk](http://www.housingcorp.gov.uk), p.4

management".<sup>49</sup> The Housing Corporation supports their operation through regulatory guidance (which replaces 70 pages of performance standards). Regulation teams have been set up to ensure consistency and co-ordination (including a specialist team for small organisations with less than 250 properties). Inspections will focus on the services provided 'on-the-ground' and consumers' experiences. A 'bank' of good practice information will also be made available.

In the event of unacceptable performance the Housing Corporation can actively intervene by placing an organisation into one of the following categories: continuing regulation, intervention status or enforcement status (which can include the suspension of funding and the use of statutory powers).<sup>50</sup>

A regulatory plan sets out the Housing Corporation's engagement with each organisation reflecting their 'unique characteristics'. All reports will be made public so assessments are available to partner local authorities and lenders. This is consistent with the regulatory commitment to transparency.<sup>51</sup>

The Kennedy Report states that the UK framework, "while regulating key functions and activities of social housing management, supports the role of housing associations as independent, entrepreneurial businesses".<sup>52</sup> In other words, the new Regulatory Code reflects the recent trend away from a prescriptive approach to regulation towards an outcome focussed and enabling framework. Regulation of social housing in the UK is underpinned by infrastructure and support systems to develop a culture of self-assessment and continuous improvement.

The principles of the new Regulatory Code in the UK can usefully inform developments in the community housing sector in Australia, as they have been so recently reviewed and are the foundation for private investment. A commitment to regulation commensurate with an organisation's scale and service is also appropriate in light of diversity in the local sector. Such tailoring is canvassed in the Kennedy Report as regulatory tiering and its applicability here will be further explored in the current project.

It is also important to note that regulation, far from stifling the sector in the UK, provides a bulwark against inevitable challenges in the provision of housing services. We can see evidence of this in Moody's Investor Services' paper on a recent credit outlook assessment of housing associations in the UK, which says, "the sector is currently facing a number of

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<sup>49</sup> The UK Housing Corporation (2002) *The way forward: Our approach to regulation*, London, p.6

<sup>50</sup> The UK Housing Corporation (2002) *The way forward: Our approach to regulation*, London, p.14

<sup>51</sup> The UK Housing Corporation (2002) *The way forward: Our approach to regulation*, London

<sup>52</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options*, NCHF, Sydney, p.28

challenges, including rent re-structuring, shifting demand, diversification of operations and an increase in debt levels. Nevertheless, this is against a background of stable cashflows, an *effective regulatory environment* and levels of debts and voids that are still low overall".<sup>53</sup> [emphasis added]

It is significant that a service like Moody's has the information to make an assessment of housing associations. Williams and Wilcox note that in the UK "the risk map for social housing lending continues to evolve as does the regulatory framework".<sup>54</sup> The management of risk and the development of regulation are integrated through information.

### *The Netherlands*

As noted in the Kennedy Report, the social housing sector in the Netherlands is the largest of its size in the Western world, comprising 37% of all housing. As at 1998 there were 762 housing associations that owned a total of 2.4 million dwellings. Organisations vary greatly in size from several hundred dwellings to tens of thousands.<sup>55</sup> All organisations are registered and regulated under a Housing Act dating from 1901. Consistent with the regulatory environment in the UK – and regulatory trends more broadly - in the Netherlands the concept that associations are "independent and entrepreneurial" underpins the regulatory framework. Following this, organisations "operate to obtain a good social return" to support their principal objective of providing housing.<sup>56</sup>

The Social Rental Sector Management Decree forms the main instrument of regulation. It was introduced in 1993 and is one response to increased independence (and therefore increased risk) of housing associations due to major changes to the policy and funding environments occurred in the 1990's).<sup>57</sup> The decree covers all functions of housing associations with the most recent one covering performance in five broad fields. The Kennedy Report summarises these fields as follows: "providing housing for people who are unable or insufficiently able to provide themselves with a suitable home... ; ensuring quality housing is provided and maintained; involving tenants in policy and management; managing the finances of the corporation to achieve long term viability of the agency and the overall sector; promoting quality of life in neighbourhoods and residential districts."<sup>58</sup>

Municipalities are responsible for monitoring of housing associations based on annual plans,

<sup>53</sup> Moody's Investors Services (2002) *Credit Outlook for English Housing Associations*, London, p.1

<sup>54</sup> Williams P & Wilcox S (nd) *Funding Social Housing: Changing Times, Changing Markets*, UK

<sup>55</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options*, NCHF, Sydney, p.35

<sup>56</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options*, NCHF, Sydney, p.36

<sup>57</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options*, NCHF, Sydney, p.35

<sup>58</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options*, NCHF, Sydney, p.36

performance agreements, annual and financial reports. However, as documented in the Kennedy Report, some degree of re-centralisation has been occurring since 1998 with a distinction being made between financial and housing performance.<sup>59</sup> It is important to note that a new housing act is proposed for 2002, with a stronger emphasis on accountability requirements and responsibilities.

In 1983 the Social Housing Guarantee Fund was established as a private institution by housing associations to obtain private finance. All social housing is now privately financed. As stated in the Kennedy Report, "The provision of new and existing social housing is now all privately financed in the Netherlands, supported by a range of direct and indirect subsidy mechanisms."<sup>60</sup>

The report goes on to describe the role of the Central Housing Fund (CFV)<sup>61</sup> - a public corporation established in 1988, which was set up to regulate the financial risks for housing associations at arms length from government. It is intended that the fund will be split into two distinct functions to deal with increasing complexity. These proposed functions are a supervisory or regulatory function and a sector management fund to facilitate re-structuring.<sup>62</sup>

While the operating environments in European countries are not the same as in Australia, the Kennedy Report concludes that the complexity and influence of the social housing system in the Netherlands means there are lessons for a fledgling regulatory system in Australia.

In particular, the report highlights some key features of financial viability in the above social housing systems as broadly relevant in the Australian context. In summary, the report suggests that the following elements are relevant:

- Provider control over the assets – in the international context described above housing associations hold title to the assets, which are protected against inappropriate disposal through regulatory measures (a statutory charge in the UK; in the Netherlands acquisition and disposal is subject to municipal approval).
- The (interim) use of government funds to attract and support private investment through a capital injection of funds in new financing structures and the issuing of government bonds<sup>63</sup>
- Implementing financial risk management strategies to facilitate private investment<sup>64</sup>

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<sup>59</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options*, NCHF, Sydney, p.37

<sup>60</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options*, NCHF, Sydney, p.38

<sup>61</sup> The Central Housing Fund is commonly known by its Dutch acronym, CFV.

<sup>62</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia*, NCHF, Sydney, pp.38-39. See also Larkin A & Lawson J (1998) *Financing Arrangements for Social Housing in England, The Netherlands, Denmark and Germany* NCHF, Sydney

<sup>63</sup> For detailed research on private financing models for affordable housing in Australia see Berry M & Hall J (2001). See also NCHF (forthcoming), *Private Financing Models for Social and Affordable Housing – Discussion series: paper no.8*

<sup>64</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options*, NCHF, Sydney, pp.40-41

## *Criteria used by financial institutions in the UK*

If, as the Kennedy report suggests, the capacity to attract private investment - assisted through an enabling regulatory approach - is relevant to the Australian context, being clear about the financial criteria used by financial systems in the UK to make social housing decisions and how they translate in the local environment is critical.

This section provides a brief overview of the UK criteria. A more detailed understanding of the UK criteria and their relevance to the Australian context will be achieved through interviews with informants from the finance sector in both the UK and Australia.

Some broad trends in the UK that will have an impact on the financing of housing associations are being identified. A recent (annual) review of the private finance market and key developments in social housing across the UK describes a changing environment with increasingly reduced margins for error for RSLs.<sup>65</sup> Therefore, whilst at this stage there have been no serious insolvencies, lenders and regulators are aware of the greater financial risks to which RSLs are exposed and are adjusting and upgrading their assurance requirements accordingly. The recent trends identified are summarised in the review as follows:

- “Around £3.3 billion of private finance was raised in 2000/01 and a further £2 billion in 2001/02 bringing the total raised in the UK to over £25billion
- Market demand and market pressures are bringing new players in though offset against this is continuing consolidation with the banking sector.
- In England, the market for housing associations funding has been overtaken by the requirement to finance local authority stock transfers.
- There is now considerable momentum behind local authority stock transfer across Great Britain. But new options for local authorities may change this.
- The new rent regime in England will challenge associations and lenders.
- The private finance requirement for the UK could be for up to £10 billion over the two years 2002/03 and 2003/04 taking the total to over £35 billion.
- The risk map for social housing lending continues to evolve as does the regulatory framework.”<sup>66</sup>

What we learn from this review is that the financial criteria used by financial systems in the UK necessarily respond to a changing political, economic and policy context. While it is expected that the UK criteria will be broadly applicable in an Australian context, it will be important to ensure that the finer details correspond to the specificities of the Australian policy environment.

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<sup>65</sup> Williams P & Wilcox S (nd) *Funding Social Housing: Changing Times, Changing Markets* London

<sup>66</sup> Williams P & Wilcox S (nd) *Funding Social Housing: Changing Times, Changing Markets* London, p.1. For further information on recent trends see also, NHF & The Housing Corporation (2001) *Private Finance Monitoring Bulletin*

However, it is important to note that the changes in social housing rent policies flowing from the Housing Green Paper<sup>67</sup> - by limiting rents and, hence, required subsidies through Housing Benefit - bring the UK financing environment closer to that currently existing in Australia.

As noted above, the contextual nature of financier requirements will be considered following the interview phase of this project. For the purposes of this positioning paper a brief summary of criteria in the UK is listed below. Given the recent market shift toward large-scale financing of stock transfers, the summary focuses on the criteria relating to this market.

The Council of Mortgage Lenders (CML) – the representative trade association for the mortgage industry in the UK – summarises lender requirements for the stock transfer market in England as follows:<sup>68</sup>

- *Timing* – Housing Associations need to factor in enough lead-time in approaching the market for funding. Late entry into the market can negatively impact on the housing association's capacity to secure funding at the best rates with the best terms.
- *Funding prospectus and Business Plan* – A business plan and funding prospectus should be prepared by an officer with financial expertise. The funding prospectus is designed to provide potential funders with information on the funding strategy and financial requirements. The business plan should include a range of details including how the housing association will interact with the local housing market and its capacity to adapt to changes which may occur over the term of the loan. Generally, funders will expect the business plan and prospectus to cover:
  - management – history, financial expertise etc;
  - business plan - income and expenditure plans and ratios, level of borrowing and gearing, asset maintenance provisions and so on;
  - security – “loan to income ratios, the nature of the stock, future demand issues... social and economic profile of tenants”;
  - information on rent levels;
  - information on any plans to engage in activities beyond those of the core business of stock and tenancy management (e.g. regeneration activity);
  - details of any “unusual” issues relating to the transfer agreement.<sup>69</sup>
- *Valuations* – funders require a valuation of the housing stock to be transferred. Lenders are generally after an asset valuation that is around 125% of the loan applied for (this is called the asset cover ratio).

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<sup>67</sup> ODPM (2000) *Housing Green Paper: Quality and Choice – a decent home for all UK*, April; Department of Environment, Transport & the Regions (2001) *Guide to Social Rent Reforms* London, March

<sup>68</sup> The following is a précis of the Council of Mortgage Lenders' *lenders and stock transfer: an outline guide to lender requirements in England*. The guide supplements the guidance – *2001/02 Housing Transfer Programme Guidance for Applicants* – developed by the Office of the Deputy Prime Minister. A Community Housing Task Force (CHTF) has also been established to assist local authorities, tenants, funders and other relevant parties in the stock transfer process.

<sup>69</sup> Council of Mortgage Lenders (2002) *Lenders and Stock Transfer UK*, June, p. 3

- *Transfer price and discount rate* – the lender will take into account the transfer price, which is based on discount rate applied to the tenanted market value (i.e. estimated income stream over a period of 30 years, less projected expenditure). In theory a higher discount rate is applied if the transfer risk is higher. However, a tendency for local authorities to apply a lower discount rate thereby pushing the price up can “squeeze” the ‘asset value to loan ratio’ required by lenders.
- *Stock surveys* – a stock condition survey is required by lenders.<sup>70</sup>
- *Warranties and indemnities* – as tools for the management of risk, sufficient warranties and indemnities are crucial from the perspective of both the housing association and the lender. Broadly, lenders require warranties in the three areas:
  - business warranties – cover management issues such as the number of transfer units, rental details, intellectual property rights and so on;
  - title warranties – local authorities are required to warrant that they own the stock being transferred and that the title conditions will not inhibit the future business of the new landlord;
  - environmental warranties – cover elements such as land contamination, construction issues (e.g. asbestos) etc.
- *Governance* – a Board with adequate skills and composition is required to give confidence to lenders. Typically lenders in England favour a board equally comprised of tenant representatives, local authority nominees and independent members (n.b. whilst lenders strongly support tenant participation - based on the view that involvement often leads to high tenant or consumer satisfaction - majority tenant boards are generally not supported).

As documented earlier in the paper, RSLs’ management of financial risk is regulated through various mechanisms established by the Housing Corporation. Of particular interest here are the target ratios for solvency and financial viability.<sup>71</sup> In effect, the requirements of financiers are protected through a dual financial performance management regime. Individual lenders monitor individually tailored financial ratios of associations to which they lend; while the regulator – the Housing Corporation – monitors financial ratios for the sector.

The Housing Corporation’s ratios used in its accounts review system are both solvency and viability ratios. Solvency ratios provide measures of funds from operations to interest, and the refinancing risk. Viability ratios measure interest cover (operating surplus to interest payable); three gearing ratios; gross earnings to interest payable; rent losses; rent arrears;

<sup>70</sup> Principles for the collection and analysis of stock condition information are contained in the Office of the Deputy Prime Minister 2001/02 *Housing Transfer Programme Guidance for Applicants*

<sup>71</sup> See, The Housing Corporation (2002) *Financial health and viability of housing associations – sector study 15*, Appendix 3, UK, March

and surplus. In turn, the effectiveness of the Corporation's regulation of financial performance and financial risk management is overseen by the National Audit Office.<sup>72</sup>

### 3.2 The Australian experience: an overview

Until recently, very little systematic research has been undertaken that explores regulatory options for community housing in Australia. With the exception of South Australia,<sup>73</sup> there is no specific legislation for community housing across states and territories with community housing organizations largely regulated through funding agreements, drafted under the broad powers defined in state and territory housing acts. Existing regulatory arrangements will be covered in the following chapter.

As discussed in the previous chapter, a range of factors have prompted recent interest in examining new ways for regulating the community housing sector - perhaps most notably, the demand that future funding uncertainty for social housing places on the sector to secure other forms of investment. Recent research suggests that a robust regulatory framework is necessary if the sector is to attract private investment and develop a more systematic approach to partnership arrangements.<sup>74</sup>

The Kennedy research undertaken in 2001 is the only attempt to apply broad human services regulatory options to community housing. This piece of work provides our main source of information regarding the kinds of regulatory 'tools' that would be most conducive to the community housing sector. In light of this, a separate chapter (4) has been dedicated to summarising the central findings of this report. It also discusses the implications of these findings for this project.

This section considers recent developments in state-based regulatory research and development in Victoria, NSW and Queensland. These show some clear consistencies with the findings in the Kennedy report and broader regulatory trends. This section summarises these state-initiated projects and their implications for pursuing a regulatory framework.

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<sup>72</sup> The NAO (UK) undertook a review of the Corporation's regulation of RSLs' management of financial risk and the final report – *Regulating Housing Associations' Management of Financial Risk* – was published in April 2001

<sup>73</sup> SACHA (n.d.) *Guide to Regulation of the community housing sector in South Australia* Department of Human Services, SA. The Parliament passed legislation for the administration of community housing through the *South Australian Co-operative and Community Housing Act (SACCH)*, 1991. The Act provides a legal structure, which contains enabling mechanisms for government to implement regulatory functions in respect of corporate governance, including powers of intervention where a CHO is experiencing financial and/or management difficulties.

<sup>74</sup> Bisset Hal (2000) *Social Housing: Building a New Foundation – Social Housing Innovations Project Report*; Robyn Kennedy & Co. (2001) *A Regulatory Framework for Community Housing in Australia*, NCHF; Farrar A (2002) 'The Continuing Search for Affordable Housing in Australia' in Richardson R & Disney J (eds.) *Social Investment in Housing and Urban Development* The University of NSW, p.52; and Brooke G, KPMG *Private Investment In The Social Housing Market* presentation, NSW Community Housing Conference, 9 May 2002

## *Victoria - Social Housing Innovations Project (SHIP)*

Following the election of a new Labor Government in Victoria in October 1999, an additional \$94.5m was committed to social housing: the Social Housing Innovations Project (SHIP). The government commissioned a consultant project manager to develop 'innovative solutions' to the housing problems faced by increasing numbers of low-income Victorians for whom the private rental market is no longer affordable.

One of the key objectives of the project was: to identify opportunities for partnerships with local government, community organisations and the private sector.

Based on sector consultation, local and international research, the SHIP report concluded that one of the requirements for these partnerships to be realised, for the growth of social housing, is the development of a regulatory framework. The report states that "given the significant financial responsibilities of housing associations... a legislative framework for the sector which establishes a Community Housing Authority with regulative functions and powers and enables the registration of Housing Associations is a logical step to ensuring accountability and sustainability".<sup>75</sup>

Other requirements for successful partnerships as identified by the report are: the development of standard community housing partnership agreements, accountable social housing ownership vehicles, and capacity building within community organisations.

The Social Housing Innovations Project report has highlighted the need for regulation as a condition of successful partnerships and growth in the community housing sector. The Victorian Office of Housing is continuing to investigate regulation of the sector and the implementation of the National Community Housing Standards.<sup>76</sup>

## *NSW – Performance Management Framework*

In July 2001, the NSW Housing Acts were amended with the purpose of consolidating existing Acts. Amendments specifically related to community housing had been proposed as follows:

- Formal recognition of the role of community housing (recognising non-profit providers as specialist fee for service housing managers). For example, providers registered with the Office of Community Housing (OCH) would be exempt from the need for a licence under the *Property, Stock and Business Agents Act 1941* (community housing organisations are currently prohibited from operating as managing agents unless they are registered as agents under this Act. Registration is a complex and lengthy process.)

<sup>75</sup> Bisset Hal (2000) *Social Housing: Building a New Foundation – Social Housing Innovations Project Report* p.85

<sup>76</sup> The Victorian Office of Housing is a member of the National Community Housing Accreditation Council; a number of workshops have been held with community housing organisations on the implementation of an accreditation system; and Victorian providers took part in an initial pilot of the National Community Housing Standards.

- Establishing a clear business performance framework for providers and the Office of Community Housing - the legislation would grant the Department of Housing, and therefore the Office of Community Housing, specific powers to allocate funds for community housing associations; operate a community housing registration system; monitor provider performance and create sector wide politics and standards.
- Protection of government assets and investments – the legislation would grant the Department of Housing specific powers to limit mismanagement or misconduct by providers; recover unspent funding and/or surpluses; and establish a community housing maintenance fund.

However, community housing organisations identified a number of problems with the proposed legislation, including the powers relating to the treatment of surpluses. As a result, the community housing amendments were not presented to Parliament and the Bill, excluding these amendments, was passed in July 2001.<sup>77</sup>

In light of this, and a recognised need for more flexible regulatory arrangements for the community housing sector, earlier this year the Office of Community Housing commissioned research into the possible establishment of a Performance Management Framework for community housing in NSW.

The consultant's report proposes 'a new way of doing business' which focuses on the achievement of clearly defined outcomes and the promotion of continual performance improvement. It recommends that "where satisfactory information is available on the achievement of core outcomes, providers would be largely left to get on with their own business and OCH (Office of Community Housing) could introduce greater flexibility and innovation in funding arrangements and service delivery models".<sup>78</sup>

The Performance Management Framework would be underpinned by the principles of: independence; accountability; flexibility; integration; streamlined processes; and transparency.

While discussions on the proposed framework are continuing within the sector in NSW, the approach is clearly consistent with the aim of this project to examine how regulation can enable organisations to manage their business more *flexibly* and develop *innovative* solutions to housing problems.

### *Queensland – a legislative and regulatory framework*

The development of a regulatory framework for the community housing sector in Queensland was identified as a key strategy in the *Community Housing Plan 1999-2004*. In March 2002, the Queensland Government developed new housing legislation, which will replace the *State*

<sup>77</sup> Queensland Department of Housing (2001), *Work in Progress: Investigating a Legislative Framework And/Or Regulatory Framework for Community Housing in Queensland* 23 August, pp.28-29

<sup>78</sup> ARTD (April 2002) *Focussing on outcomes for Community Housing in NSW*, Office of Community Housing, Sydney, p.1

*Housing Act 1945*. It was proposed that the new legislation should empower the Department to fund agencies to provide housing and housing-related services, and that it should empower the Department to develop regulations for these funded agencies.

The Department is aiming to develop regulations for not-for-profit agencies that provide housing and housing-related assistance in order to:

- “enhance client and tenant outcomes;
- safeguard public funds and assets;
- enable agencies and the sector in general to attract additional resources, through publicly demonstrating a capacity to manage resources and achieve client outcomes; and
- provide a contemporary legal and administrative framework for funded agencies to meet public accountability requirements.”<sup>79</sup>

Again, there is a focus on achieving outcomes (prioritised above stipulating processes), attracting additional resources to the sector whilst safeguarding public assets, and meeting contemporary standards.

### *Conclusion*

These state projects demonstrate recognition of the role regulation can play within the community housing sector. They also reflect the wider regulatory trend of developing enabling regulation that avoids detailed prescription. Additionally, they display an emphasis on continuous improvement and achieving agreed outcomes. This is driven by the need for responsiveness in a changing environment, and the increasing demand for the community housing system to develop capacity to source alternative funds for growth, managed with efficient but flexible business practices.

These projects and the Kennedy Report on regulation principles provide a basis for understanding the direction and priorities of state administrators. This project will take the next steps by explicitly elucidating the criteria that regulatory system must meet from the perspectives of the other key stakeholders in the sector.

## **3.3 External stakeholders – an overview**

This section provides a brief overview of external stakeholder involvement in community housing and a preliminary consideration of the kinds of assurances required for some of these stakeholders.

### *Private finance sector*

Using private finance to fund growth is not a new concept in community housing. It has been used in the past on a large scale by governments (particularly in SA and Victoria) and

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<sup>79</sup> Qld Department of Housing (March 2002) *New Housing Legislation: A Framework for Regulating Providers of Community Managed-Housing and Housing-Related Assistance*, Brisbane, p.2

continues to be used by some individual providers. However, the recent trend has been toward smaller, retail investment and joint venture arrangements and away from systematic, sector-wide borrowings.<sup>80</sup>

Recently, on-the-ground initiatives have developed further – particularly in the context of new partnerships and affordable housing initiatives. More importantly, a number of studies have been undertaken to evaluate the effectiveness of these efforts.<sup>81</sup> At the same time, the imperative to attract new forms of investment seems to have been recognised in the current CSHA re-negotiations.

Players from the private sector have been involved in the ongoing discussions about alternative financing of social housing, however, they have a number of pre-conditions for large scale investment. As summarised by Graham Brooke (Head of the Financing Group, KPMG) at the NSW Community Housing Conference in May 2002 these requirements include:

- a stable revenue stream;
- assets be made available as security against debt;
- legal access to title and the authority to negotiate borrowing facilities against these;
- the mechanics of the portfolio should be transparent (regular reporting of operating and financial information, in accordance with bank asset management policies);
- professional property management from providers including: an understanding of government policies and their implications; excellent customer relations; well developed internal processes and policies; efficiencies of scale; ability to carry out necessary maintenance; effective cost controls; and ability to present financial and operating data at the portfolio level.

This project will explore the criteria a regulatory system needs to meet from the perspective of the private sector and its requirements for working in partnership with the community housing sector.

### *Developers*

Developer involvement in community/affordable housing has occurred on a largely ad hoc basis, through initiatives driven by entrepreneurial community housing organisations and other stakeholders (notably churches and local government). In general, developer contributions to affordable housing have been secured through local government planning instruments.<sup>82</sup>

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<sup>80</sup> NCHF (2000) *Private Finance and Community Housing*, Discussion Series, Paper No. 1, Sydney, September

<sup>81</sup> For example, see Berry M & Hall J (2001) *Stage 1 Report Outlining the Need for Action (Report for the Affordable Housing National Research Consortium)* AHURI

<sup>82</sup> This information has been drawn from the various networks – perhaps most notably, the Policy Advisory Committee – that comprise, or make use of, the National Community Housing Forum. It is worth noting, as Bisset points out, that a number of joint ventures between state housing authorities and developers have been undertaken to redevelop large public housing estates. Bisset, Hal (2000) *Social Housing: Building a New Foundation* Melbourne, November, p.17

Whilst limited in number, partnerships with private developers have worked successfully with profitably developed stock that includes units to be managed as community housing. Community Housing Canberra (CHC) provides one such example of how these partnerships can work.<sup>83</sup>

CHC, a not-for-profit company established in 1998, successfully redeveloped a public housing complex in partnership with a private consortium to provide a mix of private and community housing.

The property was transferred from ACT Housing to CHC on a deferred payment scheme. CHC also received a \$200,000 grant from the Commonwealth to provide sufficient capital to manage the project, including a feasibility study and guidelines for the joint venture.

The successful tenderer was sold half the site on which they separately developed town houses. On the remainder of the site a joint venture was established to develop units, thirty of which will be used for public and community housing (indistinguishable from the private stock).

Consultation was held with the local community, prospective tenants and purchasers during the design process. The final product incorporated environmentally sustainable development principles and a number of apartments have been purpose built to accommodate the needs of people with physical disabilities.

Stage One of the private component of the development was released off the plan and more than 95% of the units were sold in ten days.

### *Churches*

The Churches are a significant provider of community housing in Australia. A mapping project, produced in 1999, estimated that 17% of community housing in Australia is managed by church-based organisations.<sup>84</sup> In Victoria, churches are the largest provider of community housing, owning and/or managing over 2,700 properties (approximately one-third of community housing stock).<sup>85</sup> Churches are also a significant provider of housing in NSW, QLD and South Australia with some initiatives in other states and territories.

The Churches have a relatively lengthy history of involvement in community housing in Australia.<sup>86</sup> Within contemporary Australia, a significant proportion of church community housing is established through joint venture arrangements with State Housing Authorities. Yet

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<sup>83</sup> The information below has been provided by Bruce McKenzie, Executive Officer, Community Housing Canberra

<sup>84</sup> NCHF & AIHW (1999) *Community Housing Mapping Project: Report on Findings* Sydney, p.23

<sup>85</sup> Ecumenical Housing Inc (2002) *The Role of the Churches in Community Housing*, p.9

research describes a sector with largely unstructured relationships with state and federal governments and little consistency across the states.<sup>87</sup>

Within the context of joint venture relationships more broadly, partnership arrangements have tended to be driven by government programs involving a local government, church or community group in partnership with a state housing authority, with variable contractual arrangements across jurisdictions.<sup>88</sup> Consistent with this trend, the development and implementation of church joint venture projects occurred on a largely individual and ad hoc basis.

In recent years there have been initiatives that go some way to remedying this situation. State-based ecumenical community housing resource organisations were established in Victoria,<sup>89</sup> South Australia and NSW in the late 1980s to early 1990s. These organisations introduced greater planning and cohesion in their respective states. Both NSW and the ACT are currently looking to consolidate and expand the role of the churches in community housing through the establishment of housing associations.<sup>90</sup> Following the steady growth of community housing partnerships over the past few years, there has been a trend by State Housing Authorities to consolidate and streamline joint venture arrangements.<sup>91</sup>

In spite of these developments, there is still a long way to go in encouraging and strengthening the Churches involvement in community housing. The National Churches Community Housing Project, undertaken in the late 1990s, forms the major piece of recent research on the Churches capacity to play a stronger role in community housing and it continues to inform new Church and community housing initiatives. The project was initiated following a National Churches Community Housing Conference in 1997. Undertaken by Ecumenical Housing Inc, Victoria, the project aimed to consolidate the Churches' involvement in community housing by establishing a strategic approach to the development of community housing.

The primary objectives of the project were:

- "the identification of appropriate funding arrangements between the Churches and State Governments in joint venture projects; and
- the development of alternative sources of funding for community housing from the private sector."<sup>92</sup>

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<sup>86</sup> For an overview see, Ecumenical Housing Inc (2000) *The Role of the Churches in Community Housing* Vol.1, January, pp. 6-7

<sup>87</sup> Ecumenical Housing Inc (2000) *The Role of the Churches in Community Housing* Vol.1

<sup>88</sup> Bisset Hal (2000) *Social Housing: Building a New Foundation – Social Housing Innovations Project Report* p.16

<sup>89</sup> It should be noted that Ecumenical Housing Inc, established in 1987, was finally forced to wind down its operations in early 2002, following the loss of government core funding over five years ago.

<sup>90</sup> Information from the National Churches and Community Housing Network

<sup>91</sup> Bisset Hal (2000) *Social Housing: Building a New Foundation – Social Housing Innovations Project Report* p.16

<sup>92</sup> Ecumenical Housing Inc (2000) *The Role of the Churches in Community Housing* vol 1, p.3

The project identified a number of benefits to the churches in their participation in community housing. In summary, these benefits are: community housing offers a practical and structural response to social disadvantage, providing an effective avenue through which to implement the churches 'mission' to respond to the needs of the disadvantaged and the marginalized. In turn, joint ventures offer a way for the churches to develop under-utilised land resources consistent with their proposed social objectives. Finally, if well-managed, joint ventures can be financially self-sustaining, thereby not decreasing the Churches already limited resources, whilst enabling the churches to pursue their mission.

Of course, if poorly managed, community housing joint ventures expose the church to financial risks, with their assets provided as collateral against such events. The costs – and potential risks – are summarised in the report as follows:

- through joint venture arrangements the Church's assets may be locked up for a considerable time, minimising the Church's capacity to respond to changing local, community needs.
- The legal requirements of entering into joint venture arrangements demand increased expertise on governing bodies.
- Following this, the Churches require structures through which this expertise can be accessed or skills learnt.<sup>93</sup>

The outcomes of the National Churches Community Housing Project provide the major basis from which to rethink and expand the churches involvement in social housing as well as providing some key insights into ways to facilitate greater involvement of the churches and access private finance. For the purposes of this research, the Churches project identifies the major obstacles to the Churches involvement in community housing – which could be alleviated by a different kind of regulatory structure. These obstacles can be summarised as follows:

- Property ownership – ownership is a specific issue for Churches in joint-venture arrangements. If from a government perspective, the issue of ownership is centred on the issues of security and risk, for churches the issue may be one of theological (maintaining the separation of church and state) or symbolic significance. The Churches are reluctant to relinquish ownership of land that may be of sacred importance or, as described in a report by NSW Churches Community Housing, over which they have 'stewardship' – land contributed for community housing is frequently incorporated in a title, in which a place of worship is also occupied. This problem can be resolved through the subdivision of title. However, if sound regulatory measures are in place, which protect the interests of government, then ownership of the land may not be an issue for government.
- A reluctance to expose a parish to the risks of community housing<sup>94</sup>

Whilst there has been significant national research on the specific issues and barriers faced by Church partners, this project will examine them in the context of the potential enabling outcomes a regulatory system could provide.

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<sup>93</sup> Ecumenical Housing Inc (2000) *Principles for Good Practice in Community Housing Joint Ventures* vol.2, pp.10-11

<sup>94</sup> Ecumenical Housing Inc (2000) *Principles for Good Practice in Community Housing Joint Ventures* vol.2, pp.10-11. See also, Churches Community Housing Inc (2002) *Public Church Partnerships: Barriers to Accessing of Church Assets for Community Housing – A discussion paper* Sydney, May

## *Local Government*

Local government has a long and varied involvement in social and affordable housing – and the potential to extend this involvement. Councils across the country participate in (and sometimes lead) a range of activities and projects that directly and indirectly impact on local housing provision.

Examples of local government facilitation of social/affordable housing include:

- providing financial and in-kind support to community housing organisations;
- direct resource contributions to specific housing projects;
- implementation of supportive town planning regimes;
- developing and managing aged care facilities;
- identifying partnership opportunities with the non-government housing sector;
- researching local housing needs;
- integrating social housing activities within local social plans and other strategic documentation; and
- the development of integrated social support programs to assist with long term tenancy viability for some population groups.<sup>95</sup>

However, at this stage, the involvement of local government in social and affordable housing is patchy. A concurrent AHURI research project being undertaken by the Sydney Research Centre – *Housing Policy and Sustainable Urban Development: evaluating the use of local housing strategies in Queensland, NSW and Victoria* – will go some way to addressing this. It aims to analyse and compare the housing related roles currently undertaken by local government in these states, evaluate their implementation, ascertain constraints and successes, and review the involvement of other local, regional and state stakeholders.<sup>96</sup>

Local government involvement can expand the options for improving social and affordable housing; from the capacity to undertake effective local holistic planning, to coordinating input from key local stakeholders and implementing strategies and programs that operate independently of the CSHA. Inclusionary zoning powers are now being formalised in NSW and Queensland and the management of stock acquired in this way is becoming a pressing issue for local government authorities.

This project will examine the criteria that a regulatory system for community housing must meet to enable the continuing development of constructive partnerships with local government.

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<sup>95</sup> Information from the National Local Government Housing Reference Group

<sup>96</sup> Gurran Nicole (2002) *Housing policy and urban development: Evaluating the use of local housing strategies in Queensland, New South Wales, and Victoria – Positioning Paper*, AHURI, University of Sydney Research Centre, August

## 4. A REGULATORY TOOLKIT FOR COMMUNITY HOUSING

This chapter provides a summary of the findings of the NCHF regulation project (the Kennedy Report) conducted in 2001. It takes the first step in identifying the regulatory options for community housing. It identifies the public risks, the current administrative mechanisms for managing these and the needs of community housing administrators. It then evaluates the effectiveness of existing mechanisms and reviews the regulatory arrangements in related industries. On this basis it proposes a 'tool-kit' of regulatory options that could be adopted by state governments to regulate community housing and some of the related implementation issues.

### 4.1 Existing regulatory arrangements for community housing in Australia

The *Commonwealth State Housing Agreement* (CSHA) forms the main legal basis for community housing, with bi-lateral agreements negotiated between the Commonwealth and each state and territory. A range of legislation affects the management and delivery of community housing – most notably, state housing Acts, incorporation legislation and residential tenancies legislation. It is important to note, however, that most state housing Acts do not refer specifically to community housing, broadly covering the powers of the Director of Housing only. In turn, the body of legislation that currently applies to community housing due to the corporate status of managing organisations is also applicable to similar corporate entities.<sup>97</sup>

As noted in section 3.2, South Australia is the only state with specific community housing legislation in place. Funding/service purchase agreements form the principal 'tool' for regulating the risks associated with the funding of community housing. Whilst holding a common emphasis on key areas such as financial management, corporate governance and reporting requirements, the content of these agreements varies from state to state.

In addition, the following key regulatory mechanisms are in place:

- *Registration* - a legislatively based registration system for community housing providers is in use in NSW and South Australia
- *Property-related regulation* – The use of publicly owned/funded properties are regulated through headleases and/or mortgages across jurisdictions. In South Australia, CHOs hold title, with a statutory charge over the assets to protect government interest.
- *Residential Tenancies Act* – Tenancy disputes are covered by residential tenancies legislation in all jurisdictions. In both NSW and Queensland the state residential tenancy legislation enables some providers to make utilize additional provisions relating to termination.<sup>98</sup>

<sup>97</sup> For an overview of the range of legislation covering organizations involved in the delivery of community housing, see Robyn Kennedy & Co (2001) 'Appendix 3: Existing Legislative Frameworks', *A Regulatory Framework For Community Housing in Australia* NCHF, vol.1, pp.32-63

<sup>98</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 1: Risk Management* NCHF, pp.9-12

## 4.2 The risks

The report identified the risks of the business of community housing for administrators of funding programs (government), providers of community housing and other sector representatives (the sector) and, to a lesser extent,<sup>99</sup> consumers/public interest (the consumers). Additionally, existing risk management mechanisms were identified.

In summary, the key areas of business and their associated risks identified in the report are:<sup>100</sup>

### *Procurement and disposal*

- Government - specific risks associated with procurement methods (eg: difficulties in the process of development and construction for new build properties);
- Sector - lack of control over location, design or quality of housing stock; loss of privately headleased stock;
- Consumers - lack of control over location, design or quality of housing stock; loss of privately headleased stock.

### *Asset Management*

- Government - ensuring appropriate property standards are maintained; ensuring potential useful life of a property is not reduced through inadequate management; long term maintenance liabilities of publicly headleased stock is not always known;
- Sector – “poor performance in relation to cost, quality and timeliness of public asset management and the constraints on providers in relation to controlling service quality or seeking redress; lack of responsibility for broad asset management functions”; lack of clarity about asset management responsibilities in some cases (particularly under public headleasing arrangements); potentially inadequate funding to meet asset-related responsibilities;
- Consumers - potential useful life of a property is not diminished through poor management.

### *Tenancy Management*

- Government - rent setting, allocations, terminations; rent arrears control;
- Sector - rent arrears control; management of difficult or complex needs tenants; risks associated with fee-for-service such as lack of control over allocations, lack of clarity over the separation of tenancy and property management functions; the level of support provided and application of commercial property management regulations; nomination rights by public housing authorities and common waiting lists;
- Consumers - rent setting, allocations, terminations.

### *Sustaining Tenancies*

- Government – interest in ensuring that tenants have “access to appropriate dispute resolution and grievance mechanisms” (including disputes over applications, allocations and transfer decisions);
- Sector - tenant access to appropriate dispute resolution and grievance mechanisms; management of rent arrears; ensuring an adequate level of support to tenants with support needs;

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<sup>99</sup> The report explicitly addresses the risks to government and the sector, under these headings respectively. It's important to note that while some risks to consumers are identified in the report, these are indirectly documented and in some cases implied. For the purposes of this paper, the (buried or implied) risks to consumers have been isolated in the 'summary of risks' detailed below.

<sup>100</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 1: Risk Management* NCHF, pp. 13-22

- Consumers - access to appropriate dispute resolution and grievance mechanisms; adequate level of support.

### *Community Development*

- Government - depends on the extent to which governments view community development as a necessary or important objective of community housing. If it is seen as an essential objective then the risk lies in the failure to effectively deliver this objective. If community development is viewed as an additional activity the risk to government is marginal;
- Sector - commitments to community development without specific funding for this purpose represents a potential financial risk.

### *Community Housing Service Management*

- Government – government interest in the management practices of organisations in relation to funded and broader social objectives with an emphasis on quality of performance.
- Sector - reporting information required by government holds little relevance to managing performance based outcomes and identifying financial risks; lack of resources leading to an inability to comply with performance based systems (like accreditation); implementation of quality/performance management systems on a one-model-fits-all basis (i.e. failure to accommodate sector differences such as size, location, management model).

### *Financial Management*

- Government - financial sustainability of organisations;
- Sector - inability of organisations to raise private finance; “the use of financial benchmarks where such benchmarks are not based on actual cost structures or where benchmarks act to constrain sustainable management”; inadequate financial data collection by government that does not effectively inform practice or promote performance.
- Consumers - financial sustainability of organisations

### *Governance*

- Government - current governance regulations do not address issues of management capacity;
- Sector - lack of governance skills in relation to compliance and ongoing viability.

## **4.3 The range of tools**

Based on a review of comparable industries in Australia and of community housing in other countries, the report focused attention on a range of common (and often complementary) regulatory tools aimed at ensuring appropriate social outcomes for governments, providers and consumers.

### *Legislation*

The Kennedy Report defines legislation as, “the creation and promulgation of a binding general rule of conduct without reference to particular cases.”<sup>101</sup>

There are two distinct forms of legislation:

1. Primary legislation - Acts of Parliament (of the Commonwealth, State or a Territory)

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<sup>101</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, p.43

2. Delegated or subordinate legislation – An Act may authorise other bodies to make legislation. It includes:
- Regulations made under an Act;
  - By-laws made by a local government authority;
  - Disallowable instruments made under an Act (the instrument must be tabled in Parliament and may be disallowed by Parliamentary vote;
  - Rules and instruments made under a statutory power.

### *Legislation as a regulatory tool – advantages*

The major advantage identified in the Kennedy Report is the far-reaching application of legislation. That is, “legislation is binding on all persons within the jurisdiction and a structure exists – the courts – to enforce rights and obligations given or imposed under the legislation.”<sup>102</sup>

Other advantages highlighted in the report are:

- *Certainty*– precise drafting of legislation can achieve a high standard of certainty around rights, standards and responsibilities.
- *Accessibility* – legislation is accessible in print form and, increasingly, electronic form.
- *Flexibility of form* – legislation can be drafted in a highly prescriptive manner, clearly delimiting responsibilities and capacities, through to a statement of purpose with provisions that authorise another body to determine the details through codes, contracts or other forms of delegated legislation.
- *Additional Powers* – legislation can authorise powers that are not open to corporations, associations and individuals.
- *Exemption from forms of regulation* – In appropriate circumstances, legislation can grant exemptions to regulation.
- *Appeal rights* – Housing authorities, CHOs and consumers can be ‘empowered’, ‘protected’ and ‘obligated’ through appeal rights.

### *Legislation as a regulatory tool - disadvantages*

The disadvantages of legislation as a regulatory tool centre on issues of cost, time and inflexibility. The Kennedy Report summarizes the disadvantages as follows:

- “The legislative process for the passage of an Act can be very difficult: Parliamentary numbers may be fragile; Parliamentary time is limited; interest groups have different levels of access to legislators; and drafting of Acts is the preserve of Parliamentary Counsel who may have little knowledge of the relevant field;
- The cost of preparing new legislation can be considerable and the legislation itself may impose significant additional costs in administration and monitoring compliance;
- Legislation, particularly Acts and Regulations, is often difficult to amend because of lack of consensus among various stakeholder groups, and there can be extensive delays in effecting amendments;
- Legislation can be very inflexible and unresponsive to changes in the business environment, society, consumer aspirations and stakeholder interests;
- Certainty in relation to rights and obligations can be diminished by lack of clarity in the ultimate legislative purpose, poor drafting, and inappropriate provisions arising from a lack of consultation with stakeholders and a poor understanding of the issues.
- It can be difficult to express policy objectives in legislation and to draft legislation to enable policy objectives to be achieved in the intended manner.”<sup>103</sup>

<sup>102</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, p.44

<sup>103</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, p. 46

## *Registration and Licensing*

Through registration and licensing systems, individuals and/or organisations are able to participate in a specific industry on the condition that they meet a given set of requirements.

Whilst operating in similar ways, the report distinguishes between the two mechanisms on the basis that licensing generally demands that the individual or organisation either hold a relevant qualification or meet specific criteria in order to obtain a license. In contrast, registration often involves a relatively simple process of “signing up”. This ensures individuals operating in a particular industry are easily identifiable. However the report does note that the registration process *may* require that the registering body demonstrate particular expertise or experience.

The report notes that unless consumers are exposed to significant risk (for example, in medical related fields), governments prefer to avoid licensing systems<sup>104</sup> for the following reasons:

- Licensing schemes are costly to maintain;
- They limit the numbers of operators in an industry, in turn reducing competition and consequently increasing prices;
- Consumers can be inadvertently discouraged from managing risks, based on the assumption that they are protected by the licensing arrangement covering the individual they are dealing with.<sup>105</sup>

## *Codes of Practice*

A code of practice or conduct is a public statement of the standards of service consumers can expect to receive from an industry sector. There are three significant advantages of codes of practice:

- They are developed with industry input, thereby ensuring their relevance to the needs and conditions of the industry;
- They are drafted in clear and accessible language (unlike the legalese of legislative documents);
- Unlike legislation, codes can be readily updated to reflect industry changes.

Compliance with codes can be voluntary (self-regulation), or compulsory (co-regulation). In the second instance, compliance is monitored by a third party (often, although not necessarily, government), and there are penalties if the code is breached.<sup>106</sup>

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<sup>104</sup> As an alternative, ‘negative licensing’ schemes are frequently employed. Negative licensing operates by excluding an individual/organization from participating in a particular industry if they operate inappropriately. Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, p.52

<sup>105</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, p. 52

<sup>106</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, p. 55

Voluntary codes of practice have been developed in WA, NSW and SA by the following peak bodies respectively, the Community Housing Coalition of WA, the NSW Federation of Housing Associations and the Community Housing Council of SA.

### *Standards*

Within the context of human services, standards - like codes - are broad statements setting out the responsibilities and expectations of an organisation in relation to the quality and effectiveness of services. Standards, according to the Kennedy Report, "are generally used as a tool to quantify requirements or performance in relation to achieving regulatory outcomes."<sup>107</sup>

Recent trends have seen a shift away from highly prescriptive standards to streamlined, outcome-based standards. This more flexible approach recognises consistent, quality outcomes for consumers, whilst enabling adoption of different approaches that are applicable to the varying circumstances of a diverse industry group.<sup>108</sup>

### *National Community Housing Standards*

The standards were initially developed in NSW and were built on in a Commonwealth funded project to develop nationally agreed service standards for community housing providers, in 1997-98. The project involved consultation in every State and Territory.

The standards manual covers the following seven areas:

1. Tenancy Management
2. Asset Management
3. Tenant Rights and Participation
4. Working with the Community
5. Organisational Management
6. Evaluation, Planning and Service Development
7. Human Resource Management

For each standard there is a list of indicators expressed as questions, which aim to define what an organisation needs to do to meet the standard. In general, where there is legislation covering an indicator, this is mentioned in a 'further explanation' column.

In September 2000 a list of ten indicators drawn from the National Community Housing Standards were endorsed by the state and national community housing accreditation councils as *Core Indicators*. Implemented on 1 May 2001, organisations seeking accreditation through the community housing accreditation systems (see below) are assessed using these

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<sup>107</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, p. 56

<sup>108</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, p. 56

Core Indicators. Organisations are required to meet or surpass *all* Core Indicators as well as a set percentage of all the standards in order to achieve accreditation.<sup>109</sup>

### *Accreditation*

Accreditation is a process of certification acknowledging that standards have been met at a required level. Accreditation, necessarily coupled with standards, provides a way of measuring performance to ensure quality and accountability.

Accreditation can be understood as a type of licensing. However, the central difference identified in the report between straightforward licensing and accreditation is that accreditation involves a process of inspection and assessment.<sup>110</sup>

Accreditation may be mandatory or voluntary. In general, mandatory systems are introduced within the human services when the risks are significant. That is, “where the costs associated with the failure to meet industry standards are very high (e.g. as in the case of the provision of residential care)”.<sup>111</sup>

### *Accreditation and community housing*

The project undertaken to develop the national service standards identified above, also piloted methods to evaluate services using these standards, and to identify options for accrediting services on the basis of such evaluations.

A system was recommended that establishes an overall framework for accreditation at the national level, to be administered at the state level. A national accreditation council was established in January 2000, to assist in shaping nationally consistent accreditation systems for community housing providers.

Currently, two jurisdictions – NSW and QLD - have voluntary operational systems in place and Victoria is in the process of developing a system. The existing systems are based on assessment of compliance with the National Community Housing Standards and are administered through standards and accreditation units, based with the housing authority and overseen by an independent Council.

The accreditation process is conducted in four stages as follows:

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<sup>109</sup> The core indicators were selected around the areas of financial probity and viability and the welfare of tenants and staff. NSW Community Housing Standards and Accreditation Unit (modified by the National Community Housing Accreditation Council) (2000) *National Community Housing Standards and Accreditation: Core Indicators*

<sup>110</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, p.57

<sup>111</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, p.57

1. Self-evaluation
2. Post self evaluation consultation and development of a quality improvement plan (optional)
3. Implementation of the quality improvement plan
4. Accreditation evaluation

They are three possible outcomes from the evaluation process:

- The organisation is awarded full (3-year) accreditation (at least 65% of the standards were met or surpassed including all core indicators)
- The organisation is awarded partial (1-year) accreditation (at least 50% of the standards were met or surpassed, including all core indicators)
- The organisation is not accredited (less than 50% of the standards were met and/or one or more of the core indicators were not met)

Accreditation for community housing currently operates within a (voluntary) framework of continuous quality improvement rather than as a mandatory mechanism of regulation.<sup>112</sup>

### *Funding Agreements*

Executive governments within Australia are empowered to enter into contractual arrangements to achieve public purposes.<sup>113</sup> Funding contracts form the major tool for minimising the risks associated with the provision of community housing. However, funding agreements in the human services industry often fail to accommodate variability in the application of regulatory requirements, adopting an 'across the board' approach, particularly in relation to risk. Their limitations are also exposed when attempting to remedy breaches and resolving conflict between the housing authority and community housing organization.

In spite of these issues, the report recognises that funding/service agreements or contracts are a necessary form of regulation that can serve as a complementary regulatory tool *if* they are drafted to provide for variability and achieve a balance between over- and under-prescription.<sup>114</sup>

## **4.4 Research observations**

The Kennedy Report concluded that overall, regulation of community housing in Australia is somewhat underdeveloped. Funding agreements currently form the principal regulatory tool. However, as a regulatory mechanism, they are relatively limited – most notably in relation to dealing with contract breaches and specifying performance outcomes.

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<sup>112</sup> It is worth noting that a review of the national community housing standards commenced in July 2002 and will be completed by December. The review will ensure that the standards and accreditation process reflect and support sector development, quality improvement principles and developments in quality systems across the states and territories.

<sup>113</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 1: Risk Management* NCHF, p.10

<sup>114</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, p. 61

Further, the report notes that whilst key areas of business are captured under existing regulatory arrangements (tenancy management and business practices), there are significant gaps in adequately addressing qualitative issues such as performance against funded objectives and the effective use of funds and assets.

### *Regulatory tools suggested by the report*

*Legislation* was proposed as the core of a regulatory framework for community housing. It was suggested that expansion and amendment of existing Housing Acts, rather than development of new legislation, would be a more cost and time-effective approach.

Legislation was seen to provide the opportunity to:

- “Set out the objectives and principles of funding programs for community housing
- specify powers to fund, develop and support community housing
- give certainty with respect to rights, obligations and required standards
- set out provisions to enable the achievements of policy objectives
- clarify the regulatory powers of government
- provide exemptions and specific provisions in other applicable legislation
- give binding rights of appeal to both service providers subject to regulation and their consumers
- overcome the constraints applicable to funding agreements”<sup>115</sup>

*Registration* – The report proposed that legislation would establish the process for registration of CHOs. Like the model currently in use in South Australia, registration would establish eligibility for funding. In the case of serious breaches of the Act and/or funding agreement, an organization could be de-registered (negative licensing).

*Standards* – Compliance with service delivery and performance standards could be linked to registration criteria and/or funding agreements. However the National Community Housing Standards would not be appropriate as they are geared towards quality improvement rather than simply providing benchmark standards. The Kennedy Report suggested a sub-set of the existing service standards could be used.

*Accreditation* - The Kennedy Report recommended that accreditation of community housing organisations remain voluntary with its current emphasis on quality improvement. Introduction of a mandatory system for community housing could result in the costs outweighing the benefits. As it says in the report, “it would appear to potentially involve over-regulation and unnecessary cost” given the relatively low-level of risk.<sup>116</sup> However, it was suggested that the accreditation system’s value to a regulatory framework could be strengthened by linking accreditation to a registration system and/or funding agreements.

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<sup>115</sup> Robyn Kennedy & Co Ply Ltd (2002) *Regulation Framework: A Summary* NCHF

*Codes of practice* – The Kennedy Report proposed that existing Codes of Practice continue to be implemented as voluntary tools for quality improvement.

*Funding agreements* – The Kennedy Report proposed a regulatory framework that extends beyond funding/service agreements. However (flexible) agreements would continue to delineate individual arrangements in areas such as payments, reporting, monitoring and performance requirements.

### *Regulation of Capital Assets*

The proposed regulatory model recommended that legislation make provision for a statutory-based charge on capital assets as an alternative to headleases or mortgages.<sup>117</sup>

Under this model community housing organisations hold title but it is subject to controls. Essentially statutory charges act to prevent properties being used or disposed of inappropriately. They are less complex than mortgages because the charge applies to all properties with governments interest (mortgages apply to individual properties).

Importantly, the statutory charge model assists private financing initiatives. Governments give consent to the creation of a first mortgage over the relevant property. In effect, government has a second mortgage position without the need for legal documents to be prepared and registered against the title.

In the UK and the Netherlands, ownership of capital assets by housing organisations has been pivotal in attracting private investment. Title is a crucial issue for the community housing sector in Australia, and inextricably linked with examinations of private financing and regulation.

### *Regulatory tiering*

The Kennedy Report proposed that community housing adopt a tiered approach to regulation. This would be designed to accommodate the vast differences that characterise the community housing sector – differences in size, location, management models and client-bases.

Tiering can be applied to a range of regulatory tools. Legislation can set out classes of registration for different types of community housing organisations bearing different (or different degrees) of risk. Standards could be tiered, with a minimum set of core standards and additional classes of standards appropriate to particular types or functions of community

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<sup>116</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, p. 59

housing. Consideration could be given to the introduction of levels of accreditation. In turn, funding agreements could vary for different classes of registration and/or individual organisations – for example, varying the frequency of reporting.

## **4.5 Conclusion**

The Kennedy Report provides an outline of the range of possible regulatory options for community housing and proposes a combination of ‘tools’ that could most effectively work for the community housing sector. In particular, the project proposes a regulatory system that could better manage the risks of the community housing sector – for government, the sector and to some extent, consumers. It also offers an understanding of how enabling regulation could, in the longer-term, reduce the administrative burden for government and the sector by shifting quality assurance away from the detail of funding agreements and onto robust quality assurance/improvement systems. Finally the report opens the question of a more enabling regulatory environment for providers in its recommendation that legislation make provision for a statutory-based charge on capital assets as an alternative to mortgages or headleases.

This project builds on the last point by specifically identifying the criteria that would optimise the flexibility and efficiency of providers whilst providing confidence to government administrators. The project will also consider additional regulatory tools not covered in the Kennedy Report but captured in the literature review of this research – specifically, performance management frameworks.

Finally, this project will supplement the findings of the Kennedy Report by identifying the outcomes looked for from a community housing regulatory system by external stakeholders.

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<sup>117</sup> Robyn Kennedy & Co Ply Ltd (2002) *Regulation Framework: A Summary* NCHF

## 5. PROPOSED METHODOLOGY

### 5.1 Introduction

This project will help fill the research gap identified in Chapter 3. The research will build on the outcomes of the Kennedy Report by addressing the regulatory concerns and attitudes of the key stakeholders that were not subject to detailed investigation in that report. The research will be comprised of four elements: field research with key external stakeholders, evaluation of international regulation through literature and key informants, a provider focus group/ workshop and two seminars toward the end of the project to review key findings – first with administrators and then with a broader constituency.

The selection of informants for interview in the field research stage is specifically targeted to organisations with sufficient familiarity with community housing to enable an informed response. The number of informants in each stakeholder group will range between three and seven. The variation is primarily related to the existing degree of engagement with community housing and the extent to which it might be anticipated that there will be regional or other differences in responses.

### 5.2 The key stages of the project

#### *Key stakeholder interviews*

The interview pro formas will be structured around a set of relatively open questions, supported by key prompts.<sup>118</sup> This semi-structured method of questioning will be adopted to minimise pre-emption of responses. It will, therefore, allow issues to emerge that have not been captured in previous research and/or are specific to an Australian context, whilst ensuring that key issues identified in pre-field work are broached.

The purpose of the external stakeholder interviews is (a) to identify threshold issues related to involvement of the stakeholder group with the community housing sector that would be influenced by a regulatory regime, and (b) to obtain more detailed information on the aspects of regulation, and where possible, the content of regulation that would support or enable engagement in partnership or financing arrangements with community housing, rather than canvassing views on a pre-existing or prescribed regulatory system. That is, the principal objective is to obtain information on the kinds of assurances external stakeholders would

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<sup>118</sup> See appendix, p.60 for a listing of interview questions and a summary mapping of research aims and corresponding research elements.

require in order to engage with community housing, and the regulatory tools that would best deliver these assurances.

Interviews will be conducted in two rounds:

1. A limited number of informants from the identified stakeholder groups with sufficient familiarity with community housing will be selected. Selection will be achieved through existing relationships.
2. A second round will supplement the first round of interviews, with informants identified through a chain of referral approach.

This selection method will be adopted to secure information-rich informants.

A mix of face-to-face and telephone interviews will be held, depending on the location and availability of the informants. Subject to permission from the informant, each interview will be recorded and transcribed. The transcript or record of interview will be provided to the interviewee for confirmation or supplementation. The material will be incorporated into the research in a non-identifying way, unless written consent is received from the informant permitting disclosure of identity.

### *Analysis of interviews*

Interview transcripts will be analysed using a dialogic gridding process between key questions/issues identified by the researchers and the interviewees. This matrix will enable identification of areas of commonality and disparity both within and between stakeholder groups and their contextualisation in the broader policy environment. As noted below, the interview data will subsequently be analysed within the context of international regulatory systems.

The following stakeholder groups will be included:

*A: Finance sector interviews* – two interviews are proposed in Victoria, building on the connections with the finance sector already established (by Ecumenical Housing and Common Equity Housing Ltd). Two interviews will also be held in NSW building on links between the Affordable Housing Research Consortium and financial institutions. Additional informants may be identified as the fieldwork unfolds.

Interviews will focus on the importance of regulation to developing a market for investment, the key aspects of the relationship that would benefit from regulation, and the likely impact of effective regulation.

*B: Development/ housing industry* – One interview with developers currently working with community housing organizations will be held in each of Sydney and Melbourne. Currently there are very few such joint ventures. A further interview will be held with the

Housing Industry Association to provide an overview of the industry. Additional informants may be identified as the fieldwork unfolds.

The interviews will focus on the importance of regulation to establishing a partnership with a CHO, the aspects of regulation that would be significant, and the impact of such regulation on the nature and roles within the partnership.

*C: Local government* - Seven interviews will be held with local government authorities currently involved in the development of affordable housing or joint ventures – two in Queensland, three in NSW and two in Victoria. The larger number of informants in this group reflect the larger number of councils with existing relationships with community housing providers and the wider variety of forms of relationships across the three States. The later informants in each State may be identified as the fieldwork unfolds.

The interviews will focus on the role of regulation in making council assets available for a social housing venture, the nature of community housing regulation that might affect council management of social or affordable housing, and the use and features of regulation that might affect selection of a manager of affordable housing developed for councils.

*D: Church agencies* – Four interviews will be held with large church agencies. Utilising the contacts provided through both Churches Community Housing in NSW and Ecumenical Housing in Victoria, it is projected that three of these would be held in NSW and one in Victoria. The later informants in each State may be identified as the fieldwork unfolds.

The interviews will focus on the threshold issues for church investment in community housing partnerships, the capacity of regulation to influence these threshold issues, influence of regulation in determining acceptable management arrangements of community housing subsidised by church agencies, and issues that might arise under a regulatory regime for churches directly involved in the management of community housing.

*E: Central agencies* – interviews will be held in three jurisdictions – Queensland, NSW and Victoria. These reflect the fact that initiatives to establish regulation have begun in each of the States and the very different arrangements related to access to the asset that operate in these States. The interviews will focus on the preferred approach to regulation of the non-government sector, the threshold issues that would need to be addressed through regulation for significant control over publicly funded assets to be acceptable, and the role and nature of regulation in enabling government to encourage the use public subsidies to support private financing of a significant community housing sector.

*F: Peak bodies* - During the early stages of the research project a further stakeholder group was identified by the project steering committee<sup>119</sup> for the interview phase of research – state peak bodies.

The interviews will provide an opportunity to obtain more in-depth information on the second project research aim, which is concerned with:

- what strategic opportunities are being limited by current arrangements ; and
- what strategic opportunities could be pursued?

The peak interviews will focus on jurisdictions currently dealing with the issue of regulation. They will have a system-wide and strategic focus on the limitations and opportunities presented by existing and new arrangements. The interviews provide a limited opportunity to get more in-depth information on particular jurisdictions, including policy and strategic implications, which are not captured in the subsequent provider workshop (see below). Four interviews will be held.

### *Evaluation of international regulatory systems*

The purpose of this stage of the research is to enable data derived from the stakeholder interviews to be considered from the vantage point of a well-established non-government housing system, with well-established regulatory arrangements. The principal issues to be explored are the extent to which requirements and expectations may change as a sector and its relationships with external stakeholders (such as the financial community) mature; and the outcomes of reviews of regulatory arrangements over time. Again this will build on the results of the preliminary examination of regulation in the UK and the Netherlands from the previous NCHF research (the Kennedy Report).

- A: Identify gaps/ questions arising from the previous research and the findings of the previous Stages of this research.
- B: Additional literature review focused on these issues with a particular focus on the role of the Housing Corporation and the Canada Mortgage and Housing Corporation in regulating community housing. The UK and Canadian systems appear to have the closest relevance to the Australia context and system.
- C: This will then be supplemented by interviews with up to five key informants from: each regulatory agency and financial institutions. The focus on financial institutions reflects (a) the fact that the relationships of other stakeholders to the community housing system appears less relevant to the Australian system (the role of local government is an obvious case in point); and (b) the primary importance of access to private finance for any future investment in an expansion of the Australian community housing system.

### *Workshops – providers and administrators*

#### *A. Providers workshop*

A full day workshop will be held in Sydney with approximately 12 participants from Queensland, NSW, ACT, SA and Victoria. Participants will have been provided with the

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<sup>119</sup> The Steering Committee includes: Carol Croce - Community Housing Federation of Australia, Mike Berry – RMIT University,

regulatory 'tool kit' developed through the previous NCHF research (the Kennedy Report). A summary of these findings has been widely disseminated. As well as building on the findings of that research, this workshop supplements it. The (final) Kennedy Report was developed based on responses to the draft report provided through a workshop of community housing administrators. No such issues identification by providers was possible.

The purpose of the workshop is three-fold:

- To find out what providers might want from a regulatory system. For example, do they want a system that enables them to take greater control of their assets? Do they want a system that supports quality improvement? Are their needs compatible with the needs of government?
- To test these objectives against (a) the 'tool kit' developed in the previous NCHF research and (b) the outcomes and regulatory instruments identified through Stages 1 – 3.
- To obtain practical details on the compliance implications that various regulatory tools elicit. That is, what would it take an organisation to meet the requirements of a specific regulatory tool? Are these requirements feasible? What are the barriers to compliance?

Participants will be a mix of peak and providers, including Indigenous providers. Participants will also form a mix of the main types of organisations. The community housing sector in Australia is diverse with a range of management models and organisational types and significant variation in size and location. What providers might want from a regulatory system and the compliance implications arising from different regulatory tools will vary across this range of providers. It is important that these differences are captured in the workshops. This is given weight by the findings of the Kennedy Report, which specifically suggested a regulatory tiering structure that is tailored to the form of community housing being regulated.<sup>120</sup> The very specific issues of this kind that might arise for external stakeholder who also act as providers – specifically, local councils and churches – will have been explored in the stakeholder interviews in Stage 2.

That being said, this workshop is not intended to provide a representative sample of responses. That is, it does not replace either a survey or a consultation. Rather, its role is issues identification. The sample selection has been undertaken to obtain an expertise/knowledge base wide enough to capture issues that might arise for the diverse range of providers.

The structure of the workshop will be developed at the end of Stage 3. However, the discussions will be structured around a set of key themes. A sequenced set of relatively open ended questions will be developed, supplemented by key prompts from the investigator, to ensure that issues identified from the previous stages of the research are covered. The workshop will be recorded and responses will be analysed in terms of provider type,

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Sean McNelis – Swinburne University and Morag McCrone – Vic Office of Housing

<sup>120</sup> Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF, pp.69-70

objectives, acceptance of specific regulatory approaches and implementability. While not representative, the consensus/disagreement on issues will be reflected in the report as an indication of the significant issues that could impact on the development or implementation of regulatory arrangements.

#### *B: Administrators*

A full day workshop will be held with representatives from government. Participants will be drawn from Queensland, NSW, ACT, Victoria, South Australia and Tasmania. As far as possible, there will be two participants from each jurisdiction – one an administrator of community housing programs and one a central policy maker in the housing authority or Department. This workshop will build on focus groups undertaken with housing administrators in the Kennedy research, which investigated what government might want from a regulatory framework.

The purpose of the workshop is to explore the policy relevance and applicability of the findings from other stakeholders to the policy and administrative environment.

The objectives of this workshop are to:

- Explore the administrative implications of the criteria, issues and options identified by key stakeholders; and
- Explore the administrative implications and relevance of international approaches.

The workshop will be recorded and analysed as above.

#### *Preparation of the final report*

A draft findings paper will be prepared and presented to a range of stakeholders through the process of a final seminar. This seminar will be comprised of administrators, sector representatives and Indigenous housing representatives. The aim is to familiarise and to test the responses of participants to the draft findings paper. The workshop will also enable differing interests and objectives to be explored. The cost of non-government participation in this seminar will be supplemented by the NCHF as part of its national seminar series.

Following the seminar, the final report of the project will be prepared.

## 6. CONCLUDING REMARKS

The outcomes of the project will be of vital interest to a broad range of community housing stakeholders. The Final Report and Findings Paper will be widely distributed accordingly. The Final Report will be of policy significance to Commonwealth and state governments as they plan and implement regulatory systems for community housing. It will also provide greater clarity with respect to discussions within the renegotiations of the Commonwealth-State Housing Agreement in regard to community housing. The Report will be circulated to all relevant government bodies through the National Community Housing Forum.

The Final Report will also be of critical interest to the community housing sector. Of particular concern will be the conclusions regarding capacity building strategies and the implications they might have for peak industry bodies at national and state levels. The Final Report will be distributed to all community housing peaks through the Community Housing Federation of Australia.

Additionally, the Final Report will be of interest to other sectors minimally included in the project – most notable, the Indigenous housing sector and crisis housing. There are some overlaps with both these sectors in functional areas such as property management. Regulatory arrangements in these areas may therefore be applicable across sectors.

The proposed findings seminar will also introduce key participants to the findings and encourage them to consider the practical implications of the findings. The Findings Paper will also provide an introduction to community housing for the private finance industry. The Findings Paper will be distributed to interested financial institutions.

# REFERENCES

## Printed Material

ACT Department of Health, Housing and Community Care (2001) *Community Housing in the ACT: Future Directions*, Canberra

Aedes (1999) *Dutch Social Housing in a Nutshell*, Aedes, Hilversum

Affordable Housing National Research Consortium (2001) *Affordable Housing in Australia: Pressing Need, Effective Solution (Policy Options for Stimulating Private Sector Investment in Affordable Housing Across Australia)*, Sydney

ARTD Management & Research Consultants for the NSW Office of Community Housing (2002) *Focussing on Outcomes For Community Housing in NSW: Discussion paper on a proposed Performance Management Framework* Sydney, April

Berry M & Hall J (2001) *Stage 1 Report Outlining the Need for Action (Report for the Affordable Housing National Research Consortium)*, AHURI

Better Regulation Taskforce (2000) *Principles of Good Regulation*, Cabinet Office, London, October

Better Regulation Taskforce (2000) *Alternatives to State Regulation*, Cabinet Office, London, July

Bisset Hal, (2000) *Social Housing: Building a New Foundation (Social Housing Innovations Project Report)* Ecumenical Housing, Melbourne, November

Bickerdyke I, Lattimore R (1997) *Reducing the Regulatory Burden: Does Firm Size Matter?* Industry Commission Staff Research Paper, AGPS, Canberra, December

Brian Elton & Associates (2000) *Private Finance and Community Housing: recent initiatives*, NCHF, Sydney, May

Brooke G, KPMG *Private Investment In The Social Housing Market* presentation, NSW Community Housing Conference, 9 May 2002

Churches Community Housing Inc. (2002) *Public Church Partnerships: Barriers to Accessing of Church Assets for Community Housing*, Churches Community Housing, Sydney, May

Commonwealth Department of Family and Community Services/NSW Office of Community Housing (1998) *National Community Housing Standards Manual*

COAG (1997) *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (amended 1997, first endorsed 1995)

Community Housing Advisory Service ACT (1997) *Increasing Community Housing in the ACT - Submission to Sue Birtles, General Manager, ACT Housing*, Canberra

Council of Mortgage Lenders (2002) *Lenders and stock transfer: an outline guide to lender requirements in England UK*, June

Day P & Klein R (1996) *The regulation of social housing* National Federation of Housing Associations, London.

- Department of Family and Community Services (1999) *National Evaluation of the Supported Accommodation Assistance Program (SAAP III)*
- Ecumenical Housing Inc (2000) *The Role of the Churches in Community Housing* vol.1, January
- Ecumenical Housing Inc (2000) *Principles for Good Practice in Community Housing Joint Ventures* vol.2, January
- Farrar Adam (2002) 'The Continuing Search for Affordable Housing in Australia' in Richardson R & Disney J (eds.) *Social Investment in Housing and Urban Development* The University of NSW
- Gruis, V (1997) 'The Netherlands', Ch. 2 in Boelhouwer, P (ed) *Financing the Social Rented Sector in Western Europe, Housing and Urban Policy Studies*, No. 13, Delft University Press, Delft
- Gruis, V (2000) 'How to Determine the Financial Possibilities of Dutch Housing Associations', *Journal of Housing and the Built Environment*, 15, pp 367- 376
- Gurran Nicole (2002) *Housing policy and urban development: Evaluating the use of local housing strategies in Queensland, New South Wales, and Victoria – Positioning Paper*, AHURI, University of Sydney Research Centre, August
- Housing Act, 1996* (UK) [[www.legislation.hmso.gov.uk/acts/acts1996/1996052.htm](http://www.legislation.hmso.gov.uk/acts/acts1996/1996052.htm)]
- Housing Corporation, The (2002) *The Way Forward: Our Approach to regulation*, UK [[www.housingcorp.gov.uk](http://www.housingcorp.gov.uk)]
- The Housing Corporation (2002) *Financial health and viability of housing associations – sector study 15*, Appendix 3, UK, March
- Hupe, P & Meijs, L (2000), *Hybrid Governance: The Impact of the Non Profit Sector in the Netherlands*, Social and Cultural Planning Office, The Hague
- Larkin, A (1998) *Research into aspects of policy and operational arrangements for non-government housing associations in Europe, and developing options for the expansion of the community housing sector in Australia*, Commonwealth Department of Social Security, Canberra
- Larkin A & Lawson J (1998) *Financing Arrangements for Social Housing in England, The Netherlands, Denmark and Germany*, NCHF, Sydney
- Ministry of Housing, Spatial Planning and the Environment (1997) *Housing in the Netherlands*, Ministry of Housing, Spatial Planning and the Environment, The Hague
- Ministry of Housing, Spatial Planning and the Environment (2001) *What People Want Where People Live: Housing in the 21<sup>st</sup> Century*, Summary document in English, Ministry of Housing, Spatial Planning and the Environment, The Hague.
- Ministerial Task Force on Affordable Housing (1998) *Affordable Housing in New South Wales: The need for Action* The Report of the NSW Ministerial Task Force on Affordable Housing, Sydney
- Moody's Investors Services (2002) *Credit Outlook for English Housing Associations*, London, May
- National Audit Office (2001) *Regulating housing associations management of financial risk* NAO, London

- National Housing Federation and Housing Corporation (2001) *Private Finance Monitoring Bulletin* Issue No. 10, NHF, London
- NCHF (2000) *Private Finance and Community Housing*, Discussion Series, Paper No. 1 Sydney, September
- NCHF (2001) *Title and Financial Independence: A discussion paper*, NCHF, Sydney, December
- NCHF (2002) *Community Housing Research and Development: working with the strategic framework – Report on capacity development*, Sydney, January
- NCHF (2002) *System-wide Business Structures for Community Housing – Discussion series: paper no.7*, Sydney
- NCHF (forthcoming), *Private Financing Models for Social and Affordable Housing – Summary of Proceedings*, Sydney
- NCHF & AIHW (1999) *Community Housing Mapping Project: Report on Findings*, NCHF, Sydney
- NSW Community Housing Standards and Accreditation Unit (modified by the National Community Housing Accreditation Council) (2000) *National Community Housing Standards and Accreditation: Core Indicators*
- NSW Department of Fair Trading (2001) *Proposed Reforms to the Regulation of Property Agents*.
- NSW Office of Community Housing (2001) *Outline of NSW Community Housing Standards and Accreditation System*
- NSW Office of Community Housing (1999) *Guide to the Office of Community Housing Registration System*
- NSW Office of Community Housing (1999) *Community Housing Accreditation Kit*
- NSW Premier's Department (1994) *From Red Tape to Results*, Sydney.
- OECD (1996) *Regulatory Reform: A Country Study of Australia* Paris
- OECD (1997) *Co-operative Approaches to Regulation* Occasional Papers: No. 18
- OECD (2000) *Reducing the Risk of Policy Failure: Challenges for Regulatory Compliance*
- Office of Community Housing,(2002) *Community Housing Leasing Program: Analysis of Performance 2000/2001* NSW Department of Housing , Sydney
- Office of Regulation Review (1998) *A Guide to Regulation (second edition)* Canberra
- ODPM [Office of the Deputy Prime Minister] *2001/02 Housing Transfer Programme Guidance for Applicants* UK [[www.housing.odpm.gov.uk/local/2001http/01.htm](http://www.housing.odpm.gov.uk/local/2001http/01.htm)]
- ODPM (2000) *Housing Green Paper: Quality and Choice – a decent home for all* UK, April; Department of Environment, Transport & the Regions (2001) *Guide to Social Rent Reforms* London, March
- Ogus A (1994) *Regulation-Legal Form and Economic Theory*, Clarendon Press, Oxford

- Pearce and Geddes (1988) *Statutory Interpretation in Australia*, Third Edition, Butterworths, Sydney
- Queensland Community Housing (1999) *Community Housing Plan 1999-2004* Queensland Department of Housing, Department of Housing, Brisbane
- Queensland Department of Housing (2001), *'Work in Progress': Investigating a Legislative Framework And/Or Regulatory Framework for Community Housing in Queensland* 23 August
- Queensland Department of Housing (March 2002) *New Housing Legislation: A Framework for Regulating Providers of Community Managed-Housing and Housing-Related Assistance*, Department of Housing, Brisbane
- Queensland Community Housing Standards and Accreditation Unit (1999) *Accreditation Kit for Community Housing Organisations*
- Queensland Department of State Development (nd) *Guidelines to Alternatives to Prescriptive Regulation*
- Queensland Department of State Development (nd) *Guidelines for Improving Service Delivery in Government Agencies*
- Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 1: Risk Management* NCHF
- Robyn Kennedy & Co Pty Ltd (2001) *A Regulatory Framework for Community Housing in Australia – Volume 2: Regulatory Options* NCHF
- Robyn Kennedy & Co Pty Ltd (2002) *Regulation Framework: A Summary* NCHF
- Salet, W.G. (1999) 'Regime Shifts in Dutch Housing Policy', *Housing Studies*, V 14, 4, pp 547 - 557
- SCRCSSP (Steering Committee for the Review of Commonwealth/State Service Provision) (2002) *Report on Government Services 2002: Volume 2* AusInfo, Canberra
- Seddon, Nicholas (1999) *Government Contracts*, Second Edition, The Federation Press, Sydney
- South Australian Community Housing Authority (nd) *Guide to Regulation of the Community Housing Sector in South Australia*
- Victorian Office of Regulation Reform (nd) *Principles of Good Regulation*
- Victorian Office of Regulatory Reform (nd) *Regulatory Alternatives*, Melbourne.
- Williams P & Wilcox S (nd) *Funding Social Housing: Changing Times, Changing Markets*, UK
- Yates J & Wulff M (1999) *Housing Markets and Household Income Polarisation: A Metropolitan and Regional Analysis* National Housing Conference, 'Reform and Renewal in Social Housing' Sydney, November
- Yates J & Wulff M (2000) *Whither Low-cost Private Rental Housing?* Urban Policy and Research, Vol. 18, No.1

## Websites

Australasian Legal Information Institute: [www.austlii.edu.au](http://www.austlii.edu.au)

Communities Scotland: [www.communitiesscotland.gov.uk/Communities](http://www.communitiesscotland.gov.uk/Communities)

Consumer and Business Affairs, Victoria: [www.consumer.vic.gov.au](http://www.consumer.vic.gov.au)

NSW Department of Fair Trading: [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

Housing Corporation (UK): [www.housingcorp.gov.uk](http://www.housingcorp.gov.uk)

National Competition Council: [www.ncc.gov.au](http://www.ncc.gov.au)

National Housing Federation (UK) [www.housing.org.uk/](http://www.housing.org.uk/)

Office of the Deputy Prime Minister (UK) [www.odpm.gov.uk/](http://www.odpm.gov.uk/)

Office of Regulation Review (Productivity Commission) [www.pc.gov.au/orr/](http://www.pc.gov.au/orr/)

Organisation for Economic Co-operation & Development (OECD) [www.oecd.org](http://www.oecd.org)

Queensland Department of Families [www.families.qld.gov.au](http://www.families.qld.gov.au)

Queensland Government – State Development <http://www.sd.qld.gov.au/>

Real Estate Institute of NSW [www.reinsw.com.au](http://www.reinsw.com.au)

Real Estate Institute of Victoria [www.reiv.com.au](http://www.reiv.com.au)

Regulatory Impact Unit (UK) [www.cabinet-office.gov.uk/regulation/](http://www.cabinet-office.gov.uk/regulation/)

## APPENDIX: Project aims & corresponding research elements

<b>Stakeholder requirements for enabling regulatory arrangements for community housing in Australia (60118)</b>	
<b>Project Aims</b>	<b>Research elements (including interview questions)</b>
To identify the <b>outcomes</b> looked for from a community housing regulatory system by external stakeholders - private financiers, local government, developers, church partners and central agencies	<p><i>External stakeholder interviews</i></p> <ol style="list-style-type: none"> <li>1. What is your current involvement with community housing or what do you understand about the sector?</li> <li>2. What opportunities does the community housing sector present?</li> <li>3. What are the barriers to expanding these opportunities? (<i>prioritise importance</i>)</li> <li>4. How could these barriers be overcome? (<i>if ways of overcoming the barriers relate to regulation, discuss for more detail on the types of mechanisms that would be useful</i>)</li> <li>5. If the barriers you have identified could be overcome in the ways we have discussed what would it change in your dealings with the community housing sector? (<i>ie: how would it impact on the risk assessment?</i>)</li> <li>6. How would these types of changes affect the costs of expanding your opportunities within the community housing sector?</li> </ol> <p>(n.b. questions modified for central agencies)</p>
To identify the limitations of current arrangements and the enhanced <b>capacity</b> of community housing providers that might flow from improved regulatory arrangements	<p><i>Peak interviews</i></p> <ol style="list-style-type: none"> <li>1. What are the new developments in your jurisdiction in relation to regulatory arrangements? Or, what are the emerging trends?</li> <li>2. What are the strategic directions/opportunities for the sector in your state that might be affected by regulatory arrangements?</li> <li>3. What are the difficulties or limitations that have arisen from current regulatory arrangements?</li> <li>4. What are the difficulties or limitations that have been identified with respect to the new developments or emerging trends?</li> <li>5. What are the strategic opportunities that could be opened up for the sector from new developments or trends, as they are now or if they were modified? What are the policy implications?</li> <li>6. What are the strategic directions for the sector now?</li> </ol> <p><i>Literature review</i> <i>Workshops</i> <i>Analysis and final report</i></p>
To identify the <b>criteria</b> for regulatory arrangements that would optimise the flexibility and efficiency of providers as well as robust and transparent accountability	<p><i>Literature review</i> <i>Workshops</i> <i>Analysis and final report</i></p>
To identify the aspects of the operations of UK and other international community housing regulatory systems that provide similar benefits to those being sought by the above stakeholders and to assess their applicability to the Australian context	<p><i>International literature review</i> <i>International interviews (mainly finance sector)</i> <i>Analysis and final report</i></p>
To familiarise administrators and providers with the findings and test their applicability in the existing community housing systems - including Indigenous housing	<p><i>Joint findings seminars</i></p>

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