

Stakeholder requirements for enabling regulatory arrangements for community housing in Australia

CENTRAL AGENCIES DATA REPORT

authored by

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INTRODUCTION

These data reports describe the responses from each of the seven stakeholder groups investigated in the project. The first five stakeholder groups are 'external' to community housing and their involvement has been seen as potentially important to the further development of the sector. They are financiers, developers, local government, churches and central agencies.

The remaining two groups are the providers and the administrators – the regulated and the regulators. Both of these two groups have a crucial interest in the outcomes to be achieved by regulatory arrangements. Unlike the external stakeholders, however, their interest is two dimensional. That is, it is an interest in both the new opportunities that might be opened up, and in how it will affect their current core business and achievement of social housing outcomes.

Information from the external stakeholders was gathered using semi-structured interviews. The broad questions, and their relationship to the project aims, are in the appendix to this data report. The informants were chosen because they had sufficient familiarity with the community housing sector to be 'information rich'.

Information from the internal stakeholders was gathered using workshops to identify issues and to get some responses to the external stakeholder views. In addition, four interviews with state based community housing peak bodies were conducted (prior to the workshops) for an assessment of:

- the strategic opportunities being limited by current regulatory arrangements; and
- the strategic opportunities that could be pursued through developments and trends in the local environment.

The informants' views have been presented in each of these data reports in six parts:

- The current context in which the informants are becoming engaged with the sector – or for internal stakeholders, pursuing regulatory reform and sector development.
- What might effective measures within the community housing sector enable or in other words the potential and emerging opportunities.
- The preconditions for realising or achieving these opportunities.
- The aspects of regulation that could help meet these preconditions.
- Principles for effective regulation.
- The informants' assessment of how much difference regulation or regulatory tools or elements might make.

In other words, stakeholders believe there is an opportunity for (and are interested in) achieving some outcomes, but they report a number of preconditions for realising these. This is of interest in itself, but in particular, they suggest ways that some of the preconditions might be met with appropriate regulation. (Table 3 in the main report starts to describe the relationships between the opportunities, preconditions and community housing regulation across the stakeholder groups).

This form of presentation has been adopted to provide an explanatory framework through which to understand the views of the informants. It is intended to help understand how the informants are currently engaged with the community housing system – the drivers and limitations on this involvement; what larger benefits might be enabled if there were some changes in the current system; and what role, if any, regulation might play in this. The overall findings of the research are presented in the findings section of main report.

Central Agencies and community housing

In the main, State central agencies' relationship with the community housing sector is relatively distant. As discussed below, central agency understanding of community housing often relies on the knowledge of key personnel or a particular initiative coming to the attention of the agency rather than through systematic information exchange. It should be noted that in some

states, information structures are established between central and line agencies – however this is determined on a jurisdictional basis.

The informants

Interviews were held with informants from state central agencies in two jurisdictions (Queensland and Victoria) that have commenced initiatives to establish new regulatory arrangements for community housing.¹ In both states informants from Treasury and the Department of Premier and Cabinet participated in discussion. In Queensland, these interviews were conducted separately (Treasury – CA1 and Premier and Cabinet – CA2) In Victoria one interview with informants from both agencies was held (Treasury – CA3 and Premier and Cabinet – CA4). The interviews concentrated on the preferred approach to regulating the non-government sector, the threshold issues that would need to be addressed through regulation for non-government control over publicly funded assets to be acceptable, and the role and nature of regulation in enabling government to encourage the use of public subsidies to support private financing to expand the community housing sector.

It is important to emphasise that the views put forward by informants were grounded in their experience, as individuals, of working in central agencies and are *not* the view of the agency itself.

The current context

The business environment

At the time of interviewing, the work on regulation for community housing in Queensland (Qld) was more advanced than in Victoria (Vic.). Discussions on improving regulation had already been held between the housing authority and central agencies and the Department of Premier and Cabinet were providing some input into the development of a legislative and regulatory framework. In addition, Qld Treasury was engaged in the development of the Brisbane Housing Company (BHC) – a not-for-profit company designed to facilitate affordable housing growth in inner Brisbane.

BHC was initiated by the Qld Department of Housing and is being developed with contributions from Treasury, local government (Brisbane City Council) and eventually, it is anticipated, from developers. CA1 suggested that Treasury was supportive of the concept of BHC because it was results-oriented with strong corporate governance and no ongoing public funding. The following reasons were expressed:

- It is ‘innovative’ - leveraging dollars and land from a number of sources. It therefore does not “hit the state budget” in a major way.
- It is a “results-oriented approach” in which the company structure “minimises the chances of red tape taking over”.
- It has a “good policy rationale behind it” – that is, there was enough evidence to suggest that pushing affordable housing to the outer suburbs is not beneficial to the broader community.
- All players and board members (a mix of community, local and state government and experts) “have a charter of making it work”.

In Vic. alternatively, discussion between central agencies and the housing authority was minimal. In part, this is an issue of timing: the work has only been more recently progressed in Vic. Since the interviews were held, the Office of Housing has initiated discussions with central agencies on this subject.

However, it is probably fair to say that in the recent past, at least, information channels between central agencies and housing administrators have been somewhat inactive. A clear understanding of housing issues and their relationship to broader policy objectives is at a

¹ It was also hoped that interviews would be held with central agencies in NSW – the third state with significant regulatory work underway. Unfortunately, it proved extremely difficult to obtain interviews with these stakeholders.

relatively nascent stage, and an understanding of the specific business of community housing minimal.²

What might effective measures enable

Key points:

- A way to improve access to affordable housing needs to be found. However,
 - some are still forming a view on policy objectives and drivers
 - there are mixed views about whether is social supply the answer
 - there are mixed views about the use of public assets by NGOs to lever new solutions

Increased role in affordable housing

Affordability – All informants recognised that affordability was an issue. However Vic. informants were not convinced of the extent to which increased social supply is the answer. They suggested further consideration would need to be given to other policy instruments such as increased rent assistance, taxation measures and so on.

Informants from Qld expressed a different view. As noted above, it was recognised by some informants that the lack of affordable housing in the inner city would have negative impacts on the broader community. CA1 suggested there was a clear link between housing and other outcomes – “things like housing link to the whole contribution that people can make within a society. It links to good school outcomes, good health outcomes ...”. Within the context of vehicles such as the BHC, a tenancy management role for community partners was envisaged.

Policy objectives - Informants from Vic. were at a stage of trying to understand the drivers and objectives. The following issues were raised:

- Is social housing³ “just another way of delivering a product, which is more contemporary and relevant?”; or
- Is there actually a “long-term demand” for social housing?
- How does social housing link in with other social objectives in terms of “people’s life cycles and changes in circumstances?”.

However, CA4 noted that a centralised housing system might lack capacity around broader community links and opportunities. In the informant’s words, “I can understand why you might want to move away from the single, monopoly provider into an alternative form of delivery. There is a lot of evidence that public housing people are locked in”.

Non-government control of the assets – When asked if there could be a trade-off between a more effective regulatory regime for less direct government control over the assets to enable non-government or private partners to provide more effective solutions the following views were expressed:

- In Vic. the argument has not been made and the initial inclination (without further information) is to maintain control over public assets. As CA4 expressed it, “I’m still one of those sticky-handed central agency people who doesn’t want to let go too much”.
- In Qld CA1 was relatively optimistic. “If there is an idea that can be seen to be contributing to outcomes and the risks and balances can be thought through, government is prepared to consider anything. ... At the end of the day, government has no interest in people *not* having access to affordable housing”. However, this response was qualified by the observation that Treasury might not see it in the same way. Certainly, informants from Treasury offered a more cautious response. The reservations expressed include:
 - increased financial risk for government

² It is important to note that in Qld one informant described a ‘collegial’ relationship with the Department of Housing, which involved working on the CSHA renegotiations and, more broadly, in the early stages of project proposals to ensure that financial risks are managed from the outset. The informant also remarked, however, that they understood this relationship to be a “fairly unusual” one.

³ In Victoria the term “social housing” has been used to refer to new models including affordable housing and non-government initiatives, rather than the current configuration of public and community housing.

- would not want to be seen to ‘favour’ one sector over another
- lack of financial return for Treasury, however, conceded that potentially you could get good housing outcomes.

Preconditions for achieving these opportunities

Key points:

Government support for the development of new delivery vehicles depends on:

- creating more professional organisations
- establishing risk management measures – risk sharing, financial risk, and political risk – that give confidence to support new arrangements
- establishing structures to provide government with assurances

A more professional sector

CA2 suggested that professionalising the sector – possibly through the growth of organisations and bringing on staff and board members with business expertise - would be a precondition for a greater community housing role. It was proposed that boards should include members who:

- are “corporations law knowledgeable”; and
- have a sound understanding of the principles of government.

Risk management measures that give confidence to support new arrangements

- *Understanding the risks* – CA3 expressed the view that understanding the risks and who should manage them is key: “the allocation of risk between the parties is one of the key drivers in any public/private partnership”.
- *Control financial risk* – CA1 placed an emphasis on managing financial risk - through legal/contractual arrangements, expertise, and commitment to agreed outcomes by all players. It was noted that, “Treasuries think about all the possible bad scenarios before making any decisions – because they are managing short, medium and long-term financial business”.
- *Managing political risks (public perceptions/expectations)* – Nervousness regarding the implicit as well as explicit public liabilities was expressed. While government, as a stakeholder in a company such as BHC, which is regulated by company law, has limited legal liability, CA1 suggested that there is still a community expectation that government will pick up the pieces if the company falls over. In the immediate term, sound risk management (so that it does not fall over) was identified as key. In the longer-term, if government were to support similar arrangements on a larger scale, then changed public expectations would be desirable. In relation to this, CA1 suggested that changed delivery vehicles, such as BHC, might ultimately contribute to changed public perceptions and expectations.
- *Common objectives* – as noted above, a precondition for the anticipated success of BHC was all players having “a charter of making this thing work”. CA2 suggested that public/private partnerships could work if there was a “coincidence of objectives”.

Assurance

- *CHOs* – CA2 remarked that you would want assurance that an organisation has a “good track record” and “good systems in place”. How you could best acquire this information would depend on the nature of the industry (i.e. as to whether it could be obtained through a regulatory framework or some other avenue). That is, while it was agreed that certain regulatory measures could usefully provide information and assurance, the need for assurance is not a sufficient condition to establish a regulatory framework.
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- *A company structure* – It was suggested by CA1 that convincing government to invest in projects that it doesn’t actually control, through the move to a company structure, involves providing reassurance around accountabilities. This is because companies operate and

deliver services in a different way to government and therefore government wants assurance that this different way of working is actually effective.

What aspects of regulation could help meet these preconditions?

Key points:

- Legislation can provide a framework
- Regulation should provide standards for consumer outcomes

Regulation was described by CA2 as “one part of the puzzle”, particularly within the context of understanding the risks within public/private partnerships. Given the relatively limited knowledge or engagement with the community housing sector beyond a focus on one-off projects, informants were unable to respond in any detail to the kinds of regulatory tools that might work within a framework of regulation. However a few observations were made:

- *Legislation* – CA2 noted that in Qld the decision has been made to introduce legislation for community housing. Alongside this, standards and a “developmental process” will be introduced.
- *Benchmark standards* – were noted as useful in some areas to protect the interests of consumers. CA3 reflected on the “opportunity to nominate, to a minimum, standards that community providers could meet which can afford some protection to tenants”.

Principles for effective regulation

Key points:

Central agencies were clear about basic principles of good practice regulation, and emphasised:

- proportionality
- a co-regulatory approach
- the need for an arm’s length regulatory, while avoiding expansionist tendencies

Informants were, understandably, clearer about the principles that should underpin regulatory change for the non-government sector than the actual tools that could most effectively achieve this for community housing.

Proportionality

Weighing up the costs and the benefits was highlighted by informants from both states. In CA3’s words, “I don’t think there’s any doubt that there’s a need for some regulation. But it’s desirable that the various scale and complexity of potential regulation is undertaken with a sense of the relative cost/benefit that might adhere to each level”. Another informant reinforced this view, arguing that for government, “it depends on who the client group is, the level of risk and the value for money”.

A co-regulatory approach

CA2 expressed the view that in an ideal environment government’s “dream is for the quality to be coming from within, rather than being imposed from the outside”. The reasons given are that the ‘imposition’ of regulation is:

- Is costly – to government (or the taxpayer), to CHOs if the compliance regime is too ‘draconian’, and potentially to the tenant (“if you over-regulate you might not get the product that’s flexible enough to meet changing demographics in the demand for community housing”);
- Is unpopular;
- Can in some cases “up the ante on risks” – that is, “if government accredits something then we’ve given it some kind of imprimatur”;
- Is “Not sustainable in the long term” – rather ‘responsibility’ should be ‘nurtured’.

However, it was also recognised that self-regulation is frequently undermined by a few industry 'cowboys'. For this reason, a co-regulatory approach that has minimal policing (i.e. is not overly *prescriptive*) and focuses on 'skilling up' and 'quality improvement' was proposed.

An arms-length regulator

As noted above, ideally regulation would be 'internally driven'. However, conceding that *some* government regulation is necessary, in an 'ideal world' a regulatory body that sits at arms length from government would be desirable. However, CA2 noted that regulatory bodies often take on a life of their own and a) fail to address the issues they were originally set up to deal with or b) grow and become another bureaucracy "that is costly and another player for the stakeholders involved to have to negotiate with".

How much difference would such regulatory elements make?

Key points:

- Do we need new regulation?
- We do need minimum standards for tenants.

Do we need more regulation?

While in general informants expressed the view that some regulation was needed, CA3 asked if we need more regulation: "We've got a statutory and regulatory framework around our system of public housing; we've got building codes; we've got tenancy protection; regulations building up for different bits which aren't necessarily connected. And then there are questions around do you start introducing regulatory frameworks around social housing."

Minimum standards for tenants

Vic. informants suggested that regulation could provide minimum standards of delivery for tenants. Beyond this, it is fair to conclude that informants would require more information about the business of community housing and affordable housing policy objectives before being able to broach the question of what difference particular regulatory elements would make.

Summary

Central agency informants were aware that housing affordability is a growing issue, requiring responses. However, the policy framework in which this should occur is still evolving. In the light of this, informants did not have any clear views about the potential for a systematic expansion of non-government delivery vehicles, although where there was a pilot model it was viewed favourably. They were cautious about options that used government assets and new public-private partnerships. However, if there was to be an increased role for non-government providers, the capacity to appropriately manage the risks associated with such a business and to limit political risks was seen as essential. So too was the need for government to be assured of the structures and performance of new models. Despite this, informants had no clear view on the effectiveness of specific regulation to provide such assurance – particularly whether existing regulation might be sufficient. However, the potential for specific regulation to protect tenant outcomes was recognised. However, central agency informants were clear that there are principles that good regulation should meet, and that these included proportionality and a co-regulatory approach

APPENDIX: PROJECT AIMS & CORRESPONDING RESEARCH ELEMENTS

Stakeholder requirements for enabling regulatory arrangements for community housing in Australia (60118)	
<i>Project aims</i>	<i>Research elements (including interview questions)</i>
To identify the outcomes 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"> 1. What is your current involvement with community housing or what do you understand about the sector? 2. What opportunities does the community housing sector present? 3. What are the barriers to expanding these opportunities? (<i>prioritise importance</i>) 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>) 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>) 6. How would these types of changes affect the costs of expanding your opportunities within the community housing sector? <p>(n.b. questions modified for central agencies)</p>
To identify the limitations of current arrangements and the enhanced capacity of community housing providers that might flow from improved regulatory arrangements	<p><i>Peak interviews</i></p> <ol style="list-style-type: none"> 1. What are the new developments in your jurisdiction in relation to regulatory arrangements? Or, what are the emerging trends? 2. What are the strategic directions/opportunities for the sector in your state that might be affected by regulatory arrangements? 3. What are the difficulties or limitations that have arisen from current regulatory arrangements? 4. What are the difficulties or limitations that have been identified with respect to the new developments or emerging trends? 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? 6. What are the strategic directions for the sector now? <p><i>Literature review</i> <i>Workshops</i> <i>Analysis and final report</i></p>
To identify the criteria 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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