

Final Report

Stakeholder requirements for enabling regulatory arrangements for community housing in Australia

authored by

**Claire Barbato, Robyn Clough, Adam Farrar
and Peter Phibbs**

**Australian Housing
and Urban Research Institute**

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ABBREVIATIONS

AGPS	Australian Government Publishing Service
ALGA	Australian Local Government Association
AMO	The Association of Municipalities of Ontario
BHC	Brisbane Housing Company
BVI	Best Value Inspection
CFV	Central Housing Fund (Dutch acronym)
CHO	community housing organisation
CHFA	Community Housing Federation of Australia
CHFC	Co-operative Housing Federation of Canada (Ontario Region)
CIH	Chartered Institute of Housing (UK)
CMHC	Canada Mortgage and Housing Corporation
CMSM	Consolidated Municipal Service Managers (Ontario, Canada)
CML	Council of Mortgage Lenders (UK)
COAG	Council of Australian Governments
CSHA	Commonwealth State Housing Agreement
HA	Housing Association
LSVT	Large Scale Voluntary Transfer (UK)
MMAH	Ontario Ministry of Municipal Affairs and Housing
NCHF	National Community Housing Forum
OECD	Organisation for Economic Co-operation and Development
OCH	Office of Community Housing (NSW)
ONPHA	Ontario Non Profit Housing Association
ORR	Office of Regulation Review (Australia)
PMF	Performance Management Framework
PUMA	Public Management program (OECD program on Public management and Governance)
RIS	Regulatory Impact Statement
RGI	Rent Geared to Income (Ontario, Canada)
RSL	Registered Social Landlord (UK)
SACHA	South Australian Community Housing Authority
SHA	State Housing Authority
SHIP	Social Housing Innovations Project (Victoria)
SHRA	Ontario Social Housing Reform Act 2000
SHSC	Social Housing Services Corporation (Ontario, Canada)

Australian states / territories

ACT	Australian Capital Territory
NSW	New South Wales
NT	Northern Territory
Qld	Queensland
SA	South Australia
Tas.	Tasmania
Vic.	Victoria
WA	Western Australian

EXECUTIVE SUMMARY

The project and its purposes

This report presents the findings of research on stakeholder requirements for enabling regulatory arrangements for community housing in Australia. The project was undertaken to inform the development of new regulatory tools around the country. The project specifically builds on and can be seen as companion research to a 2001 report commissioned by five jurisdictions to identify possible elements of a regulatory framework for community housing in Australia – the Kennedy report.¹

The specific purpose of this research is to identify the aspects of a regulatory framework that could enable the community housing system to develop more effectively. In particular it explores the capacity of regulation to enable more effective engagement with ‘external stakeholders’ – private financiers, developers, local government, churches and central agencies – to support access to finance in addition to government grants for social housing generally and affordable housing in particular.

At the same time, it aims to identify the conditions under which such regulatory reform might increase the capacity of the community housing sector – including its capacity to take on new forms of business.

The five aims of the research were:

- To identify the outcomes of a community housing regulatory system looked for by external stakeholders – private financiers, developers, local government, churches 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 in 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.

Methodology

The research comprised five elements: a literature review (reported in the Positioning Paper), field research with external stakeholders (interviews with private financiers, developers, local government, churches and central agencies); an evaluation of international regulation through a literature review and some discussion with key informants (focusing on the UK and the Canadian province of Ontario); interviews with a number of informants from community housing peaks and one workshop each with providers and administrators of community housing; and a joint findings seminar towards the end of the project to explore the applicability of the preliminary results to the community housing system.

¹ The references are: 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

The elements of a regulatory framework

Loosely described, regulation can be seen as the implementation of a set of rules or processes achieved through various instruments, to ensure specific social and/or economic outcomes. This research is principally concerned with administrative regulation, applied to the specific business of community housing. The instruments or tools that are available to regulators are: legislation, codes of conduct, standards, registration, accreditation, licensing, negative licensing, funding agreements and performance management frameworks. Regulation can also range from a prescriptive, 'black-letter' approach to co-regulation (where government and industry both participate) to self-regulation. The Positioning Paper, which provides the context for the project, contains a more detailed discussion of the tools and options for regulation as well as contemporary Australian and international good practice.

Community housing regulation in England and Canada

The impetus for exploring international experience is to provide some means of comparison for regulatory developments in Australia. The focus of interest in the UK is the impact of regulation on access to private investment and the growth of large housing associations (or Registered Social Landlords). The principles of good practice that have underpinned the recent revision of regulation in the UK are also based in experience that is far more developed than in Australia. In Ontario a complex process of devolving the administration of social housing from the provincial to the municipal level reveals some of the issues and tensions in regulatory reform. The regulatory framework in Ontario came down more heavily on compliance and management of government risk without explicit consideration of growth. Both examples provide insight into how the regulatory tools are shaped by the policy and political environments in which they are employed.

The stakeholders – opportunities and preconditions

The data from the stakeholder interviews and workshop discussions are presented under the following headings to provide context for the findings and capture the range of issues arising for each of the seven groups:

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

Findings

The findings examine three main questions:

- What opportunities could be provided for the future development of the community housing system by better regulation and why would it enable these?
- What are the key principles and aspects of a regulatory framework that could achieve this?
- What are the tensions or trade-offs between the various interests represented in the research that would bear on the implementation of such regulatory reform?

One striking observation – which goes beyond the research aims – is the extent to which external stakeholders (other than central agencies) have an expectation that there will be

considerable growth in affordable housing markets and private financing of social and affordable housing. There was also understanding of the social pressures that are creating this demand. The research findings address the outcomes that might be provided for consumers. The touchstone of all social housing activity is that it provides benefits to consumers – tenants and applicants.

Opportunities for the future development of community housing

External stakeholders – what can they bring to the community housing system?

The potential benefits to community housing from greater involvement by external stakeholders are substantial. External stakeholders potentially bring four major sets of benefits to the community housing system: access to finance, access to new partnerships through which resources can be provided, access to new markets and access to new kinds of business.

Internal stakeholders – what do they want from regulation and why isn't it being provided now?

There is a clear difference between the benefits being sought by external stakeholders and those identified by internal stakeholders – administrators and providers. Generally the focus of internal stakeholders is on the way that a regulatory system directly impacts on their business and responsibilities in three main areas:

- Development of more professional and innovative organisations that are able to identify and take on new business opportunities.
- Government support to enable further sector development, including engagement with the private sector opportunities. Access to assets or equity is the most frequently cited example.
- Improving the current fragmented forms of regulation which inconsistent, ineffective and impose high compliance costs.

What could regulation achieve?

Why would regulation make a difference?

This is the question that underpins the study and has been answered in four ways. Some improvements, such as protecting or widening tenants' rights, directly require a regulatory response – although these are not as essential for its further development. Regulation can impact on the way that the business is developed – its capacity to innovate, costs and effective governance. Better regulatory assurance may manage political risks as a precondition for the policy decisions that are needed to establish new roles and new markets. Most important for this study, regulation can enable the engagement of external stakeholders who control resources and business opportunities needed for any significant development of the community housing sector by meeting some of the preconditions for their engagement:

- ensuring that there aren't failures
- bringing down the cost of funds
- creating a market.
- providing assurance about management capacity
- enabling better risk management to enable innovation
- providing greater transparency about the environment in which external stakeholders engage with the sector
- providing a information that is basis for strategic planning
- establishing minimum standards for tenants
- protecting the asset

- streamlining existing regulation.

What is needed for enabling regulation?

Principles for effective regulation

Informants and international literature identified a number of principles that were seen by various stakeholders as essential for acceptability or effectiveness. Initially the project aimed to identify the criteria for a flexible and efficient system that balanced government requirements for robust and transparent accountability. However, informants articulated a broader range of principles to frame the outcomes they looked for from a regulatory system. In summary, effective regulation:

- is enabling for providers through having growth as a central outcome, recognising the unique abilities of community housing organisations to add value to the system, and recognising the autonomous responsibilities of providers
- is consistent: across funding programs or streams, (as far as possible) nationally, and in its application
- focuses on organisational capacity, not programs
- is efficient and effective by being outcome focussed, avoiding micro-management, and by being more streamlined and cost-effective
- enables innovation
- is proportional to the risks and to the costs and benefits
- establishes relationships that ensure confidence through a co-regulatory approach, and by ensuring the independence of funding and regulating
- is transparent – in particular by making the regulator’s reports available to potential partners (in appropriate circumstances) and reporting on the standing of organisations and the performance of the sector more generally
- is accountability for its own performance and role.

The key elements of enabling regulation

- *Legislation* – which establishes the role and objectives for the sector, provides a clear statement of the regulatory objectives and enabling powers, and establishes the regulatory agency and the provisions for its oversight
- *Registration* – which, through regulatory tiering, ensures proportionality of regulation and provides meaningful information to potential partners or lenders
- *Statutory charge* – which provides access to assets and equity while protecting the public interest. Such a charge would need to have the status of a second mortgage, the expected uses of the asset would need to be made explicit (including in legislation) and carry a presumption that permission would only be withheld under unusual circumstance.
- *Specific risk management plans* – for more complex organisations or those with more demanding financing or management arrangements. These would need to complement a lender’s risk assessment needs and entail effective communication with financiers or other partners. (Key areas of risk identified by informants and the UK Council of Mortgage lenders are provided in the report and attachments.)
- *Performance management frameworks (general risk management)* – are the most important aspect of regulation for most external stakeholders. They must have the capacity to identify emerging problems and ensure effective intervention to prevent insolvency. A clear distinction needs to be drawn between minimum performance standards and such risk management frameworks.

- *Standards and accreditation* – to provide assurance in areas best managed through quality management, such as governance, human resource management, local community development or tenancy management and responsiveness.
- *Minimum standards* – including compliance with other legislation such as health and safety, or standards of probity, but would also include new standards such as standards of rent setting, access to transport, or requirements for allocations
- *Inspections* – to observe practices, particularly the delivery of services to consumers, rather than procedures
- *Intervention* - to provide *the* assurance that government will stand behind the solvency of organisations through the regulatory system – in lieu of financial guarantees. The primary criterion for an enabling regulatory system is that it is able to intervene effectively and early to support and, if necessary, restructure organisations. Best practice would require a collaborative effort (with industry bodies) to find solutions, build capacity, and negotiate rescue packages.
- *Processes for communication* - to ensure that their respective reporting requirements and responses are complementary, or where the partners not in position to develop their own reporting requirements. Communication with external stakeholders over performance is a new role for government administrators. The regulator's communications role also includes industry information on financial structures, global performance, and policy issues as they emerge.
- *Information and data* – developed through the regulatory arrangements to support policy and program development and market information
- *Independent tenant appeals mechanisms*
- *Checks and balances.*

Tensions, preconditions and trade-offs

This section considers the tensions that emerged from the research and the trade-offs contained within these tensions. Understanding these is particularly important to enable effective implementation of regulatory reform.

Key tensions were identified around the following areas:

- Setting policy parameters – particularly between the providers' view that a new regulatory approach should be framed by a policy framework and administrators' priority to achieve administrative efficiency
- Increasing engagement and good will against a history of poor trust between providers and administrators
- Control of the assets
 - Central agencies reluctant to relinquish control
 - Statutory charge: use of the instrument
 - Statutory covenant may inhibit partnerships.
- Relationship between the regulator and the private finance sector, as it occurs in the UK to facilitate lending, is not being addressed in Australia amidst pressures to restructure and consolidate administrative processes. This is a precondition for the engagement of some stakeholder groups.
- Developer interests and consumer interests – revealed a tension around the level of developer tolerance of high needs and the needs of such tenants
- Transparency and access in a competitive funding environment

Policy implications

The principal policy implication of the overall findings is that regulatory reform is clearly needed in the community housing sector. The current regulatory arrangements act as a barrier to the new opportunities to attract additional resources to provide responses to increasing housing need. Existing arrangements also inhibit the capacity of the sector to do its current business and develop as strong and innovative housing organisations.

While it seems that regulatory reform will generate significant benefits for the sector, and initiatives to develop such reforms are underway, these do not always reflect many of the principles or regulatory elements identified through this research. The question arises whether there is advantage in a national, or nationally co-ordinated approach.

A broad policy implication is the need to provide a clear policy focus to the work in process, as well as new initiatives. The research suggests that these parameters should be clearly established before legislating.

Internationally accepted principles of good regulatory practice - also underscored by central agency informants - are only partially informing current initiatives. There appears to be scope for more explicit policy discussion of the principles that should shape regulatory reform. In particular, further elaboration of the policy implications of a co-regulatory approach may be called for.

A currently unresolved policy issue within the Australian context is the relationship between the roles of funder (or, preferably, public investor) and regulator. The extent to which these are separated or linked may have significance for the level of assurance provided to external stakeholders (particularly financiers) by regulation.

This research did not explicitly address what regulation is needed to support tenant outcomes. Further consideration of this and consultation with consumers is needed.

Additionally, there are four more specific issues that require further policy development:

- Further exploration of a statutory charge – to ensure that the use of such an instrument to protect public interest in the asset does not inhibit operations or innovation.
- The balance between risk management and minimal compliance – achieving a suitable boundary between quality, risk, performance and compliance measures.
- Data collection – co-ordinating existing national data collections and administrative data collection improved through new regulatory instruments.
- Structure of entities – accommodating different entities (joint venture partners, umbrella structures, diverse management arrangements) in the development of new reporting arrangements

1. INTRODUCTION

1.1 The project and purposes

The project has been undertaken to provide an informed basis to support the development of new regulatory tools for community housing currently underway in states and territories around the country. In a number of jurisdictions these include legislative changes and/or comprehensive regulatory frameworks. The project specifically builds on and can be seen as companion research to the 2001 project to identify possible elements of a regulatory framework for community housing in Australia (Kennedy, 2001) undertaken through the National Community Housing Forum (NCHF) for five state and territory jurisdictions — Qld, NSW, ACT, Vic. and Tas.

The specific outcomes of this research are, first, to provide some additional detail about the regulatory approaches in the United Kingdom (UK) and Canada; but more importantly, to identify the characteristics of community housing regulation that are needed if regulation is to play a role in enabling the further development of community housing in Australia. Such development appears likely to require the engagement of a wider range of stakeholders than those 'internal' to the current community housing system – community housing organisations (CHOs) and state and territory administrators. As well as considering the requirements of these internal stakeholders, the project also sought to identify the opportunities for wider engagement with the sector by 'external' stakeholders such as the finance sector, developers, local government, churches and central agencies; the preconditions for realising these opportunities and the contribution that new regulatory arrangements might make.

In this way, the findings of the research may assist in making the new regulatory arrangements currently being designed in a number of jurisdictions more enabling of future sector developments.

1.2 The policy context

With the exception of SA,² there is no specific legislation for community housing across states and territories. Community housing organisations are largely regulated through funding agreements, drafted under the broad powers defined in state and territory housing acts. In turn, 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.³ 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.

The sector is small - approximately 0.4% of all households (SCRCSSP, 2002) - 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. 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

² 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.

³ See, for example: NCHF (2002b) *System-wide business structures for Community Housing*, discussion series, paper no. 7, which considers sector and/or government driven system-wide structures for the management of aspects of the business.

- responsiveness in meeting the needs of specific tenant groups.⁴

Following this, 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.

Sustainable growth is a key factor underpinning the general interest of community housing administrators in regulation, expressed through the commissioning of the Kennedy Report. At the same time, a number of important policy development initiatives have taken place around the country. These are summarised below and are described in greater detail in the Positioning Paper:

- In Vic. the current development of the sector, building on the recent Social Housing Innovations report, has explicitly identified the need for a regulatory framework that will support partnerships and private investment approaches (Bisset, 2000). The Vic. Office of Housing is currently developing a proposed regulatory framework.
- In Qld, new housing legislation is due to be introduced in 2003 that will also contain the enabling legislation for the regulation of community housing. The development of regulatory arrangements is well advanced, following a number of consultations and discussion papers and are expected to be in place by the end of 2003.
- In NSW draft legislation to support new regulatory arrangements was prepared as part of a new *Housing Bill 2001*, but not introduced due to concerns expressed by sector representatives that the needs and concerns of CHOs 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 referred by the NSW Housing Minister in September 2001.
- At the same time, a new performance management framework developed for the NSW Office of Community Housing is being piloted.
- A Best Value Inspection process initially developed for public housing client service teams in NSW has recently been extended in a number of pilots to community housing providers in that state.
- National Community Housing Standards were developed and endorsed in 1998. Organisations have been externally assessed and accredited against these standards through accreditation units in NSW and Qld since 1999-00 and accreditation procedures are now being developed or trialled in Vic. and the ACT.

These specific initiatives take place against the background of Australian and international trends in the approach taken to regulation. These are discussed in greater detail in Chapter 2, but can be summed up as a move toward non-prescriptive, performance based regulation. In particular, regulatory systems are increasingly designed to encourage more innovative and efficient processes within industry.

As noted in the Positioning Paper, 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. 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.⁵ Access to more effective forms

⁴ See for example: Bisset (2000) and NCHF (2001a).

⁵ 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

of investment is one of the central issues under consideration in the current re-negotiation of the Commonwealth State Housing Agreement (CSHA).⁶

- To enhance the capacity of locally based housing providers to link housing activities to wider community building and social inclusion strategies. This includes the capacity of local managers to undertake a wider range of 'housing plus' activities to strengthen the opportunities and capacities of local communities. Increasingly, it also includes the capacity to engage, with private developers, in the redevelopment of housing estates to provide a new tenure mix.

The capacity of regulation to enable or inhibit these outcomes is of considerable importance to social housing policy today.

1.3 Research aims

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
- any advantages to community housing providers that might flow from such outcomes and the limitations of the current arrangements
- 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
- 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
- and familiarise administrators and providers with the findings and to test their applicability in the existing community housing systems – including Indigenous housing.

1.4 Methodology

This project built 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 comprised four elements: field research with external stakeholders, evaluation of international regulation through literature and key informants, two workshops – one with providers and one with administrators - and a seminar at the end of the project to review the preliminary findings. An early literature review also considered current regulatory trends and good practice in regulation (see the Positioning Paper).

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

The key stages of the project

Key stakeholder interviews

The interview pro formas were structured around a set of relatively open questions, supported by key prompts.⁷ This semi-structured method of questioning was adopted to

⁶ 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 in early 2002.

⁷ See the Positioning Paper (Barbato et al., 2002), Appendix, for a listing of interview questions and a summary mapping of research aims and corresponding research elements.

minimise pre-emption of responses. It, therefore, allowed issues to emerge that were not captured in previous research and/or were specific to an Australian context, whilst ensuring that key issues identified in pre-field work were broached.

The purpose of the external stakeholder interviews was (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 was to obtain information on the kinds of assurances external stakeholders would require in order to engage with community housing, and the regulatory tools that would best deliver these assurances.

Six stakeholder groups were included in the interview process: The finance sector, development/housing industry, local government, church agencies, central agencies and community housing peak bodies (see below for further details). Interviews were conducted in two rounds:

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

A mix of face-to-face and telephone interviews were conducted, depending on the location and availability of the informants. Following permission from the informant, each interview was recorded and transcribed. The transcript was provided to the interviewee for confirmation or supplementation. The material has been incorporated into the research in a non-identifying way.⁸

Analysis of interviews – Interview transcripts were analysed using a dialogic gridding process between key questions/issues identified by the researchers and the interviewees. This matrix enabled identification of areas of commonality and disparity both within and between stakeholder groups and their contextualisation in the broader policy environment. The interview data was subsequently analysed within the context of international regulatory systems and current good practice in regulation.

The following stakeholder groups were included:

Finance sector interviews – two interviews were conducted in Vic. The first, with the head of global finance for a major national bank also operating through subsidiaries in the housing association market in the UK, built on the connection already established with Ecumenical Housing. The other was with a community bank, building on contacts with the housing association sector in Australia through a new community sector venture. Three interviews were held in NSW. One of these was with another major Australian bank, building on links established over a series of private financing forums and direct involvement with asset holding structure, Community Housing Canberra. The other was with a representative of a major investment bank currently exploring opportunities to respond to expected State government calls for expressions of interest. Finally, an interview was conducted with a national financial consultancy currently developing models for private investment for a SHA. Interviews focused 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.

Development/housing industry – One interview with developers currently working with community housing organisations was held in each of Sydney and Melbourne. Both are

⁸ In keeping with this, throughout the report, we have avoided using gender-specific pronouns when referring to the views of informants. For this reason we have chosen to adopt the plural-pronoun 'they' for singular subjects rather than the more awkward, 'she or he' or 's/he'.

major developers operating in a numbers of states. Both have been involved in tenders (and in one case was the successful tenderer) for the redevelopment of large sites with a social housing component, and have developed their bids in partnership with a community housing provider. Currently there are very few such joint ventures. The interviews focused 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.

Local government - Six interviews were held with local government authorities currently involved in the development of affordable housing or joint ventures – two in Qld, two in NSW and two in Vic. The interviews focused 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.⁹

Church agencies – Four interviews were held with church agencies/representatives. The interviewees were identified through contacts provided by Churches Community Housing in NSW and Ecumenical Housing in Vic. Two of the interviews were held in NSW and one in Vic. A further interview in the ACT was identified through the National Churches and Community Housing Network.¹⁰ The interviews focused on the threshold issues for church investment in community housing partnerships, the capacity of regulation to influence these threshold issues and determine 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.

Central agencies – It was initially proposed that interviews would be held in three jurisdictions – Qld, NSW and Vic. This reflected 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. However, researchers were unable to secure interviews with NSW central agencies, therefore interviews were limited to Qld and Vic. In Vic. a joint interview was conducted with informants from Treasury and Department of Premier and Cabinet. In Qld two separate interviews were held. The interviews focused 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 of public subsidies to support private financing of a significant community housing sector.

Peak bodies - During the early stages of the research project a further stakeholder group was identified by the project steering committee for the interview phase of research – state community housing peak bodies. The interviews provided an opportunity to obtain more in-depth information on the second research aim, which was concerned with:

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

The peak interviews focused on jurisdictions currently dealing with the issue of regulation. Interviewees gave a system-wide and strategic focus on the limitations and opportunities presented by existing and new arrangements. The interviews provided a limited opportunity to get more in-depth information on particular jurisdictions, including policy and strategic implications, which were beyond the scope of the provider workshop (see below). Four interviews were conducted.

Evaluation of international regulatory systems

⁹ It was also hoped to hold an interview with the NSW Affordable Housing Service, whose principal aim is to develop long-term affordable housing for low to moderate-income housing in partnership with the private, community and local government sectors. Unfortunately, the 'approval to interview' process through the NSW Department of Housing's Communications and Media section exceeded the time frame of the project.

¹⁰ The network meets via teleconference on a needs basis and receives secretariat support from the NCHF.

The purpose of this stage of the research was to allow 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 explored were 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 built on the results of the preliminary examination of regulation in the UK and the Netherlands from the Kennedy Report. Research involved:

- Identification of gaps/ questions arising from the previous research and the findings of the previous stages of this research.
- Additional literature review that focused on these issues with a particular emphasis on the role of the UK Housing Corporation and the Canada Mortgage and Housing Corporation – specifically, the regulatory environment in Ontario - in regulating non-profit housing. The UK and Canadian systems appear to have the closest relevance to the Australia context and system.
- This was then supplemented by face-to-face interviews with three key informants from the UK: Peter Williams, Deputy Director General, the Council of Mortgage Lenders; Ceri Richards, Head of Housing Finance for the Bank of Scotland and Clare Miller, Director Regulation Policy, the Housing Corporation.¹¹ 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. In the case of Canada, a phone interview was held with community housing worker, John Mumme, who has twenty years experience working in the Canadian social housing sector. In addition, input and feedback on the Canadian situation was sought from Dr Kath Hulse, Swinburne University, and Steve Pomeroy, Focus Consulting Ottawa, via email correspondence.

Workshops – providers and administrators

Providers workshop

A one-day workshop was held in Sydney with 12 participants from Qld, NSW, ACT, SA and Vic. As well as building on the findings of the Kennedy Report, this workshop supplemented it. The Kennedy Report was finalised using responses to the draft report provided at a workshop of community housing administrators. No such issues identification by providers was possible.

The purpose of the provider workshop was 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 the ‘tool kit’ developed in the Kennedy Report and the outcomes and regulatory instruments identified through stages 1–3 of this project.
- 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 were a mix of peak and providers, including Indigenous providers. Participants also formed 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

¹¹ A member of the research team conducted the interviews while in the UK for the annual conference of the Chartered Institute of Housing.

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. 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 (2001, Vol. 2: 69-70). The specific issues of this kind that might arise for external stakeholders who also act as providers – specifically, local councils and churches – was explored in the stakeholder interviews in stage 2.

The workshop was not intended to provide a representative sample of responses. That is, it did not emulate either a survey or a consultation. Rather, its role was issues identification. The selection of participants was designed 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 was developed at the end of stage 3, with discussions structured around a set of key themes. A sequenced set of questions was developed to ensure that issues identified from the previous stages of the research were covered.

Analysis – The workshop was recorded and responses analysed in terms of provider type, objectives, acceptance of specific regulatory approaches and implementability. While not representative, the consensus/disagreement is reflected in this report as an indication of the significant issues that could impact on the development or implementation of regulatory arrangements. As with the stakeholder interviews, the workshop transcripts were analysed using a gridding process to arrive at the findings.

Administrators

A one-day workshop was held in Sydney with representatives from government. A total of eight participants attended from Qld, NSW, ACT, Vic., WA and Tas. Participants were a mix of community housing administrators and housing authority policy makers. The workshop built on the 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 was to explore the policy relevance and applicability of the findings from other stakeholders to the policy and administrative environment. The objectives of the workshop were to explore:

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

The workshop was recorded and analysed as above.

Joint-findings seminar and final report

A draft findings paper was presented to a range of stakeholders at a final seminar. The seminar comprised state administrators, Commonwealth representative, sector and Indigenous housing representatives.¹² The aim was to familiarise participants with the findings and test their responses. The workshop enabled differing interests and objectives to be explored.¹³

Analysis – The seminar was minuted and the responses analysed to determine where they confirm, deviate from or add to the draft findings. The seminar outcomes have been incorporated into Chapter 5 of this report. All data – from interviews, workshops and the seminar – was further analysed within the context of current good practice in regulation,

¹² The project aimed to discuss the findings more fully with Indigenous housing representatives at the joint findings workshop. However, it was difficult for those people invited to attend. ATSIC did send a representative but – due to a change of circumstances – the attendee did not work directly in housing. There have been subsequent discussions with ATSIC about the findings and they can be effectively disseminated and discussed in the Indigenous housing sector.

¹³ The cost of non-government participation in this seminar was supplemented by the NCHF as part of its national seminar series.

with a particular emphasis on the principles of good regulatory practice, which are outlined in Chapter 2.

1.5 The structure of the report

The report is in three parts. In addition, seven companion data reports have been produced, which document in detail the findings from the seven different stakeholder groups that might play a key role in realising future opportunities for the development of community housing (discussed below)

Chapter 2 – describes the background against which regulatory arrangements for community housing in Australia are being developed. The first aspect of this background is the *principles of good regulatory practice* that have been adopted internationally and in Australia. The awareness or acceptance of these principles by the informants for this project will be considered in later sections of the report. The second, very important, aspect of this background is a characterisation of the range of potential *elements of a regulatory framework*. This is largely drawn from the review of human services regulation in Australia and community housing regulation in the UK and Netherlands in the Kennedy Report. However, it is supplemented by a review of subsequent developments in Australia, and a more detailed examination of regulatory arrangements in the UK and Ontario, Canada in Chapter 3. The importance of these elements (or of the approach to their implementation) to enabling the outcomes identified by informants is explored in later sections. This section (together with finding from Australian providers and administrators) relates to the third aim of the project – to identify the criteria for regulatory arrangements that would optimise the flexibility and efficiency of providers as well as robust and transparent accountability.

Chapter 3 – describes the features of regulatory arrangements in England and one Canadian province, Ontario and the specific mechanisms employed in these systems. However, it places this additional detail about possible regulatory procedures, in the context of (a) recent trends, policy drivers and reviews in those two jurisdictions, and (b) a discussion of some of the main outcomes that have been enabled or impeded by these arrangements. The implications of these trends or outcomes for the design of Australian regulatory frameworks are considered in this section and in Chapter 5. However, where possible, confirmation of their application to Australian systems is explored through discussions with stakeholders. This section relates to the fourth aim of the research – to identify aspects of international regulatory systems that provide similar benefits to those being sought in Australia.

Chapter 4 – presents the findings and policy implications of the research. This section approaches the findings in three parts. The first is to identify, from across the stakeholder groups and international examples, the aspects of regulatory arrangements that appear to support ('enable') some key objectives for the community and social housing systems. In doing this, it also identifies the extent to which there are differences in interest in these outcomes or the assessment of the contribution of regulation. The second part of the section explores some of the main barriers to or preconditions for the implementation of these regulatory elements and, indeed, of more comprehensive regulatory frameworks as a whole. This includes identifying areas where the research has found tensions or trade-offs between stakeholders. Finally, the section identifies the policy implications of these findings. In considering the findings – particularly the differing interests – the analysis has been informed by the final, joint findings seminar which brought together providers and administrators to comment on the preliminary findings. This workshop also related to the final project aim – to familiarise providers and administrators with the findings and their applicability.

Data reports - documents the findings from the seven different stakeholder groups that were consulted in this research – financiers, developers, local government, churches, central agencies, administrators and providers themselves. These reports describe the range of perceptions of informants and workshop participants about the context in which they currently operate, the opportunities or aspirations for further development of their

activities in the sector, the preconditions for this and the ways and the extent to which regulatory arrangements might help meet these. Where possible or relevant, any confirmation of issues raised in the previous two sections is considered. The reports primarily addresses the first two aims of the research – to identify the outcomes looked for by external stakeholders and to identify the limitations of current arrangements and the enhanced capacity that might flow from improved arrangements.

Each of the stand-alone reports can used as a reference to provide a detailed understanding of the objectives and issues for the particular stakeholder group; but equally, it will not be necessary to consider each of these to appreciate the findings contained in Chapter 4.

2. ELEMENTS OF A REGULATORY FRAMEWORK

This chapter is a précis of research documented in the Positioning Paper. Section 2.1 provides an overview of current regulatory practice with a particular focus on the principles of regulation that have been embraced both in Australia and internationally. Section 2.2 gives a summary of the range of possible elements of a regulatory framework for community housing, largely drawing on the Kennedy Report.

2.1. Principles of good regulatory practice

What is 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.

This research is principally concerned with *administrative* regulations, that is, the administrative mechanisms through which governments collect information and monitor industries.¹⁴ CHOs 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.¹⁵

The introduction of regulation is frequently 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.

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. That is, it is *enabling*. In this case the risk being managed is the possibility that without regulation the positive outcome will not occur.

As noted in Chapter 1, this project is specifically concerned with identifying the regulatory framework that would optimise the flexibility, efficiency and capacity of providers (that is, 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.

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') regulation. Of course, some industries are unregulated. That is, there is no industry or government regulation and competitive market forces prevail.

¹⁴ Other forms of regulations are: economic – intervening in market decisions such as pricing and competition; and social – protection of public interests such as the environment, health and safety (OECD, 2000: 9).

¹⁵ 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.

THE REGULATORY SPECTRUM OF OPTIONS

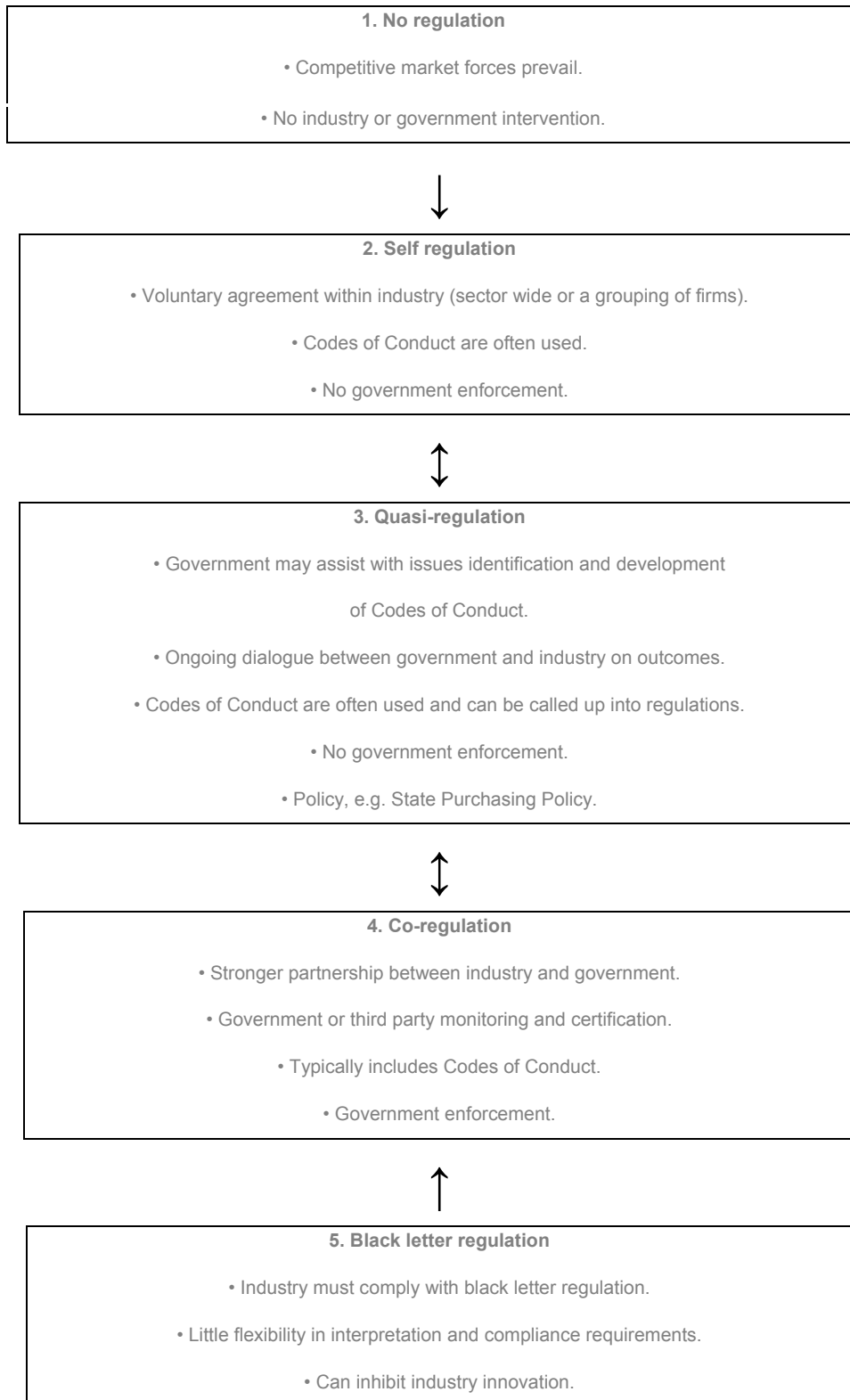


Chart source: Qld Department of State Development (nd.a) Guidelines to Alternatives to Prescriptive Regulation

Experience of self-regulated industries both within Australia and overseas has shown that while there are some successful examples,¹⁶ in general it is uncommon for regulation to work 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 (Qld DSD, nd. a: 13).

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.

Good practice in regulation

The recent trend in regulation – on both a national and international scale – has been a shift away from *prescriptive* regulatory processes to a flexible and less interventionist approach. In particular, attention is directed to the *quality* of regulatory instruments and services delivery outcomes.¹⁷

The move to non-prescriptive regulation can be characterised as follows:

- Minimising government intervention (weighing up the risks, the benefits and the costs¹⁸)
- 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 (Qld DSD, nd.a: 7)

Importantly, recent practice in regulation is frequently *performance based*. That 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 (Qld DSD, nd. a: 14).

The UK Better Regulation Taskforce has developed five principles of good regulation which they suggest should be applied across the regulatory spectrum - that is, from state regulation through to self-regulation (2000a: 2).¹⁹ In summary, the principles are:

¹⁶ See, for example, a case study of the advertising industry in the United Kingdom in a recent OECD publication (Crawford, 1997: 21-28). 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.

¹⁷ For an overview of the broad regulatory environment and associated trends see the positioning paper for this project (Barbato et al., 2002).

¹⁸ 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 (COAG, 1997 & Office of Regulation Review, 1998).

¹⁹ It is important to note 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*.

- 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
 - compliance does not disadvantage small organisations
- Consistency
 - new regulations are consistent with existing regulations
 - 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 performance-based approach is employed with the processes to achieve the outcomes or 'targets' are determined by those being regulated
 - regulations should be regularly reviewed for ongoing applicability and affectivity
 - in instances where regulations unfairly impact on small businesses (or organisations), support options or alternatives are considered (2000a: 8-9).

These principles are designed to underpin both the development and the implementation of regulatory systems and to ensure their ongoing applicability. The Better Regulation Taskforce identified eight tests of good regulation, which are broadly applicable across different kinds of industries. In summary, regulations should:

- "Have broad public support" – in the case of community housing, this means consulting with all relevant stakeholders (consumers, providers, external stakeholders) to ensure there is common agreement that regulation is necessary. The Better Regulation Taskforce argues that without this support compliance will probably be low.
- "Be enforceable" – there is no point in introducing regulatory measures that are too complex, costly or time-consuming to enforce.
- "Be easy to understand" – regulations must be well publicised and accessible to all relevant parties.
- "Be balanced and avoid impetuous knee-jerk reaction".
- "Balance risk, cost and practical benefits" – to consumers, industry and government.

- “Avoid unintended consequences” – the implications of all regulatory changes need to be fully considered. This can be assisted by being clear from the outset on the rationale for introducing regulation and the (immediate and long-term) objectives it is anticipated regulation will help to achieve.
- “Seek to reconcile contradictory policy objectives” – the possible impact on other policy objectives should be assessed. As an example, the Taskforce suggests that ‘environmental protection must be balanced against economic need when taking planning decisions.
- “Identify accountability” – being clear about *who* is accountable – that is, who carries the risk (2000a: 6-7).

Regulatory tiering

In contrast to ‘uniform regulation’ – that is, regulation that imposes the same requirements on all businesses despite their differences – regulatory tiering uses 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.²⁰ In this sense, tiering is underpinned by the principles of *proportionality* and *targeting*.

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 holding 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.

Due to its complexity a tiered approach may be more difficult to understand and more costly to enforce. However, what it can provide is an approach that accommodates the different size and experience of an industry as well as the capacity for flexibility and innovation without disadvantaging some sectors.

2.2. Elements of a regulatory framework

This section is a summary of Chapter 4 in the positioning paper (Barbato et al., 2002). It is based on the outcomes of the Kennedy research with some supplementary material. There are a range of types or ‘tools’ of regulation that are available to regulators:

- legislation
- codes of conduct
- standards
- registration
- accreditation
- licensing
- negative licensing
- funding agreements
- performance management frameworks

Based on a review of comparable industries in Australia and of community housing in other countries, the Kennedy Report focused attention on the first eight of these common (and often complementary) tools aimed at ensuring appropriate social outcomes for governments, providers and consumers. The ninth tool – performance management

²⁰ 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?*

frameworks – emerged in this research as a vital element in a framework that has a preventative yet enabling focus. These tools are considered below.

Legislation

The Kennedy Report defines legislation as, “the creation and promulgation of a binding general rule of conduct without reference to particular cases” (2001, Vol. 2: 43).

There are two distinct forms of legislation:

- Primary legislation - Acts of Parliament (of the Commonwealth, state or a territory)
- 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.

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” (2001, Vol. 2: 44). In addition legislation can provide certainty, additional powers and appeal rights.

The disadvantages of legislation centre on issues of cost, time and inflexibility. The cost and time involved in preparing new legislation is considerable. In turn, amending legislation to meet changing circumstances is in itself resource intensive (2001, Vol.2: 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 (2001, Vol.2: 52).

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 (2001, Vol.2: 52).

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.

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 (2001, Vol.2: 56).

The National Community Housing Standards were initially developed in NSW and were built on in a Commonwealth funded project to develop nationally agreed service standards for CHOs, in 1997-98. The project involved consultation in every state and territory. The standards are currently under review to ensure that they continue to reflect and support sector development and developments in quality systems across the states and territories.²¹

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 (Kennedy, 2001, Vol.2: 57).

The project undertaken to develop the national service standards for community housing 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 CHOs.

Currently NSW and Qld have voluntary operational systems in place and Vic. is in the process of developing a system. Accreditation for community housing currently operates within a (voluntary) framework of continuous quality improvement rather than as a mandatory mechanism of regulation.²²

Funding agreements

Executive governments within Australia are empowered to enter into contractual arrangements to achieve public purposes (Kennedy, 2001, Vol.1: 10). 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 (2001, Vol.2: 61).

Performance management frameworks

While not identified in the Kennedy Report, performance management frameworks (PMF) have emerged in this research as an important tool for risk management. A PMF has been defined as "a systematic description of intended outcomes and the processes for measuring, reporting and facilitating improvements in the achievement of these outcomes" (ARTD, 2002: 2). It is a consistent and streamlined approach to the collection and

²¹ The National Community Housing Accreditation Council has appointed RPR Consulting to undertake the review and the NCHF to project manage. The review has the support of all states and territories. It will be completed in December 2002.

²² Accreditation may be mandatory or voluntary. In general, mandatory systems are introduced within the human services when the risks are significant (Kennedy, 2001, Vol.2: 57).

measurement of core outcomes with the intention of managing risks and enabling providers to improve their performance in relation to agreed outcomes.

Based on the recent development of a PMF for community housing in NSW,²³ the principal advantages are:

- As an outcomes based regulatory approach it will facilitate adequate and consistent reporting whilst enabling a flexible approach to undertaking the business of community housing.
- The information generated can be usefully used by providers to improve their performance, as well as by administrators – to inform funding decisions and policy development.
- It concentrates on early risk management and quality service delivery, thereby limiting the need for (later) intervention.

A regulatory framework for community housing

The Kennedy Report suggested the following tools would be conducive to the community housing sector:

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. Importantly, it was proposed that legislation make provision for a statutory-based charge on capital assets as an alternative to head leases or mortgages. Under this model CHOs hold title but it is subject to controls.²⁴ The statutory charge model would assist private financing initiatives.

Registration – The report proposed that legislation would establish the process for registration of CHOs. Like the model currently in use in SA, registration would establish eligibility for funding. In the case of serious breaches of the Act and/or funding agreement, an organisation 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 CHOs 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. 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.

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.

²³ The NSW Office of Community Housing developed the Performance Management Framework (PMF). It is currently being piloted and will be mandatory from July 2003. The PMF is underpinned by the principles of: independence; accountability; flexibility; integration; streamlined processes and transparency (ARTD, 2002: 2).

²⁴ 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 government's interest (mortgages apply to individual properties).

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

2.3. Conclusion

This chapter has outlined the background against which regulatory arrangements for community housing are being developed. What is of particular interest for the purposes of this research, is the ‘enabling’ focus of current good practice in regulation. The shift away from prescriptive regulation to a more flexible and collaborative approach supports, in theory, development of a regulatory framework that would optimise the capacity of providers *and* manage the risks to government. The research findings (chapter 4), will discuss how the current theory of good regulatory practice is taken up within the dynamic context of the community housing sector actually opening up to new housing and financial markets. That is, the findings document the particular regulatory elements highlighted by the different stakeholder groups and some of the tensions and trade-offs that would necessarily shape and constrain regulatory reform.

The following chapter will supplement chapter 2 with a description of the key features of regulatory arrangements in England the Canadian province with the largest stock of social housing, Ontario. It will also consider the implications of these arrangements within an Australian context.

3. COMMUNITY HOUSING REGULATION IN ENGLAND AND CANADA

3.1 Introduction

This chapter explores the regulatory arrangements in two other countries with a sizable non-government social housing sector – England and Canada. Section 3.2 principally focuses on the impact of regulation on access to private investment and the growth of large housing associations in England, with a brief overview of recent regulatory developments. One of the objectives of the research is to provide information on the details of international approaches against which their relevance to the Australian context can be assessed. The positioning paper (Barbato et.al., 2002: 20-22) provided a preliminary overview of arrangements in England. Attachment 1 builds on this by outlining the key features and objectives of the new regulatory approach introduced in 2002.

Section 3.3 introduces research on the regulatory arrangements for the social housing sector in Canada. Specifically, it describes the key characteristics of the social housing sector in Canada and the drivers behind social housing reform and associated regulatory elements (focusing on the province of Ontario). Further, the key issues flowing from this context are considered.

In the UK Registered Social Landlords (RSLs) manage approximately 1.5 million properties and approximately 21% of housing tenure in England is social housing (Moody's Investors Service, 2002: 3). In Ontario, Canada non-profit social housing organisations manage approximately 3.4% of housing (MMAH, 2000b: 6).²⁵ This compares to the 0.4% of housing managed by CHOs in Australia.²⁶

Both countries have also seen some considerable changes over the past few years. In England, a review was undertaken followed by extensive revisions to the regulatory regime managed by the Housing Corporation. In Canada, there was a far more substantial process of devolution of housing responsibilities from the federal government to the provinces. Additionally, in the specific case of Ontario, a further process of 'downloading' social housing administration from the province to municipal level occurred. The latter change has meant the complete redevelopment of the regulatory arrangements. In many ways this makes the stage of development of the regulatory framework comparable to the Australian situation, although it is further ahead in designing and implementing a new system. As noted above, the issues emerging from this process, together with the elements of the regulatory framework itself, have been the focus of the research in Ontario. The focus of interest in England, on the other hand, has been both the influence of regulation on the growth of large housing associations and access to private finance, and on the principles of good practice that have underpinned the recent revision of regulation of registered social landlords.

3.2 England

The discussion of the impact of the regulatory arrangements on the use of private finance for RSLs was largely the result of discussions with three informants – Peter Williams, the Deputy Director of the Council of Mortgage Lenders (the industry peak for the mortgage lenders), Ceri Richards, Head of Housing Finance for the Bank of Scotland (Corporate Banking), and Clare Miller, Manager of Regulation at the Housing Corporation.

Regulatory arrangements for social housing in England – an overview

The key milestone in the establishment of the contemporary social housing system in the UK was the introduction of the 1988-89 Housing Act. Although the regulator of housing associations and co-ops in England, the Housing Corporation, already existed and there

²⁵ See also, Statistics Canada, 2001 Census – www.statcan.ca

²⁶ Report on Government Services (2002) and ABS 2001 Census of Population and Housing.

had been a number of small scale bond issues to raise finance for the sector, the 1988-89 Act signalled a fundamentally new policy direction – to strongly encourage the transfer of public housing, managed by local authorities, into the hands of non-government social housing managers – RSLs. The other policy objective was to raise a significant proportion of the funds needed for the upgrade of transferred stock and the acquisition of new stock through debt raised by the new non-government housing managers.

In 2000, a comprehensive review of the Housing Corporation was undertaken to ensure the ongoing relevance of regulatory arrangements to the social housing sector.²⁷ In light of the review, significant changes were made to the way in which the Corporation operates and a new regulatory approach was introduced in April 2002.

The new approach reflects contemporary trends in regulation as described in section 2.1. That is, it is consistent with a shift away from prescriptive regulatory practices to a more flexible, outcomes focused approach. More specifically, the new approach can be characterised by an increased focus on tenant outcomes and continuous quality improvement.²⁸ Importantly, in addition to improving the regulatory processes for housing associations, the Corporation describes an increased effort to ensure that as the regulator it remains accountable and relevant to the sector (Housing Corporation, 2002a: 5).

It is worth highlighting that while the new approach aims to minimise intervention or ‘intrusion’ by an increased emphasis on self-assessment for housing associations, if minimal standards are not met, the Corporation does hold the power to take action.²⁹ In a recent paper produced by the NHF it is argued that the regulator’s powers of intervention are important for two interrelated reasons. Firstly, lender confidence is, in part, grounded in the Corporation’s statutory powers to intervene (2002a: 10). Secondly, it is noted that while achieving a balance between “robust inspection, helpful intervention” and “respect for the independence of the RSLs” and their capacity to innovate is important, “successful intervention” is vital. That is, “it is the ability to put things right that is the most important dimension of raising standards” (14).

*Financial risk management*³⁰

In 2000, the National Audit Office (NAO) undertook a review of the Housing Corporation’s regulation of financial risk management. The recommendations in the review report built on and further informed the Corporation’s ‘regulation revolution’, which culminated in the new regulatory approach discussed above. It is worth briefly summarising the outcomes of the review as a backdrop to the subsequent sections on private finance and social housing in England.

The following list shows the 12 most common high-risk problems identified in large housing association assessments:

1. stock deterioration
2. cash flow problems
3. failure of IT systems
4. falling demands/voids
5. changes in Housing Benefit Policy
6. rent controls

²⁷ The review was undertaken by the Department of the Environment, Transport and Regions (now the Department for Transport, Local Government and the Regions).

²⁸ Details of the aims, objectives and features of the Housing Corporation’s new approach are outlined in Appendix 3. The new approach was presented to CHOs, administrators and policy makers during the field research stage of this project. The purpose was to gauge their responses and test the relevance of such an approach to the Australian context. The outcomes of these discussions are documented in the stand-alone data reports – Data Report: Providers and Data Report: Administrators.

²⁹ See Appendix 3 for further detail on levels of unacceptable performance and corresponding actions of intervention.

³⁰ For an overview of the criteria used by financial institutions in the UK, see Attachment 2.

7. interest Rate movements
8. arrears/bad debts
9. staff recruitment/retention
10. falling grant levels
11. development cost over-runs
12. fraud (NAO, 2001: 3).

The review concluded that the Corporation and the sector have a good record in avoiding association failure evidenced in that there have been no serious insolvencies or tenants losing their homes over the past 10 years (2001: 1).

However, the report notes that sector growth and increasing complexity of business (diversification; new partnership arrangements) have lead to changing risks (2). While taking into account that the Corporation had proposed better targeting of RSLs at greater financial risk, and strengthening of financial management and governance to prevent associations from falling into financial difficulty as part of its regulatory reform, the following recommendations were made:

- the Corporation strengthen its financial ratio analysis³¹
- remedy problems more quickly
- make it's regulatory assessments more transparent – to increase accessibility to other stakeholders (such as lenders)
- improve collection and usage of information from housing associations (i.e. ensure it's relevance without increasing the 'regulatory burden' to housing associations)
- improve regulatory staff training (2001: 2).

Industry development in the UK – private finance

From the introduction of the 1988-89 Act to 1999-2000 approximately £19.5b of private lending had been committed to the sector in England (of which £15b has been drawn down) in addition to £15.2b in public investment through the Housing Corporation (Williams & Wilcox, 2002). In fact lending started a year earlier with £25 million being lent to RSLs in 1987-88. In 1988-89 annual lending from banks and financial institutions increased to £125m and in 1992-93 had reached £1.325b. (Wilcox, 2001)

While lending into the sector is dominated by the banks, and building societies provide a further 19% of loans, 23% of committed finance has been directly raised from the capital markets and other investors. Bond issues are now 25% of the 'mainstream' RSL market (as opposed to funding for stock transfers – of which they represent only 5%). The largest bond based financier is the Housing Finance Corporation with over £1.4 billion in lending. There are seven other bond organisations and a number of associations issue their own bonds. However, the banks have been the major lenders (Williams & Wilcox, 2002).

The impact of this very substantial growth in private investment on the organisational and financial structure of the RSL sector has been significant. There are now £48 billion of assets under management - half is public investment and 31% loans (the rest is comprised of various provisions and reserves, including revaluation reserves). In its 2002 study of the financial health of housing associations, the Housing Corporation concludes, "By most criteria of financial viability, the sector would be considered financially strong, with an overall gearing ratio of 31%" (Housing Corporation, 2002c).

³¹ 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; and surplus.

The result of this period of stock transfer and substantial access to private investment has been the creation of a significant number of large associations, with very different organisational scale and structure to the associations that existed before this time. In the 2002 sector study, the Housing Corporation has classified the sector into six groups by their share of the total turnover of 'traditional' associations (that is, all associations excluding the newer associations established to manage large scale voluntary transfers). The division of the sector by share of turnover reflects the focus of the Housing Corporation study on sector viability, although it also closely parallels the share of total stock managed. The three categories 'largest', 'large' and 'medium/large' each comprise 25% of the turnover of traditional associations or 20% of the turnover of all associations. The last quartile of turnover has been subdivided into three smaller groups.

While, as indicated in Table 1 below, there are 1,527 traditional associations managing 1,168,637 units,³² 75% of the more than £4b annual turnover of these organisations is accounted for by 101 associations. These have a turnover of between £9.7m and £164m, and employ between 54 and 5,900 staff. While there has been a process of restructures and growth over the 14 years since the 1988-89 Housing Act, most of these 101 organisations are fundamentally different from those that existed previously.³³ The new structures such as 'arms length management organisations' that have been established to manage much of the stock transfer are also a new face to the sector and operate on a scale completely unlike that seen in Australia.

Table 1 Characteristics of English Housing Associations (HAs) by category

Category	No of HAs ³⁴	Ave turnover £k	Ave no. of units	% of total units	Financing (loans & reserves) £m	Ave financing £m
Largest	10	101,430	28,246	18	3,888	388.80
Large	24	42,859	12,560	20	4,170	173.75
Medium/large	67	15,248	4,448	19	3,634	54.24
Medium/small	112	5,547	1,610	12	2,312	20.64
Small	505	735	184	6	1,348	2.67
Smallest	807	48	17	1	221	0.27
Total 'trad' HAs	1,527	2,686	765	76	15,572	10.21
LSVTs ³⁵ < 5 yrs	33	11,327	4,593	10	1,677	50.82
LSVTs > 5 yrs	36	17,722	5,898	14	3,105	86.25
Total	1,594	3,204	961	100	20,355	12.77

Table source: Housing Corporation (2002c), Appendix 2

³² Including large scale voluntary transfers (LSVT) the total stock managed is 1,532,553

³³ 12 years ago 75% of English sector was very small (<200). While most of the very small (85%) stayed the same, 20% of the whole sector disappeared or amalgamated and 10% became (or were newly established as) very large organisations managing between 4,000 – 46,000 units (Personal communication with Clare Miller, Director Regulation Policy, Housing Corporation, 12 June 2002).

³⁴ Some associations combine into grouped entities. Such groups have been treated as one association in this study.

³⁵ Large scale voluntary transfers

This immediately raises the question of the extent to which the English – indeed the UK – experience can provide guidance for the future development of community housing in Australia. While recognising the risk of comparing experiences in different countries, there are three reasons for believing that the experience can be instructive.

- The access to such large volumes of private funds is recent – the past 13 years – and followed the policy decision and legislative implementation of the UK government. That is, it is a matter of policy decision and implementation, rather than national difference.
- The growth of the new type of organisations that now manage most of the housing association business has come from, and continues to sit beside, the vast majority of the sector that in terms of stock and turnover is directly comparable to the Australian community housing sector. The average size of the smallest 53% of English associations is 17 units, while the next 33% manage an average of 184 units. The 1998 mapping study of the Australian sector by NCHF and the AIHW found that the average size of community housing organisations was 36 units, with the largest 11% managing an average of 177 units (AIHW & NCHF, 1999).
- Although many of the small associations have not financed their businesses through private debt, a number have. That is, the opening up of private finance has not only provided opportunities for the newer or expanding organisations, but for at least some of the smaller associations as well.

Financing trends - risks, benefits and drivers

The evidence on the flow of private lending into the sector strongly suggests that the development of the contemporary English housing association sector was driven by the introduction of the Housing Act 1989 and structures enabled under it. This view was confirmed by the key informants with which discussions were held.³⁶ This has enabled the development of a sector that has been able to take on an expanded role by virtue of access to large scale private lending.

Since then, the financing of the sector has continued to evolve, as have the nature and understanding of the risks involved.

The professionalism of both providers and lenders has grown over the decade. Four significant developments in the approach by lenders over the period have been:

- Financial arrangements, which initially were simply large traditional mortgages, have now become far more complex and sophisticated in terms of the approach to credit assessments (particularly with regard to cash flows) and the nature of the financial reporting required by lenders, with new reports against new ratios and a greater focus on future risk assessment³⁷ (A summary of criteria used by lenders for the stock transfer market is attached at Appendix 2).
- Lending is not all asset-based. According to informants “there is a healthy mix of asset and income based lending”.³⁸ The significance with respect to the regulation and control of assets will be discussed further below.
- Lenders now have far greater understanding of the sector, with all the large lenders developing specific responsibilities for lending to housing associations.

³⁶ The informants were: Peter Williams, Deputy Director General, Council of Mortgage lenders (pers. comm., 5 June 2002) and Ceri Richards, Head of Housing Finance for the Bank of Scotland (pers. comm., 12 June 2002).

³⁷ “When we started out our credit skills and analysis was pretty unsophisticated. But there has been a shift in corporate credit analysis (within the banking industry). For example, cash flow analysis. Initially the analysis was on balance sheet analysis and liquidity ratios. But now credit analysis has moved to forward cash flow forecasting (partly because of the recession). We have moved from historic to more predictive analysis – to event test cash flows – and to 30 year business plans.” (Ceri Richards 2002, pers. comm. 12 June)

³⁸ “There are still small mortgages. At the other end there is PFI, which is income stream based - but is more expensive at 1.5% rather than 0.5% above the prime rate.” (P Williams 2002, pers. comm., 5 June)

- Lenders collectively (through their industry peak, the Council of Mortgage lenders) formally engage with the key players in the industry such as the Housing Corporation and the National Federation of Housing Associations. Where necessary, they will advocate to government as political risks arise.

As the sector has grown, lenders' exposure has also grown,³⁹ making them vulnerable to policy changes. Three instances specifically identified by informants have been the tightening of insolvency provisions for RSLs,⁴⁰ the (unintended) impact of proposed changes to insolvency law⁴¹ and the new rent policies now being phased in by government. In the former case, representations were effective. In the latter, the new rent policies will reduce the income streams of many associations, increasing the risk to lenders and, as a consequence, the prudential requirements.

A final trend that may be affecting the risk of lending is the growing diversification of the business the sector is undertaking. Some of this flows from 'housing plus' activities such as managing shopping centres and the like as part of a broader approach to regeneration. The move away from core business is seen by lenders as presenting some additional, but not insurmountable risks.⁴²

At the same time, the growth and the regulatory underpinning of the sector have produced some significant benefits. The growth of the market – and with it both competition and familiarisation – have seen the cost of funds fall from 2% above the prime rate when lending began, to around 0.5% above the prime rate today (P Williams 2002, pers. comm. 5 June).⁴³ The regulation of the sector has also meant that central bank requirements of lenders are reduced.⁴⁴ Finally, as part of the recent review of the Housing Corporation, it has been estimated that regulation itself has reduced the cost of funds by 1%.⁴⁵

The contribution of regulation

Informants noted a number of factors as important to the creation of the vigorous financial market lending to housing associations today. Some of these are directly related to the regulatory framework, others might arguably flow indirectly from regulation.

Clearly there are some preconditions that are not related to regulation. The most important of these is the role played by Housing Benefit in supporting the income streams of RSLs. Housing Benefit is a means tested payment that fully subsidises rents for low-income earners. For much of the period, it was therefore possible to push rents structures up by increasing the gearing of projects to win the bids for the available public investment, without impacting on affordability for low-income earners. This will change with the introduction of the new rent policy announced in December 2000 after consultation on a

³⁹ "Now lenders' exposure has gone up too – for example, Halifax loan book is around £4 billion." (P Williams 2002, pers. comm., 5 June)

⁴⁰ "Housing Corporation regulation has also strengthened insolvency provisions in [amendments to the] Housing Act in 1996. But political risks remain. The insolvency provisions would have cancelled lenders rights if housing associations were insolvent [they had also proposed private landlords managing social housing]. The CML lobbied hard over this provision and the compromise was that the government has a month to transfer tenants to another RSL if an association is insolvent." (P Williams 2002, pers. comm., 5 June)

⁴¹ "There have been times when this has created tension between government and the lending community. An example was changes to the insolvency laws [social housing was caught up in amendment relating to industrial and provident societies]." (Ceri Richards 2002, pers. comm., 12 June)

⁴² "Diversification of the RSL business is undoubtedly *increasing* the risk, because RSLs have less expertise outside their core business. However, it is a mature sector that can afford to take risks. Lenders will continue to lend to diversified businesses, because this will provide higher returns [to compensate for the increased risks]." (Ceri Richards 2002, pers. comm. 12 June)

⁴³ However competition is also contributing to the rates. There is very high liquidity. Competition is driving margins down to marginal economic rates (Ceri Richards 2002, pers. comm., 12 June).

⁴⁴ If lending to a RSL and taking security over the property, only 50% of the capital rating is required if lending to a corporate. This translates to close to half the margin (Ceri Richards 2002, pers. comm., 12 June).

⁴⁵ "This was undertaken (done by HACAS housing consultancy firm) as part of the 5 yearly Finance & Management Performance Review of the Housing Corporation. The finding was that regulation save 1% on the cost of funds. In the review this saving on the cost of funds was translated into the saving this represented to Housing Benefit costs." (P Williams 2002, pers. comm., 5 June)

Housing Green Paper (ODPM, 2000 & 2001). The restructure of rents must begin in 2002-03 and be completed over a ten-year time. The extent to which the availability of finance has depended on underpinning income streams by generous Housing Benefit payments will be tested over this period.⁴⁶ The Council of Mortgage Lenders has warned that, "The new rent regime will limit the capacity of some housing associations to raise and service debt. It has already led to higher grant rates that reduce the call on private finance" (Williams & Wilcox, 2001). Clearly effective subsidy structures are a necessary condition for private financing.

However, informants were also quite explicit in their view that the regulation of housing associations was an equally important precondition. The 1988-89 Local Government & Housing Act itself was explicitly identified as a marker of the changed environment. In particular, it provided a policy position that curtailed the ability of local authorities to build new stock and directed funding to housing associations, leading to significant stock transfers funded in large measure by private finance. Various Acts also define the role of the regulator – (in England) the Housing Corporation. Later Acts such as the Housing Act 1996 specify the regulatory powers of the Housing Corporation in very great detail (Kennedy, 2001b).⁴⁷

In particular, informants focused on some key aspects of the regulatory regime that were seen to have played an important role in facilitating the expansion of the market for private finance. These aspects are considered in detail below. The implications of this within an Australian context are addressed in chapter 4.

The supervisory regime – In effect this element complements the government income stream subsidy provided through Housing Benefit. Unlike the Canadian system of social housing finance in which mortgages are explicitly supported by government guarantees, the UK has gone down the path of providing this assurance in an implicit form. Lenders perceive the Housing Corporation as delivering "a supervisory regime that doesn't allow insolvency" (P Williams 2002, pers. comm., 5 June). Indeed, the record speaks for itself. There has not been a single default on a loan since the lending into the sector began. The reason for this is the combination of the capacity of the Housing Corporation to identify risks to the viability of an organisation, the powers to intervene (ultimately to restructure an organisation), and a willingness to take effective action. Informants also suggested that this lies less in the formal powers of intervention, that were seen as too cumbersome, and more in the willingness to solve problems.⁴⁸ It should also be noted that this is backed by the Corporation's own investment capacity. Informants pointed to two aspects of the reporting requirements that reflect continual development of the approach. First, there has been a shift to a more explicit risk based approach that aims to enhance the capacity for early warning.⁴⁹ This approach mirrors the changes in lenders' approach to reporting, which changed from historic to more predictive analysis – focused on cash flows.⁵⁰ Informants also noted that, despite requiring their own reports from associations, "lenders

⁴⁶ One informant believes that Housing benefit was not a necessary condition: "Housing Benefit wouldn't have ruled it out, but it would have required far more due diligence" (C Richards 2002, pers. comm., 12 June).

⁴⁷ "Previously, with 100% public funding, only so much could go wrong. But with the introduction of private lenders, and the requirements of their covenants, it was necessary to ensure greater professionalisation ... The recent changes to the 1988-89 Act provided a codification of the regulation – taking a risk based approach." (Clare Miller 2002, pers. comm., 12 June)

⁴⁸ "With the experience of organisations getting into trouble, the Housing Corporation has found that its powers of supervision [a 'Section 16 Inquiry'] are too limited. The process is very difficult and unwieldy. The Scottish regulator has just looked to strengthen its powers – for example, its power to appoint a manager. There are a variety of ways that the regulator can respond and this is not always by intervention. For example, when West Hampstead was experiencing a crisis, and the lenders were going to foreclose, the Housing Corporation provided a £4 million overdraft to solve it for the lender." (P Williams 2002, pers. comm. 5 June)

⁴⁹ "In terms of risk management, there is a shift to early warning." (Clare Miller 2002, pers. comm., 12 June)

⁵⁰ "When we started out our credit skills and analysis was pretty unsophisticated. But there has been a shift in corporate credit analysis (within the banking industry). For example, cash flow analysis. Initially the analysis was on balance sheet analysis and liquidity ratios. But now credit analysis has moved to forward cash flow forecasting (partly because of the recession). We have moved from historic to more predictive analysis – to event test cash flows – and to 30 year business plans." (Ceri Richards 2002, pers. comm. 12 June)

take comfort from the financial ratios”⁵¹ against which the Housing Corporation assesses the financial performance of the RSLs. These specific financial ratios provide robust information on both individual and sector wide performance (Housing Corporation, 2002c).⁵²

Funder and regulator – The Housing Corporation is both regulator and is also responsible for the investment of public funds in housing associations. Informants noted that, while the appropriateness of these dual roles has been a matter of some debate, and the internal structure of the functions within the Corporation has been revised from time to time,⁵³ lenders take comfort in the fact that the regulator is protecting the viability of its own investments as well as providing assurance to private investors.⁵⁴ Clearly, the capacity to back intervention with funds is also a comfort.

Relationship between regulator and lender – The relationship between the regulator and the lenders is important in two ways. The first is the requirement by the regulator that RSLs report problems identified as part of its supervision to the lenders concerned (Ceri Richards 2002, pers. comm., 12 June). This helps to increase the relevance to lenders of the supervisory regime and to ensure that it complements, rather than duplicates, the direct reporting to lenders.⁵⁵ The second aspect of the relationship is also very important to the creation of an effective market. This is the structural attention by the regulator to the needs of lenders. This takes the form of quarterly meetings with lenders, the development of public financial information on the sector, and specific resourcing of new lenders entering the market.⁵⁶ There may be grounds for some concern that this means that the regulator may be captured by the needs of financiers. While aware of this risk, the Housing Corporation takes the view that this risk is offset by a clear focus “on their legislative remit – protect public investment and outcomes for tenants” (C Miller 2002, pers. comm., 12 June).

Best practice guidance – Informants also identified a number of measures that are key to their assurance about the sector that relate to good practice and quality systems. These are:

- best practice guidance on treasury management
- best practice guidance on governance
- quality control of management (Ceri Richards 2002, pers. comm., 12 June).

Consistency – A less direct benefit of a regulatory underpinning to the market identified by the Council of Mortgage Lenders is that the efficiency of the system of lending is enhanced by the degree of conformity. This takes the volatility and regional variation out of the market (Ceri Richards 2002, pers. comm.).

Creation of a market and the cost of funds – It has been noted above that the market for private finance has continued to grow. The total number of institutions providing funding in the UK is close to 130, although “the number of funders in the market has declined as competition has intensified” (Williams & Wilcox, 2001:9). Informants argue that the competition in the market has driven down the cost of funds and that the vigour of the market depends in part on the presence of the regulator.⁵⁷ There has also been a clear

⁵¹ “Lenders do take comfort from the Housing Corporation’s financial ratios (for example, rental income must be greater than 125% of the interest due). These ratios have been built up over time. ... However, it is important to note that the ratios are dynamic.” (Peter Williams 2002, pers. comm., 5 June)

⁵² See Appendix 2 for a list of ratios used by the Housing Corporation for its accounts review.

⁵³ “Up to the mid 1980s, investment and regulation were separated [within the Housing Corporation]. They were co-located in the early 1990s and have now been separated again. There is debate about whether some of these powers should be devolved [in fact, in Scotland funding to housing associations is being devolved]. But from the private sector point of view it is important that public investment has been driven by regulation.” (Peter Williams 2002, pers. comm., 5 June)

⁵⁴ “Generally the fact that there is a lot of grant is comfortable – but it is neither necessary nor sufficient.” (Ceri Richards 2002, pers. comm., 12 June)

⁵⁵ “Banks own analysis means that there is some duplication with the HC regulation – but hopefully we are both singing off the same hymn sheet.” (C Richards 2002, pers. comm., 12 June)

⁵⁶ There is a full-time position of “lender liaison” (Clare Miller 2002, pers. comm., 12 June).

⁵⁷ Regulation is also crucial to the credit worthiness of the RSLs (Ceri Richards 2002, pers. comm., 12 June).

benefit from the relaxed central bank lending requirements for lending to housing associations that are attributed to the regulation of the sector. And finally, as noted above, the study commissioned as part of the recent review of the Housing Corporation, has calculated that the presence of the regulator reduced the cost of funds by 1%.

Statutory charge – As in Australia, government has a keen interest in protecting its investment in the assets managed by housing associations. At the same time, it has been necessary to balance this with the needs of lenders. The solution has been the use of a statutory charge, which requires the provider to obtain consent to the disposal (including mortgaging) of a property. The status of the charge is that of a second mortgage on the property after the lenders charge (Ceri Richards 2002, pers. comm., 12 June).⁵⁸ This would seem to raise a broader problem of the risk to public investment in the event of a housing association defaulting. Against this, informants argue that lenders are particularly averse to selling up the asset. It was reported that in one simulation hosted by the Council of Mortgage Lenders, financiers opted to take over the management in preference to realising the asset.⁵⁹ But beyond this, it may reflect a broader trend. It was reported that lenders are now willing to provide unsecured loans, or in other cases are interested in lending against income streams rather than assets.⁶⁰

Information – A final crucial feature of the housing associations market in the UK is the role of information that assists lenders and builds understanding and confidence. While the regulator is a key provider of information, it is not the only source. The range of information available is extensive and includes:

- market information provided by Housing Corporation – particularly information support for new lenders
- sector wide summaries of financial performance against key measures provided by the Housing Corporation
- individual summaries – again provided by the Housing Corporation⁶¹
- credit rating information on the sector - provided by ratings agencies including Standard and Poors
- global accounts for the sector – an aggregate of provider accounts – provided by the National Federation of Housing Associations.

In Summary

The experience of the past 14 years in the UK, since the introduction of the 1988-89 Housing Act, reflects many of the key issues facing community housing in Australia. These include the growth a substantial non-government housing sector from a relatively small base; the emergence of a number of very large housing associations from a sector that was and is made up of small scale organisations; and, crucially, the unlocking of very large volumes of private investment in social housing. The study has found that regulation is seen by all key stakeholders as having been fundamental to these changes.

The experience of the past 14 years in the UK has also led to greater sophistication in both financing and in regulation. This provides us with an opportunity to take advantage of this experience in developing similar systems in Australia. Recent changes in regulation give

⁵⁸ The charge does not apply if the property is sold for private ownership; although, a covenant applies to the property for three years to ensure that any discount or subsidy is repaid if the property is sold within that time. Overall, the use of the charge is subsumed to the specific policy intentions of supporting private financing or home ownership by association tenants.

⁵⁹ "There is still a debate about whether if I took charge I have to have the Secretary of State's permission to dispose. Government has not committed to an answer on paper." (P Williams 2002, pers. comm. 5 June) A simulation exercise of behaviour in the event of insolvency was run with the Housing Corporation, and a group of government, housing associations and lenders. The interesting conclusion was that all the lenders said that they would take over the businesses and continue to run it [rather than selling it up].

⁶⁰ "Sometime we will lend for three to four years unsecured [although this is at 100% capital rating]." (Ceri Richards 2002, pers. comm., 12 June)

⁶¹ "The Housing Corporation publishes a summary of problem cases (by that name), and the strategies used to resolve the problems. Publishing that information gives lenders confidence." (Clare Miller 2002, pers. comm., 12 June)

greater emphasis to consumer outcomes, quality improvement and self- assessment. At the same time, they provide more focussed risk management for larger associations, with an even clearer focus on the 'capacity to put things right'.

Over the entire period, regulation is seen to have been important in four main ways:

- The legislative framework signalled the new policy direction and the terms under which financing could be developed;
- It chose an approach of providing certainty to lenders through the supervisory regime, rather than government guarantees (the path chosen in, for example, Canada);
- It provided the regulatory assurance that enabled lenders to enter the market and develop specific products;
- Over time it has reduced the cost of funds.

These findings provide an important background against which to see the views of Australian stakeholders identified through the second part of this research. They also provide information on the details of the most recent regulatory approaches that can be drawn on in Australia.

3.3 Canada

Trends and political drivers – devolution, downloading and risk

This section explores the regulatory arrangements for the non-government social housing sector in Canada – with a particular focus on the province of Ontario – and compares elements of existing regulation with the Australian situation. Much of the discussion is drawn from information provided by the following three informants: a phone interview with John Mumme, Community Housing Ltd., Victoria, who has twenty years experience working in the Canadian social housing sector; and input and feedback through email correspondence with Dr Kath Hulse, Swinburne University and Steve Pomeroy, Focus Consulting Ottawa.

There are approximately 640,000 units of social housing in Canada.⁶² The sector consists of about one third public housing and two thirds community managed housing run by housing co-operatives, private non-profits (established by church groups and service agencies) and municipal non-profits. Over the past 20 years much of the growth in social housing has been in the non-profit sector, and much of it has been debt financed.⁶³

Community housing in Canada was originally based on social and income mix but since 1986 programs with federal funding have been targeted to those in 'core housing need'.

The federal government housing agency is the Canada Mortgage and Housing Corporation (CMHC). According to its website the four pillars of CMHC's work are:

- Housing finance - providing access to affordable housing (achieved mainly through a mortgage loan insurance program).
- Research and information transfer - being a source of 'reliable and objective' housing information.
- Assisted housing - participating in assisted housing initiatives.
- International work - supporting and promoting the export of Canadian housing products.

Devolution of social housing in Canada began in the mid-1980s. The federal government negotiated global and operating agreements with individual provinces/territories for the delivery of federal social housing programs if they shared the cost of these programs (federally funded co-operatives lobbied successfully to continue as a federal program). In

⁶² Canada Mortgage and Housing Corporation website on 'What We Do' page (www.cmhc.ca/en/about/whwedo)

⁶³ Construction was financed by mortgage loans from private sector institutional lenders. Each loan is secured by a mortgage on a specific property (MMAH, 2000b: 30).

1994 the federal government stopped funding new social housing projects and announced in the 1996 budget that it would negotiate to transfer responsibility of existing social housing to the provinces/territories. The first bilateral Social Housing Agreement was signed with Saskatchewan in 1997 and subsequently with nine other jurisdictions, including Ontario.⁶⁴

At the time of these agreements there were questions from the co-operative housing peak body about the devolution of social housing to the provinces “setting the stage for a full federal withdrawal from funding social housing” (CHFC, 1998:9). Under the agreements CMHC has maintained subsidy levels for its existing program commitments but they begin tapering in 2006. This starts to put increased pressure on provincial governments and municipalities (particularly in Ontario) to fund the short fall in housing. The federal government remains responsible for some specific indigenous housing programs and for federally funded co-operatives.

CMHC has also developed a role – through the Canadian Centre for Public-Private Partnerships in Housing – facilitating non-profit housing projects through loan insurance and the provision of interest free loans (up to C\$75,000) to develop detailed proposals for affordable housing in order to secure finance.

In November 2001, the federal government and provinces/territories announced an Affordable Housing Program as an interim measure to increase the supply of housing for low- to moderate-income earners. This was pending longer term strategies to increase private investment in rental housing and involves a federal contribution of C\$680m over five years to be matched by the provinces/territories.

After signing the Canada-Ontario agreement in May this year the federal minister said it “recognises that all levels of government have a role in supporting affordable housing”, adding that the program contained incentives for partnerships between municipalities, private developers and the non-profit sector (CMHC, 2002: 1). However, there have been concerns expressed about whether the provincial government will provide matching funds and the implementation of the program in Ontario had not been announced as of September this year (ONHPA, 2002b: 2).

In summary, the Canadian federal government retains responsibility for federally funded co-operatives and the On Reserve Native Housing Program. The province (in the case of Ontario) retains responsibility for the Rural and Native Housing Program and some supportive housing. The local service managers in Ontario, as described in more detail in the section below, are responsible for public housing, rent supplements to private landlords, the Urban Native Housing Program, rent supplements to some co-operatives and non-profits, and the non-profit and non-federally funded co-operative housing programs.

A focus on the province of Ontario

Canada has a federal system of government so, as with Australia, this means the legislative and administrative arrangements governing social housing vary between jurisdictions. It is not within the scope of this report to cover the regulatory systems in each of the Canadian provinces and territories and so it will focus on the jurisdiction with the largest stock of social housing, Ontario.

Ontario is also one of the last provinces to embark on reform, following federal devolution of social housing, partly because of the conservative provincial government’s intention to ‘get out of the business’ and hand the administration of social housing to the municipalities.

⁶⁴ Housing was “caught in a grey area of constitutional debate” in Canada in the late 1980s/early 1990s with the prevailing view that it should be allocated to the provinces. In other words “constitutional drivers ... shifted the historic role of a strong federal presence in social housing”. However, both federal and provincial involvement had vacillated since 1946. The result is a subset of social housing delivered under cost shared programs but managed by the provinces (public housing 1949-73); a subset of unilateral federally funded community managed housing (non-profit/co-op housing 1973-93); a subset of provincial unilaterally funded community managed housing (1989-96). (Steve Pomeroy, Focus Consulting, Ontario 2002, email correspondence, 1 November)

This means some of the details of the new system are still evolving. However, the elements of regulation in Ontario and difficulties and lessons in establishing the new regime can be extrapolated from what has been a complex process.

The management of more than 245,000 units of social housing was consolidated by the Social Housing Agreement signed in 2000 between CMHC and the Ontario Ministry of Municipal Affairs and Housing (MMAH): the agreement that enabled the devolution of federal social housing to the province. This involved about 84,000 units of public housing, built prior to the late 1970s, and approximately 156,000 units managed by housing co-operatives, non-profit housing associations and municipal non-profits (MMAH, 2000b: 6).

Public housing tenants pay Rent-Geared-to-Income (RGIs) of 30% of household income. Community housing retains an income mix with about 58% of residents on low incomes and paying RGI and 42% on higher incomes and paying market rents (MMAH, 2001). The downloading process also involved rent supplements paid to about 12,5000 private landlords whose low income tenants pay RGI, and rent supplements for some non-profit housing.

Following federal devolution the Ontario government instigated a process of 'downloading' administrative responsibility for social housing to the municipal level (specifically, 47 Consolidated Municipal Service Managers – now called service managers⁶⁵ – or CMSMs).

The commitment to shifting social housing administration to the local level preceded federal devolution to the provinces. In 1997, the Ontarian government had completed a program review of roles that concluded housing should be a local function, delivered and funded (through the property tax base) at a municipal level. As a result, responsibility for funding social housing had been a municipal responsibility since 1998.

Advocating the download of both federal and provincial housing to the municipal level the Ontarian Housing Minister at the time said that: municipalities need the flexibility to respond to local needs, providers need predictable funding, and Ontarians in need must be able to get social housing services.⁶⁶ There is ongoing debate about whether these outcomes can be achieved through the system that has been put in place.

The Social Housing Reform Act 2000 (SHRA) was passed by the provincial legislature in December 2000 and took effect on 1st January 2001 with the transfer of ownership and management of the public housing stock and responsibility for rent supplements to private landlords from the Ontario Housing Corporation to Local Housing Corporations.⁶⁷ In May 2002 the transfer of provincial non-profit and co-operative housing and federal non-profit housing was completed. This transfer did not involve transfer of property ownership as the organisations continue to own and manage their own stock.

Reform and regulation of social housing in Ontario – the elements

The regulation of social housing in Ontario is legislatively based and brings several pre-existing reform processes together. The elements of the regime are set out in the SHRA and this section has a brief description of the main ones. In summary, they are:

- provincial compliance with federal government program requirements
- the Act itself which enshrines a single operating framework
- a new, legislated funding model
- a statutory authority designed to take on province wide functions
- mortgage insurance

⁶⁵ Service managers are also responsible for the administration of Ontario Works, which is the province's social assistance program.

⁶⁶ Remarks made at the Association of Municipalities of Ontario Annual Conference, Ottawa, Ontario, 15 August 2000 and cited on the website of the Co-operative Housing Federation of Canada (www.chfc.ca).

⁶⁷ The sole shareholder in the Local Housing Corporations when they were established was the service manager.

- risk management
- powers of intervention
- provincial and municipal standards.

The primary responsibility in each of these areas is shared, though not evenly, across the provincial and municipal government with the CMHC retaining some interest particularly in the area of compliance and insurance.

Federal-provincial program reporting

The Social Housing Agreement between CMHC and Ontario province sets out a number of program requirements to be met by the MMAH. They include:

- audits on the portfolio of housing programs
- performance reporting on expenditures in each program
- cyclical evaluation to ensure programs meet provincial priorities and are effective in achieving their objectives and outcomes within budget.

The Agreement also spells out the right of CMHC to hold back federal funding if the reporting requirements are not met (MMAH, 1999: 4). The federal government through the CMHC “ensure that the requirements of [its] accountability framework are being followed” (MMAH, 1999: 3).

Provincial legislation

The SHRA replaces providers’ individual operating agreements with a single legislated operating framework. The government’s aim was to “simplify and harmonise the administration of non-profit housing programs” (MMAH, 2000b: 7).

It is worth noting here that the operating agreements superseded by legislation were for the same period as the mortgages covered by the housing project: many of them for 35 years. This duration provided a much greater level of certainty than funding and service agreements do in Australia.

The MMAH has said that the roles and responsibilities of housing providers would remain ‘essentially the same’ but the co-operative housing peak argued that their roles and responsibilities were more clearly spelt out in operating agreements, which could only be changed in consultation with them. The peak was concerned that the detail of their operating environment would be contained in the regulations, which “can be changed on a political whim” (CHFC, 2000a: 18).

Funding model and subsidies

As mentioned earlier, the community housing sector in Canada, and specifically Ontario, is debt financed through mortgages that have been raised primarily at the provincial level. Like the proposal to shift housing to the municipal level, the process of streamlining the funding mechanism (and from the perspective of groups like the Ontario Non Profit Housing Association – ONPHA – creating more certainty) had commenced as early as 1996. It was also overtaken by the process of re-organisation following the federal-provincial devolution of housing and the SHRA enshrined a new, legislated funding model.

The model requires what the MMAH describe as a more ‘businesslike’ approach from providers so they can cover a predetermined share of debt (an ‘affordable mortgage payment’) and their operating costs from revenue. There are two types of subsidies to support providers’ operations:

- A mortgage subsidy based on the shortfall between total costs (mortgage costs plus operating costs) and revenue based on market rents for all properties.
- A RGI (operating) subsidy based on the gap between RGI income from low income tenants and market rents.

Benchmarks are set by the Minister to set standards for operating costs and market rent revenues and are used to establish the level of both mortgage and RGI (operating) subsidies. Property taxes are also taken into account in establishing the amount of subsidy.

Any surplus the housing provider may generate must be paid in part to the service manager rather than adjustments being made to the affordable mortgage payment. In other words, “if a provider were able to decrease costs or increase revenues, the provider would share any surplus with the service manager, thus reducing municipal costs” (MMAH, 2000b: 24).

Statutory Authority

The SHRA establishes the province-wide Social Housing Services Corporation (SHSC). It is a statutory body created to “provide opportunities for cost savings and limit risk by taking advantage of economies of scale” (MMAH, 2000a:33). Its mandate is to co-ordinate insurance; bulk purchasing; to manage the pooling of capital reserves; study and advise on benchmarking and best practice for the efficient and effective provision of housing (33). The non-profit housing sector did have an amendment to the SHRA accepted so that providers still have access to the funds they are required to invest thereby mitigating to some extent one of the more controversial elements of the new corporation’s role (CHFC, 2000b: 2 & ONPHA, 2000: 2).

Insurance

The federal government agency CMHC provides mortgage insurance to non-profit housing providers through the National Housing Act. The province fully indemnified the CMHC mortgage insurance fund and as such has an ongoing interest in the management of the mortgages (MMAH, 2000b: 31). New municipal built affordable housing is not covered by the federal-province loan insurance agreement. An informant in Ottawa, Ontario has said that some municipalities have provided loan guarantees for small second mortgages but are reluctant to take on the liability of default on the first mortgage.⁶⁸

Risk management

Some of the major financial risks to government that have to be managed under the new funding and subsidy arrangements are inflating operating costs, modernisation and capital repair expenses. There is also interest rate risk. The Ontarian provincial government continues to play a limited role in risk management. A Risk Management Centre has been established in the MMAH to assist with minimising default and keeping organisations solvent. One of the Center’s roles is to produce guides on best practice in risk management to assist service managers. The guide is intended to contain information to assist them “anticipate, recognise, address and monitor projects in difficulty” or in other words take on some degree of performance management (MMAH, 2002: 2). It appears the system is squarely focused on managing risk within government.

The direct responsibility for detecting where potential difficulties may arise lies with the service managers. As part of a ‘consolidated risk management approach’, service managers are required to report to the province on projects in difficulty (MMAH, 2000b: 31). There appears to be a financial incentive for municipalities to detect and intervene in problems early because the province can recover costs resulting from defaults from the service manager. There is some flexibility if the default came about from circumstances outside the control of the service manager, in which case the province can waive the cost recovery (MMAH, 2000b: 31)

The Ontario provincial government recognises that managing projects in difficulty is a “complex undertaking, which can involve a number of organisations, including lending institutions and the CMHC” (MMAH, 2000b: 31). This approach is similar to that taken by the UK Housing Corporation to the extent that intervention may involve negotiations with financial institutions to find a solution.

⁶⁸ pers.comm Steve Pomeroy, Focus Consulting, Ontario 2002, email, 1 November

The province also continues to have responsibility for mortgage renewals⁶⁹ to capitalise on their bulk purchase advantage so they can “contain one of the most significant cost elements” of non-profit housing. Mortgages account for up to 59% of social housing operating costs (MMAH, 2000b: 31).

Intervention

It was the provincial government’s intention to give the service managers the “necessary and appropriate tools for dealing with the small percentage of situations where housing providers failed to comply with the requirements set out in the legislated operating framework”. However, there is recognition of the need to balance this against the inappropriate use of remedies to deal with ‘minor infractions’ (MMAH, 2000b:25).

Given that the province is liable for defaults it is in their interest that the municipalities have strong powers. There is a provincial expectation of “swift and direct action” by service managers in relation to providers who have “failed to comply with their operating requirements” (MMAH, 2000b:25).

Moreover, as the municipalities are responsible for funding social housing they wanted what they termed ‘say for pay’. That is, “they demanded greater opportunities for direct intervention in the interest of public accountability for tax payers money”.⁷⁰ According to one informant, municipalities had “extremely strong objections” to the downloading of social housing primarily because their only tax base was property taxes, which was insufficient to “cope with the sudden ups and downs of funding required”.⁷¹

It is unclear in the early documentation accompanying the SHRA – particularly the Guide to Social Housing Reform – how early the identification of a provider at risk occurs and whether there is a staged process of intervention, such as the three-phase approach taken by the UK Housing Corporation. The Act itself states that the service managers may exercise one or more the remedies and it must be “reasonable in the circumstances” (SHRA, 2000: S116[1]).

The SHRA outlines ‘triggering events’ for intervention and the actions that municipalities can take in the event of breaches. The actions the SHRA empower service managers to take include:

- appointing a receiver for a period of up to one year
- performing duties of the provider to ensure the breach is remedied
- replacing some or all board members
- making mortgage payments
- requiring staff and board members to receive training
- fining for not reporting on time as prescribed
- reducing, suspending or discontinuing subsidy (MMAH, 2000b: 26).

The CHFC has said of this section of the SHRA that “governments are given open-ended powers to interfere in the operations of co-ops”. They particularly objected to the power to remove and replace board members and were seeking amendments to this section of the Act (CHFC, 2000a: 7).

The co-operative housing sector were seeking amendments to have a ‘cure period’ inserted into the remedies sector to give providers the scope to “correct any problems before such drastic measures are invoked”. CHFC also lobbied for a process to appeal the decisions of the service managers (CHFC, 2000a:23).

⁶⁹ Canadian mortgages have terms less than amortization: in social housing most are 35 year amortization with five year rollovers with the rates adjusting at rollover (Steve Pomeroy 2002, email, 1 November).

⁷⁰ Steve Pomeroy 2002, email, 1 November

⁷¹ John Mumme, 2002, email, 1 November

Standards

The province has responsibility for setting and monitoring standards however the SHRA gives scope for municipalities to develop additional local standards. The MMAH state that, “For the first time, service standards in general use will be enshrined in legislation, to further protect tenants and to sustain the current level of social housing support” (MMAH, 2000b:12). Provincial standards aimed to ensure:

- province wide rules on eligibility and benefit levels
- co-ordinated access to social housing – including a centralised waiting list⁷²
- municipalities continue to provide assistance to the same number of households
- the supply of units modified for physically disabled access is maintained
- compliance with the terms of the federal/provincial Social Housing Agreement
- municipal reporting to ensure provincial and federal standards are met (MMAH, 2000d:2).

Some of the issues (and tensions)

The Ontario social housing reforms were an outcome of quite different macro policy drivers to those shaping the discussion of developing enabling regulation for community housing in Australia. However, there are also some interesting similarities. For instance, Australian state government administrators are expressing a desire to move away from fragmented contractual agreements to more streamlined administration, which was the objective behind a single operating framework in the SHRA. The use of private finance for the growth of community housing has long been a feature of the operating and regulatory environment in Canada and certainly a topic of considerable interest in Australia.

The issues generated by the SHRA and the elements of regulation in Ontario provide a means of comparison for the local sector and the stakeholders seeking to engage with it. However, it is worth noting at the outset that the Ontario reforms have been described as ‘complex and cumbersome’. They incorporated a series of structural changes into one regime, and were driven by the policy imperatives of three tiers of government as well as a sector trying to retain its independence and secure its financial future.

ONPHA have said that the downloading of housing to municipalities was not supported by service managers, the sector or even business groups. As a result some of the stakeholders appear to be working on the premise of averting worst-case scenarios rather than creating an enabling environment.

ONPHA have also said that a deadline to devolve public housing created a “hasty passage of the legislation, leaving most of the crucial details for the accompanying regulations” (ONPHA, 2000:2). This appeared to have created a large degree of uncertainty about the shape of the system and highlights the importance of providing information for stakeholders to have input on the features of a new regime.

Three other issues that emerge from the Ontario experience are worth noting. Indigenous housing in Ontario is now split between three levels of government: federal, provincial and municipal. This poses a number of ongoing challenges in assisting the worst housed section of the population. Reform did not deliver any new housing in an environment where the provincial government had stopped funding new housing in the mid 1990s. The legislation did not include a clause that recognised the role of non-profit housing providers in the system, which was of central interest to the sector.

⁷² Municipalities have the flexibility to set local access priorities provided they do not conflict with provincial standards or the Ontario Human Rights Code (MMAH, 2000b:13)

No new housing

At public hearings on the Social Housing Reform Bill, the CHFC said one of its major concerns was that the legislation did not deliver new housing. (CHFC, 2000a) This is interesting because the reform process did apparently only set out to provide a legislative framework for the downloading of housing to the municipalities, without provisions for future growth. While there was a standard enshrined in the legislation that the number of households assisted would not fall, it did not facilitate the development of additional social housing, which is of central interest in Australia. In Ontario the new supply appears to have come later, and separately, through the Canada-Ontario Affordable Housing Agreement, which is not explicitly captured by the SHRA or its regulations.

Sector identity

The co-op peak also argued to have an up-front clause “in recognition of the critical role of housing providers” (CHFC, 2000a:19). It was important to them that the roles and responsibilities of housing providers were clearly recognised in legislation. It as an issue about sector identity – particularly for the Canadian co-operative housing movement – to be clear about the central place providers play in the system.

Regulatory elements – similarities between Canada and Australia

Notwithstanding the tensions in the Ontario experience documented above, it is of particular interest to this project why the elements of regulation were set up, how they are being used and what comparison can be made with Australia.

National program and performance reporting – between the Canadian government and the province is similar to the Performance Indicators (PIs) used for national data collection in Australia.

Legislation – has replaced individual operating agreements in Ontario and while legislation is not always posited as the vehicle, streamlining funding and service agreements and the reporting requirements is an objective of a number of state housing administrators and peak bodies here.

A province-wide structure – in the SHSC has been established. It appears there has been some negotiation between the SHSC and peaks because there is scope in the legislation for it to contract out some services (John Mumme 2002, pers. comm., 15 October). The CHFC was concerned that the regulatory reform in Ontario did not recognise the role that peak bodies play in resourcing and developing the sector. CHFC note that they have been providing services to the co-operative housing sector since 1968. The ONHPA also provides advocacy, resources, training and management support to the non-profit housing sector. In most jurisdictions in Australia there are also well established peak and resourcing bodies playing sector-wide strategic roles.

Risk management – in Ontario is focused on the financial risks of the province and municipalities rather than wider sector viability or the risks to lenders.

Intervention powers – are framed around non-compliant or defaulting organisations rather than early support to assist a ‘project in difficulty’.

Standards – are used quite differently. Rather than the quality assurance focus of the National Community Housing Standards in Australia, in Ontario the provincial standards focus on compliance and eligibility.

In summary

One informant, based in Ottawa, commented on reform thus: “Overall there were elements that made a lot of sense - especially the funding model reform and attempt to both streamline and create a better system of incentives to be efficient while maintaining an appropriate accountability framework. However in mixing up the three pieces of work [review of municipal functions, review of the funding model and federal devolution to the

provinces], the reforms have gone off the rails and created a very cumbersome and complex system - likely with little improvement. A very good lesson in what not to do!"⁷³

The experience of social housing reform in Ontario has been very involved and rolled a series of changes into one process. It provides a case study for being clear about the drivers and the outcomes sought from regulatory reform; and supporting a future vision for the sector based on the objectives of all stakeholders.

3.4 Conclusion

Regulatory reform in both the UK and Ontario, Canada demonstrate how the range of possible regulatory tools can be used and how they are shaped by the political and policy environment in which they are employed.

Both systems are based in specific legislation. The experience in the UK demonstrates that the Housing Act of 1988-89 was enabling of significant private sector investment and growth in the RSL sector; organisational and cultural change (particularly within large organisations) and; a progressive regulatory framework. The revised regulatory code focuses on outcomes anchored in the principles of viability, governance and proper management. The code is supported by regulatory guidance, good practice and delivered on the ground through the regulatory teams and inspections. There is a tiered response to intervention based on performance information designed to be an early signal of problems. The phased introduction of a new rental formulae in the UK does have the potential to make the RSL sector a higher risk investment however, the elements of the regulatory framework provides the Housing Corporation – as the industry regulator – with tools to maintain its record of no serious insolvencies or tenants losing their homes over the past decade. These two outcomes signal it is a soundly based system and working well.

Ontarian housing reform was a more complicated process, which rolled several pre-existing policy decisions into an Act that downloaded the responsibility for social housing from the province to the municipal level. The legislation itself was not specifically enabling of any new housing despite pre-existing private investment and government guarantees. The Ontarian government has adopted more of a policy of administrative compliance. Risk management is focussed on the requirements of the legislated operating framework rather than performance management and quality improvement. The municipal service managers have strong powers to intervene under the legislation to protect their interests and that of the provincial government. One of Ontarian government's aims of reform was simplicity and harmonisation of administrative arrangements. Debate continues about whether this will be achieved, in an environment where there was little initial support from the sector or service managers for the new policy of downloading.

One of the key points of departure in the two regimes is the role of a regulatory body. In the UK the Housing Corporation is now a well-established funder/regulator that plays a strong leadership role in the sector whilst providing support to RSLs. The administrators – or the service managers – are essentially the regulators in the Ontarian sector. (The Social Housing Services Corporation has a much looser mandate and is likely to play a brokerage rather than a regulatory role.)

These two case studies highlight issues for jurisdictions developing or reforming regulatory arrangements in Australia, both in terms of the regulatory tools employed and in light of the policy drivers. In both instances new arrangements were put in place – in the UK housing management was directed to the non-profit sector and in Ontario, administrative responsibility was downloaded to the municipalities. But the additional outcome in the UK of raising funds for the sector has added enabling value in terms of supporting growth, organisational change and sector development. In Ontario, the reforms packaged up the changes sought by the provincial government – and may deliver efficiency and administrative simplicity in the long run – but does not encompass the future vision that would create some ownership in the system by the sector and its stakeholders.

⁷³ pers. comm.. Pomeroy, Focus Consulting, Ontario 2002, email, 1 November.

4. FINDINGS AND POLICY IMPLICATIONS

4.1. Introduction

The findings focus on the specific aspects of a regulatory framework that would enable wider opportunities for the sector, the issues that would have to be resolved in implementing any changes and some of the policy implications that flow from this.

Companion data reports have been prepared, which describe in detail the responses from each of the differing stakeholder groups investigated in this project. The first five stakeholder groups are 'external' – financiers, developers, churches, local government and central agencies. Their involvement has been seen as potentially important to the further development of the sector. The remaining two groups are the providers and the administrators – the regulated and the regulators. Both of the latter 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.

The similarity and differences between the external stakeholders, and the potential tensions and trade-offs between the two internal stakeholder groups are considered later in this chapter.

There are a number of contextual issues relating to external stakeholders' potential engagement with social housing in Australia that are shared across stakeholder groups. While not directly related to the project aims, these provide interesting findings and are presented as Attachment 3. Similarly, there are some general preconditions for such engagement that raise interesting policy issues. Again these have been presented in Attachment 3.

4.2 The stakeholders

External stakeholders – what can they bring to the community housing system?

One striking observation – which goes beyond the research aims – is the extent to which external stakeholders (other than central agencies) have an expectation that there will be considerable growth of affordable housing markets and private financing of social and affordable housing.

Another is their understanding of the social pressures that are creating this demand; including the needs of 'key workers', housing and social mix in high cost areas, and community capacity building. A clear view was expressed by external stakeholders (except central agencies) and by administrators, that there is a growing need for social and affordable housing that cannot currently be met through CSHA or other state funding or by the market alone. In particular, most external stakeholders emphasised the need for 'affordable housing', although informants from the churches also stressed the need for increased supply of housing for those most in need.

The potential benefits to community housing from greater involvement by external stakeholders are substantial. External stakeholders potentially bring four major sets of benefits to the community housing system: access to finance, access to new partnerships through which resources can be provided, access to new markets and access to new kinds of business.

Informants from the finance sector made it very clear that there is a strong interest in finding ways to provide finance to the social and affordable housing systems. The experience internationally shows that the volume of funds available is very substantial. However, those most interested in financing community housing were the high street banks, while other financial institutions saw social housing investment taking a different form. Despite this, the opportunity to access investment – particularly debt finance was clear.

Equally important, however, informants identified three main preconditions for access to such funds. The first is a source of subsidies to support the income stream. The second is a form of government backing. The third is access to assets (free equity) from which to lever finance.⁷⁴ Only the last two can be influenced by effective regulation. How this can be achieved will be discussed below.

Three other external stakeholder groups – churches, local government and developers – identified a strong interest in engaging with community housing providers in partnerships, which would make additional assets available to the sector.⁷⁵ There were three main sources for this: access to new social housing in joint ventures with churches or local government mainly providing land; access to stock generated as part of mixed tenure redevelopments of public housing estates; and access to new affordable housing stock made available through an increase in inclusionary zoning.

Internal stakeholders – what do they want from regulation and why isn't it being provided now?

There is a clear difference between the benefits being sought by external stakeholders and those identified by internal stakeholders – administrators and providers. In part this simply reflects the different sides of the partnership. Developers are seeking development opportunities; providers are seeking ways to use these to build the sector. Providers and administrators may have a strong indirect interest in creating the environment (including the regulatory environment) in which external stakeholders can operate. A striking example is their shared interest in a system that can provide effective monitoring of viability and which has the capacity to intervene to sustain the business and the tenancies.⁷⁶

But generally the focus of internal stakeholders is on the way that a regulatory system directly impacts on their business and responsibilities. This focus leads to three areas of interest that are specific to internal stakeholders.

Some providers see potential in a regulatory framework to support the development of more professional and innovative organisations that are able to identify and take on new business opportunities. This is also the source of some debate amongst providers, with the recognition that, based on previous experience, there is a real risk that regulation will be implemented in a way that limits flexibility and constrains opportunity. Even the strongest supporters of an enabling regulatory framework have acted strongly to reject inappropriate and inflexible proposals for further regulation from time to time.⁷⁷ The debate, then, is over an assessment of the balance of risks and opportunities. There is also a strong concern to develop a system that does not place an undue burden on those (usually smaller) organisations that do not seek to expand their business. Regulatory tiering was, therefore, particularly important to all internal stakeholders.

There are also some informants who argue that greater regulatory assurance about the capacity of the sector is a precondition of winning the government support needed to enable further sector development, including engagement with the private sector opportunities. Access to assets or equity is the most frequently cited example. Even those who place less stress on this aspect argue that the future development of the sector (and more effective regulation) depends on clear articulation of the aims of the system; and that this must include recognition of the strengths and wider capacities of the community housing model.

⁷⁴ These are discussed in more detail in Attachment 1.

⁷⁵ As noted above, some financiers also saw an opportunity to enter into partnerships with community housing in the management of housing held by new equity investment vehicles.

⁷⁶ As has been discussed a number of times, there is an equally strong view that an emphasis on powers of government intervention can be counterproductive, particularly to the extent that it is a substitute for capacity building and industry driven support.

⁷⁷ A clear example is the rejection by providers of the proposed amendments to the NSW Housing Act in 2001, despite ongoing support for incorporation of community housing regulation in the Act.

Finally there is general acceptance that regulatory reform is needed to improve the current fragmented forms of regulation. These are seen to be inconsistent, ineffective and imposing high compliance costs. Improving this was a primary focus of administrators and an abiding concern of providers.

4.3 What could regulation achieve?

Why would regulation make a difference?

This is the question that underpins the whole study. It has been answered in four ways.

First, there are a small number of improvements in the system that directly require a regulatory response. Protecting or widening tenants' rights to procedural fairness can only be achieved by making these rights explicit and establishing mechanisms to adjudicate when it is felt that they have not been met. Similarly, the right to standards of affordability or equitable access requires the establishment of minimum standards and monitoring of compliance. These measures were suggested as improvements to the system – although not as essential for its further development.

Second, regulation can have an impact on the way that the business is developed. Certainly it will have a cost and efficiency impact. But the nature of the regulation can also limit or enhance an organisation's capacity to innovate and (as noted above) the reporting regime can affect the ability of an organisation to plan and manage its risks effectively. At its best, parts of the regulatory framework can build the quality and standard of performance in all the important aspects of the business. There was a strong recognition that the current regulatory practices are ineffective, inefficient and not cost-effective. Both administrators and providers saw that a better co-ordinated, cohesive and streamlined system was part of building a viable and cost effective community housing system. Providers went further, and argued that wider regulation must enhance the capacity of organisations in order to be acceptable.

The third way that regulation can affect the future development is its capacity to manage political risks. While this is less direct, there was a strong argument from some providers and external stakeholders that more explicit assurances are essential for the development of – particularly government – confidence in the system as a precondition for the policy decisions that are needed to establish new roles and new markets.

But it is the fourth way that is the most important for this study. This is the way that regulation can enable the engagement of external stakeholders who control resources and business opportunities needed for any significant development of the community housing sector. This is less direct, but no less significant. The research has found that the engagement of external stakeholders in the social housing business depends on a range of preconditions being met. Some of these (such as the provision of subsidies) will not be achieved through regulation.⁷⁸

It was also seen to be important to assess *how much* difference regulation can make. Is it a potentially helpful contribution but not a necessary (let alone a sufficient) condition for achieving the opportunities for enhancing the community housing system described earlier – particularly those offered by external stakeholders?

Not all informants felt that there was a need for regulatory reform to enable the outcomes for the sector to be achieved from engagement with external stakeholders. However, the majority of informants explicitly supported the further development of regulation. The ways in which particular stakeholder groups explicitly argued that improved regulation would make a difference were, in summary:

- *Ensuring that there are not failures* – This was seen as a fundamental precondition of securing the risks of an income lend and of establishing confidence in community partners. Preventing *early* failures while establishing the market was particularly

⁷⁸ See Attachment 1.

important to financiers, developers and local government. In the case of financiers the fundamental purpose of this aspect of regulation is that it allows government to stand behind the financing without providing an explicit guarantee.

- *Bringing down the cost of funds* – Regulation was seen by a number of stakeholders to reduce the cost of funds: through the creation of a competitive market, the development of a more sophisticated and realistic understanding of the risks in the industry or through direct risk mitigation through regulation. The cost of funds is crucial to the viability of private financing of social and affordable housing.
- *Creating a market* – A regulatory framework including legislative certainty, general risk management, government intervention and better industry information was seen to be a basis for increasing the volume of lending, and with it competition.
- *Identifying potential partners* – Developers, local government and some financiers saw the lack of information about potential community partners with the necessary skills and capacity as a major barrier. A tiered registration system could address this problem.
- *Assurance about management capacity* – Access to public information based on assessments of capacity or viability through accreditation or performance management process was seen as important by local government, developers, and churches. Local government saw this as changing community attitudes and as part of the promotion of the sector.
- *Better risk management to enable innovation* – Church informants saw more robust risk management as necessary if we are to have innovation, since innovation is inherently more risky and requires more robust risk management.
- *Greater transparency about the environment in which external stakeholders engage with the sector* – A number of stakeholders – the churches, financiers, local government – saw the regulatory framework as a way of making explicit what can be expected of the system; including what can be expected of government. This was seen as being helpful in enabling them to overcome some of the existing difficulties in engaging.⁷⁹
- *A basis for strategic planning* – Churches and administrators argued that a benefit of regulation is that provides data that can then be used for more effective strategic planning for the sector's development.
- *Establishing minimum standards for tenants* – Central agencies in particular argued that regulation was needed to provide minimum standards for tenants. It should be noted, however, that they warned against over regulation.
- *Protection of the asset base* – Administrators and some providers saw this as a precondition of more flexibility in the use of assets – particularly access to private financing. Financiers had identified 'free equity' as a crucial element of any possible arrangements. There were differences about the nature of these protections. Central agencies, however, have not yet come to this view except on a project by project basis.⁸⁰
- *Streamlining existing regulation* – Both providers and administrators saw an immediate need to reform the current regulatory arrangements that were universally seen as being inefficient and inhibiting of organisational capacity.

⁷⁹ It is perhaps worth noting that the SA Community Housing Act was recently amended to specify the arrangements for joint ventures with bodies such as churches.

⁸⁰ In these cases – City West Housing and the Brisbane Affordable Housing Company – government's assurance is by way of direct shareholding rather than regulation.

4.2. What is needed for enabling regulation – principles and key elements

The previous section explored how broad elements of a regulatory framework would meet the requirements of both external and internal stakeholders for further development of the sector. In this section we shift the focus to the regulatory framework itself, and describe in more detail the principles and the key regulatory tools.

The full range of elements of a regulatory framework is discussed in Chapter 2. In this section we outline those elements, principles or implementation issues that have emerged from the research as of particular importance to enable the involvement of external stakeholders and the more effective development of community housing. The following draws together the range of proposals from various stakeholders, including providers and administrators. Where there are significant disagreements these have been noted.⁸¹

Principles for effective regulation

As well as the specific structures or procedures, informants and the international experience identified a number of principles that were seen by various stakeholders as essential for acceptability or effectiveness.⁸²

Regulation is enabling – This principle reflects a history of regulation or proposed reform that is seen as inhibiting innovative or even effective operations of community housing providers, and focuses on the ways that regulation is implicated in the relationships between government and non-government providers.

- *Linked to a growth objective* – In general it is argued that the effectiveness of regulation depends on the clarity of its objectives. But for providers, the bottom line for an expansion of regulatory oversight of a sector that, on available measures, performs better than other rental models, is that it must be intended to support the growth of non-government social and affordable housing provision.
- *Recognises the unique abilities of community housing organisations to add value to the system* – A growing role for the sector is not an end in itself. It is based on a view that the model can add value. If it is not to constrain the very benefits sought, the regulatory system must be framed by an explicit recognition of the value that community housing delivery can bring.
- *Recognises the autonomous responsibilities of providers* – Finally, and most important for providers, is a clear understanding that regulation must enable CHOs to function as effectively as possible. This means understanding that they are independently governed organisations with their own range of business objectives, social missions and responsibilities.

Regulation is consistent – This broad principle was proposed by most stakeholders (internal and external). However, different stakeholders emphasised different aspects of the broad principle:

- *Is applied consistently* – The principle of administrative consistency is the most basic. However, the current approach of regulation, by means of contracts or program guidelines, gives rise to serious inconsistency. This is one of the strongest arguments for a legislative base for regulation.
- *Consistency across program areas* – Variations in regulatory requirements across program areas creates duplicatory and often contradictory requirements. Its adds vastly to compliance costs and can impede the development of new areas of

⁸¹ The range of stakeholders whose input has informed a particular proposal is not noted since a lack of detailed comment on possible regulatory arrangements cannot be taken to represent dissent.

⁸² Again, it is important to stress that not all stakeholder identified all principles. See Section 4.4 for a discussion of some of the differences. All of the principles were proposed by more than one stakeholder group or were principles adopted for international systems.

business.⁸³ Many of the administrators reported current efforts to make requirements more consistent.

- *A national approach* – A number of the external stakeholders, particularly financiers and developers, argued that a key opportunity to develop new markets and volume is impeded by the lack of national consistency.

Focuses on organisational capacity not programs – This principle is clearly related to the principle of cross-program consistency and autonomy, but goes further to the structure and scope of regulation and its relationship with other capacity building processes:

- *Focuses on the whole business* – It is crucial that reporting for regulatory purposes is equally useful as a resource for governance. Without this, it is a costly imposition. Regulation that does not provide a focus on the whole business will militate against the ability of boards to plan or develop effective risk management. At the same time, this will require that regulation is not so prescriptive that it impedes areas of the business not directly the responsibility of the regulator.⁸⁴ The scope should be broader than individual programs.
- *Regulation is linked to wider capacity building* – One of the more important arguments presented by providers is that regulation – the monitoring, prescribing and intervening functions – are not sufficient by themselves. The other way to provide assurance is to build capacity; and the best approach to regulation seek to link these elements. The principle of co-regulation is discussed below as an approach that can increase the focus on capacity building.

Efficient and effective – All stakeholders, external and internal referred to the need for efficiency and effectiveness. While widely accepted, the experience of current regulatory arrangements show that there is a very real risk that regulation will be neither efficient nor effective.

- *Outcome focussed* – A key principle of all contemporary literature on regulation is that it assesses the outcomes rather than prescribing procedures.
- *Avoiding micro-management* – In the light of current practice, there was strong concern that regulation should not seek to prescribe or override the management decision making process. In many jurisdictions this goes well beyond direction. Whole aspects of the business are undertaken by government because (in the view of providers) of an unrealistic lack of confidence. A key outcome sought by providers and some joint venture partners from ‘enabling’ legislation is that this form of direct management can be replaced by effective regulation.
- *Streamlined and cost-effective*– All stakeholders stressed the need for streamlined regulation, avoiding wherever possible, complexity, excessive detail or duplication. Central agencies and some providers stressed the need for strong control over the cost of the regulatory system and of compliance costs.
- *Fewer prescriptions in favour of ensuring regulations are actually adhered to* – Some church and some provider informants particularly argued for a shift in the balance of regulation, away from excessive prescription or reporting and onto ensuring effective compliance or evaluation.

Enables innovation – All stakeholder groups stressed the need for regulatory approaches that did not inhibit innovation.⁸⁵ This objective is captured in a number of other principles, such as efficiency and effectiveness, but because of the emphasis placed on it by stakeholders it deserves separate mention.

⁸³ Inconsistency between various Acts was particularly problematic. In one example a major opportunity to utilise surplus government land was lost by a conflict with legislation relating to Real Estate Agents.

⁸⁴ This then goes to the location of the regulator. If it is too closely linked to a specific funding source or program, then it will run the risk of limiting organisations. If it is more independent, this risk may be reduced.

⁸⁵ Although administrators referred to this more in passing than other stakeholders.

- *Enabling and protecting risk taking* – a particular observation is that those organisations that “aim highest” are inevitably subject to greater risks. In this respect, a principle for enabling regulation is that, rather than limiting such risk taking, it enhances the capacity of organisations (and their government and external partners) to manage the risks.

Proportionality – proportionality is one the most important of all principles. It is a principle of all contemporary approaches to regulation and was stressed by informants. They emphasised two distinct forms of proportionality between:

- *Risks and oversight* – It is recognised that many organisations present little risk or risk in limited areas of their operation. It would be inappropriate to impose the same level of regulatory oversight as that imposed on organisations with more complex business or higher levels of risk for other reasons. There is therefore, very substantial support for regulatory tiering to match oversight to the level of risk.
- *Risks, benefits and costs* – Similarly, a number of stakeholders, but particularly central agencies, stressed that regulation should also be matched to the cost benefit of such regulation. If the cost of regulating some risks outweighs the likely benefit, even if the risk is high, then regulation may not be an appropriate response.

Relationships that ensure confidence – This broad heading seeks to capture a number of important principles that go to the status and relationships of regulatory bodies. It is significant that while these principles were articulated by external stakeholders, central agencies and providers, administrators and those designing regulatory reform did not refer to either co-regulation or oversight. The key to these principles is that they address potential conflicts or lack of confidence in the system.

- *Co-regulatory approach* – The negotiated division of regulatory responsibility between government and an industry is a widely accepted principle of contemporary regulation. It recognises the strengths of self-regulation and the strong interest of an industry in ensuring standards and public (or government) confidence, while acknowledging the difficulty for industries in effectively policing non-compliance. But it also embodies another potential strength. Industry bodies provide a range of capacity building services and industry wide products (such as insurances) that enable a more robust business approach. Co-regulation enables this to be drawn on to deliver more effective risk management or (as discussed earlier) interventions to support organisations at risk of insolvency or poor performance.
- *Independence of funding and regulating* – This principle is far more debatable (and debated). There is a general awareness between providers and administrators that there are risks of conflict of interest between the two functions. More positively, there is recognition that the regulation role is specialised and requires distinct skills. On the other hand, financiers and other external stakeholders (including informants in the UK) argue that the government interest as an investor provides greater confidence that the regulatory role and intervention (where necessary) will be far more effectively pursued. It is clear that there is an important issue at stake here, but it is not clear how it should be resolved.
- *Oversight* – Provider and central agency informants raised the risk of regulatory structures growing unchecked. A provider informant argued that this should be managed and the ownership and confidence of all parties ensured, by establishing a structure to oversee the performance of the regulatory body itself. It was argued that this should include representatives of all stakeholders. In a more limited way, the regulator in the UK is overseen by the Audit Office, which is responsible for periodic reviews of its performance.

Transparency – Again this is an internationally recognised principle of regulation. The lack of transparency in current arrangements is one of the strong arguments for reform. However, informants placed different emphasis on various aspects of transparency:

- *Decision-making is clear* – Most fundamentally, this means that the basis of decision making is clear, understood by those affected and can be appealed where there is doubt that decisions have been properly reached.
- *The regulator's reports are made available to potential partners* – A more controversial aspect of transparency is that decisions are available to external stakeholders to provide them with the confidence needed. The balance between this and appropriate confidentiality has to be further explored.
- *Greater public reporting* – A wider concern with transparency is the development of public reports on the standing of organisations and the performance of the sector more generally. As discussed earlier in this chapter, this is a key precondition for the establishment of wider markets and partnerships.

Accountability – It is a principle of effective regulation that accountability is two way – the accountability of providers must also be matched by the accountability of the regulator. This principle of accountability is closely related to the principles of confidence and transparency above. It is also an internationally accepted principle of regulation. Again there are a number of aspects:

- *Reviewing regulatory processes* – A key to accountability is that the regulator and the system is subject to periodic review. This is not just a matter of performance, but it ensures that regulation is adaptable and appropriate to changing environments.
- *Proper consultation* – A major issue for providers and a principle explicitly adopted by the regulator in the UK is that the establishment, conduct and review of regulation should be based on effective consultation. Some informants noted that the lack of effective consultation had resulted in the development of unsuccessful regulatory initiatives.
- *The regulator is accountable to all stakeholders* – For some informants the need to provide effective notification of risks or problems to external stakeholders with an interest in the solvency, viability and quality of organisations, is a matter of accountability. Others raised the same issue as a matter of transparency.
- *Clarity about who is accountable within any partnership arrangement* – A specific concern of church or local government informants who are likely to enter into joint venture arrangements or to undertake community housing as part of a wider umbrella structure is which entity or part of an entity is accountable. This is the converse to the principle that the regulation should monitor the whole entity rather than programs. Ultimately, this means that the entities undertaking a community housing business must be appropriately and distinctly structured to manage the risks and responsibilities of that business.

Fairness – Where organisations are adversely affected by regulation they have an opportunity to appeal against decisions.

The key elements of enabling regulation

Legislation⁸⁶

Most stakeholders explicitly or implicitly supported the introduction of legislation to enable a regulatory framework. However, its role was seen to be far wider than simply to provide the powers to regulate; indeed, were it to do this alone, there would be strong opposition from providers. First, there must be clear policy about the way that role and objectives for the sector inform any legislation. A number of these must be embodied in the legislation:

- The objectives for the sector.

⁸⁶ Detailed comments about legislation and other elements of regulation are contained in Vol 2 of the Kennedy report.

- The character of community housing as autonomous organisations able to work with government and other stakeholders to deliver social and affordable housing outcomes amongst any other business they seek to establish.
- The broad financing and partnership framework, including particularly, government financing responsibilities and the permissible uses of assets or equity in which government has an interest.

The legislation would then also provide a clear statement of the regulatory objectives and enabling powers. At the same time, it would avoid the inflexibility of prescriptive black letter regulation. The legislation should not only provide the powers to regulate, but should specify and establish the regulatory agency and the provisions for its oversight. There was a general agreement that as far as possible the regulator should be separated from sector development and administration. However, administrators noted that there may be limitations to the capacity to formally separate these functions. At the same time, the UK situation (and the preference of lenders in the UK) of bringing regulation and public investment together in the one organisation was noted. While no clear views were expressed about this arrangement, it was understood that this requires government to act as a 'public investor' with a strong stake in supporting the financial viability of the organisation, rather than the current more administrative role of 'funder'. It was further noted that this might require a change of conception of government's function.

Registration

Many stakeholders saw registration as central to their effective engagement. Registration identifies potential partners, and provides information on their standing in the system. However, the crucial information needed is initially on the capacity and business of the organisation. This suggests that regulatory tiering, whereby organisations are registered in different categories depending on levels of capacity, performance and risk. Both administrators and providers also strongly supported regulatory tiering, particularly as a key to ensuring that the principle of proportionality was adhered to. That is, that the level of oversight matches the level of risk. Smaller organisation that do not wish to take on new areas of business with greater risk would therefore have a less onerous level of oversight. In the one example of regulatory tiering currently existing, the level of registration is also linked to accreditation as an organisation meeting quality assurance standards across all aspects of the business.⁸⁷

Statutory charge

Access to assets and equity was identified as a key precondition by financiers, developers (although their interest is not in community housing assets but wider public housing assets) and providers. It was generally recognised that some form of ongoing government interest in these assets is a public requirement. There was some debate about whether new instruments to establish such an interest comprised an unwarranted extension of control – a 'clawing back' of sector interests. More importantly, there was a strong concern that such control would impose a 'permission based' approach that would fundamentally inhibit the use of assets and equity. However, against this, it was recognised that the use of a statutory charge in the UK does not inhibit debt financing or asset management. Three features of the UK system that enable this were noted: the charge has the status of a second mortgage, the expected uses of the asset are more explicit and some aspects are specified in the legislation, and there is an attitudinal difference whereby it is presumed that permission would only be withheld under unusual circumstances rather than only granted under exceptional circumstances.

Specific risk management

All organisations will need some measures to assess whether difficulties are emerging in their performance. These provide protections to tenants and a level of assurance to the community and government. Such performance management is discussed below.

⁸⁷ There are currently two levels of registration in the NSW community housing system.

However, more complex organisations or those with more demanding financing or management arrangements may need specific risk management plans. These might be established as part of a tiered regulatory system (as is the case in the UK). For any large financial or management arrangements there is also likely to be separate reporting to lenders or partners against key risks for that relationship. In the UK these are seen as being complementary and Australian informants argued that the capacity for regulators to act complements a lender's risk assessment needs. Communication and avoidance of duplication were seen to be essential if these are to be truly complementary.

The key areas of risk were identified by Australian finance sector stakeholders. The assurances needed to show that these can be managed vary; and a number of them, such as capacity to intervene or explicit subsidy streams, are discussed elsewhere in the findings. Some are general capacities that should be managed through a broad performance management framework discussed below and/or a quality system. Some, however, provide the basis of a suite of measures from which specific risk management plans can be tailored. To a large extent these also parallel the set of criteria developed by the UK Council of Mortgage Lenders to provide guidance to lenders assessing financing proposals.⁸⁸ These risks identified are:

- *Rental income stream* – this included three areas of risk: rent collection, subsidy risks (such as access to Rent Assistance), and vacancies.
- *Tenancy management* – this included tenant selection (for some informants this included 'screening' or 'sifting'), evictions, and subsidisation of higher risk tenants.
- *Asset management* – procurement standards, inspections, maintenance standards.
- *Solvency* – financial performance standards, 'financial resources', capacity to manage to the cost benchmarks required by financing structures, probity.
- *Sustainability* – long-term capacity (20-30 years), and "the government willingness to replace an under-performing management".
- *Human resources* – the "calibre of the people in the group", a "core skill set in the areas of financial management, tenancy management, asset management".

Performance management – general risk management

For most external stakeholders this is the main benefit of regulation. This ranges from a broad capacity to provide assurance about the level of performance of services to the ability to clearly identify emerging risks to solvency or other viability issues. All stakeholders were particularly concerned that this aspect of the system was right. For a number – particularly financiers, local government and some providers – the key issue is the capacity to identify early emerging risks to solvency and viability. At the same time, providers stressed that risks must be understood contextually and in relation to the nature of the organisation and its financing.⁸⁹ Two different conceptions of monitoring performance were discussed – a system based on indicators of potential risks across aspects of the business and a system of 'compliance' with minimum standards or required procedures. From the point of view of external stakeholders, it is the identification of key risks that is paramount. In the UK, a somewhat different distinction is found. On one hand there is a regulatory code that requires self-assessment against a set of basic outcome areas, linked to guidances.⁹⁰ This broad outcome focused approach to minimum requirements for acceptable performance seems to stand halfway between the Australian quality standards for community housing (see below) and a minimum standards approach.⁹¹ At the same time there is regulation by 'lead regulation teams' of large organisations that identifies a

⁸⁸ See Attachment 2 for the set of criteria used by UK mortgage lenders to assess financing proposals.

⁸⁹ The NSW performance management framework currently being piloted takes precisely this approach, adding a stage of interpretation to the use of its performance indicators. A similar principle informs the National Community Housing Standards (standards of service quality).

⁹⁰ See Chapter 2.

⁹¹ The Australian standards focus on quality (both assurance and improvement) and so are optimal not minimum standards.

specific risk profile and regulatory regime. There is also a separate financial appraisal process.⁹² The Housing Corporation (the regulator) has established a number of key financial ratios to assess solvency and financial risk.⁹³ These latter elements focus on the risk management approach and in particular, solvency.

A number of conclusions can be drawn from the above:

- The first is that a clear distinction needs to be drawn between minimum performance standards and risk management; and the latter is a requirement of key external stakeholders.
- Second, even in the case of minimum standards, an outcome focus rather than detailed prescription is preferred.
- Compliance is an even more limited and prescriptive component of performance, although in both the UK code and Australian quality standards, compliance with separately specified requirements, such as rent setting, can be included and monitored as an outcome.
- The recent NSW model of performance management provides a focus on risk in a system wide framework, without the separate risk management plans required of larger organisations in the UK. However, its emphasis on context and links to regulatory tiering would be consistent with greater specification of particular risks for some organisations.

Finally, it is worth noting that the risk management framework established in Ontario Canada reflects a different interest in risk. There, the province and the local authority underwrite the financial risk of insolvency, rather than it being born by the lender. There are incentives (in the form of reduced liability) for the local administrators to manage these risks. But as a result, the emphasis is on managing the financial risk to administrators, rather than the risks from the point of view of organisations and their effectiveness.

Quality standards and accreditation

A number of the risks outlined above, about which external stakeholders will seek assurance, relate more to quality management. These include effective governance, human resource management or (a capacity of particular concern to developers) local community development and management skills. Similarly, the protection of tenants' interests depends on an orientation to a high standard of tenancy management and responsiveness. These go to the *quality* of services. Both quality assurance and quality improvement are reflected in quality standards. The National Community Housing Standards are such quality standards. The National Standards have just been reviewed and have been restructured to provide a stronger outcome focus. The review also concentrated on the processes for both internal quality improvement plans and external assessment and accreditation and the relationship to other regulatory requirements (RPR, 2002). Both the national review and the performance management framework being piloted in NSW, assume a link between the quality system – which provides a point in time assessment of the overall quality and quality improvement approaches across all aspects of the business – and the risk identification system that regularly monitors indicators of performance in critical areas of the business. In some areas, the assessment of these risks will be moderated or assisted by accreditation and conversely, in some baseline area of performance, satisfactory assessment by the performance management system would be required for accreditation as a quality organisation.

Minimum standards

However, a number of informants also talked about what must be seen as baseline standards – a compliance focus. These clearly include some compliance with other legislation such as health and safety, or standards of probity. They may also include

⁹² The NSW performance management framework goes hand in hand with specific financial oversight.

⁹³ See Attachment 2 for the financial ratios used by the UK Housing Corporation.

compliance with standards of rent setting, access to transport, or requirements for allocations. It is perhaps striking that such minimum standards are of concern to government – both administrators and central agencies – but are not discussed by providers or external stakeholders.

Inspections

Inspection is another tool in the regulatory kit. Various forms of inspection were noted by informants. These included organisational audits, the Best Value Inspection in the UK, which complements the Housing Corporation regulation and are undertaken by the Audit Office, and ‘best value’ inspections established in NSW for public housing client service teams and recently piloted with community housing. In fact, part of the assessment process for accreditation is a form of inspection. These and organisational audits were seen to be of considerable value in strengthening procedures. However, the distinct focus of inspections seems to be that they observe practices, particularly the delivery of services to consumers, rather than procedures. Providers in NSW reported that this was valuable for building capacity. This approach was not explicitly discussed with external stakeholders; and there was insufficient discussion with internal stakeholders to reach a conclusion about its importance in a regulatory framework. However, as will be discussed below, ‘capacity building’ is a very important complement to regulation and to the extent that inspections play this role, they may be valuable.

Intervention

As discussed elsewhere, the assurance that government will stand behind the solvency of organisations through the regulatory system – in lieu of financial guarantees – is a precondition for lending. The primary criterion for an enabling regulatory system, then, is that it is able to intervene effectively and early to support and, if necessary, restructure organisations to ensure that there is never a need to foreclose. The discussion by informants suggests that there are two conditions for achieving this. The first is the effectiveness of the monitoring regime. This means reporting indicators that are capable of genuinely identifying emerging risks, the capacity to interpret these appropriately (without either neglect or alarmist and unwarranted concerns), and the capacity to do this early. The second, however, is the appropriateness of the intervention. Providers particularly argued that it cannot primarily be about the application of last resort powers. Nor can formal steps such as appointing an administrator achieve what is needed. Rather, a collaborative effort to find solutions, build capacity, negotiate rescue packages and the like are what has been successful in the UK. This was confirmed by UK informants. The example of a co-regulatory approach now being implemented in NSW, which contracts industry bodies to manage either internal restructures or ultimately a transfer of management, was seen as a model.

Processes for communication

As noted above, communication between lenders and regulators is important to ensure that their respective reporting requirements and responses are complementary. For some stakeholders like local government, communication with regulators is even more important, since they are not in position to develop their own reporting requirements. However, they need to be sure that they will be informed if their assets or affordable housing tenancies are at risk. Communication with external stakeholders over performance is a new role for government administrators. There are also some clear issues of confidentiality that would have to be clarified. Moreover, it would require regulators to be well informed of key external relations and to have a wider flow of communication with external players in the industry. This kind of approach is established in the UK, but represents a substantial change for both administrators and providers in Australia. Nonetheless, it would appear to be an essential part of a process of regulation that enables external participation.

The importance of a communication role goes beyond information on individual risk. Industry information on financial structures, global performance, and policy issues as they emerge is crucial to the establishment of robust and sustainable markets, which are the basis of the benefit to the sector from external stakeholders. Again regulators, and also

industry peaks, will need the expertise and staff positions to make these relationships effective.

Information and data

Information is a key outcome sought from a regulatory system. It is one of the benefits of registration and tiering. It is also central to the communication with external stakeholders about the performance of particular providers and of the system as a whole. Administrators also stressed the value of data for policy and planning. External stakeholders noted the need for market information. In the UK this is an important aspect of the way that the regulator carries out its work and the products produced by the regulator. This is clearly a distinct aspect of the regulatory role. Data collection in Australia is undertaken by the Australian Institute of Health and Welfare as part of the National Housing Data Agreement between the states and the Commonwealth. In many ways this data function is like some aspects of the Canadian standards, which provide reporting to the federal government about the extent to which provinces have met agreed outcomes. In Australia, data collection was, in part, driven by a need to report against broad CSHA outcomes, although it now provides more general measures of state performance. A key concern of regulatory reform for community housing in Australia is to limit the duplication and compliance cost of reporting. To date, the synergy between national data collection and regulatory reporting has been poor. One outcome of a more robust regulatory framework might be an improvement in such synergy and a reduction in compliance costs.

Independent tenant appeals mechanisms

One specific regulatory measure that was noted, which can substantially improve transparency in outcomes for tenants and improve performance and capacity across the system, is an independent tenant appeals system. Many organisations have internal appeals procedures, these lack the transparency and expertise of an independent appeals system across the sector.

Checks and balances

Providers and central agencies identified the risk of over-regulation and a propensity to evolve in that direction. Perhaps more important, it was clear that regulatory reform is being pursued in a context of low levels of trust between providers and administrators. Providers in particular, argued that managing these risks, and building ownership of regulation requires transparency and checks and balances. The two most important that were proposed by a small number of informants was an explicit system for appeal against regulatory decisions, and structures for regulatory oversight with both government and industry participation.

4.3. Tensions, preconditions and trade-offs

The applicability of the above regulatory reforms in the existing community housing systems

This section considers the tensions that emerged from the research and the trade-offs contained within these tensions. The policy implications will be considered in the following section.

Key tensions were identified around the following areas:

- setting policy parameters
- increasing engagement and good will against a history of poor trust between providers and administrators
- control of the assets
 - central agencies reluctant to relinquish control
 - statutory charge: use of the instrument
 - statutory covenant may inhibit partnerships

- relationship between the regulator and the private finance sector
- developer interests and consumer interests
- transparency and access in a competitive funding environment

Setting policy parameters

One of the principal tensions that emerged from the research was a lack of clarity and consensus around the policy parameters of an enabling regulatory framework from the perspective of internal stakeholders. Providers argued that a new regulatory approach should be framed by a clear policy framework. Establishing the policy objectives – and specifically, community housing’s role in achieving these objectives – *before* designing the regulatory system is important for two reasons:

- To ensure that all stakeholders (particularly those being regulated) understand what regulation aims to achieve, how it will work, and the implications for those involved. This is, in part, about encouraging ownership of a new regulatory approach.
- To ensure that the system does not inadvertently inhibit the activities it ultimately seeks to enable.

Within this context it is worth reiterating the emphasis that the UK Better Regulation Taskforce places on ‘avoiding unintended consequences’. As noted in Section 2.1, one of the Taskforce’s ‘tests of good regulation’ is that the implications of all regulatory changes are fully considered. This involves being clear from the outset as to the rationale driving regulatory reform and the full range of objectives it is envisaged regulatory change will help achieve.

Both administrators and providers identified two broad outcomes that they would want from a regulatory framework:

- Streamlined administrative arrangements, which would improve reporting processes, remove duplication and ensure accountability.
- Encourage innovation (enable independent and viable organisations to conduct their business in a more flexible and innovative way), and attract new forms of investment.

However, as discussed in Section 4.8, most administrators envisaged that these measures would occur in a two-stage process as follows:

- Stage 1 – achieve administrative efficiency
- Stage 2 – attract new forms of investment.

In turn, while it was acknowledged that keeping a ‘policy focus’ on immediate and future outcomes of a regulatory framework was important, this did not appear to translate into establishing a clear policy framework prior to developing the regulatory system. Government informants described this incremental approach as necessary, if not ideal, based on the amount of work involved in establishing a framework of regulation. This tension was reiterated in the joint findings seminar where it was suggested by some government attendees that a ‘radical overhaul’, which accommodated every potential future outcome, would interrupt business.

Provider and peak informants proposed, however, that it is important that the policy objectives are clear from the start. A shared understanding of the outcomes of a new framework is necessary to ensure that the tools developed can deliver these outcomes - even if this is to occur at a later stage. Again, sector representatives emphasised this concern at the joint findings seminar, arguing that without a clear policy framework providers could end up with an approach that is prescriptive and ‘disenabling’. Importantly, sector attendees stressed that without a clear – and broadly agreed to – policy framework, an imbalance in the compliance, capacity building and enabling dimensions of a regulatory system could easily occur (this is considered in more detail in the point below).

The tension lies, therefore, not in contradictory policy objectives, but in a lack of clarity on what the objectives are, and, more importantly, in how the objectives (or absence of) will impact on the design and approach to new regulation.

Increasing engagement and good will against a history of poor trust between providers and administrators

In response to the preliminary joint findings, seminar attendees emphasised a history of poor trust between providers (including the churches) and administrators. While this varied in the severity ascribed – for one sector informant, ‘distrust’ best captured the relationship; another described a “mutual lack of confidence”, whilst a third talked about a lack of understanding of how each other works – there was general consensus that the relationship between government and the sector was frequently a fractured and difficult one.

On the one hand, it can be argued that an improved regulatory approach may facilitate improved relationships – by clearly delineating roles (particularly separating administrative and regulatory roles), responsibilities and risk allocation. This would be reliant on the regulatory principles underpinning the design of a new approach (transparency, proportionality, outcomes-focused and so on).

However, conversely, the lack of trust or confidence could present a possible barrier to achieving an enabling regulatory framework that has the support of all players. This lack of confidence was expressed in the field research in a number of ways, for example:

- *Honouring future objectives* – Interrelated to the tension around policy objectives, providers expressed reluctance to endorse a regulatory approach that does not explicitly sets out the benefits to providers (as well as to government and consumers). That is, there is a concern that government might renege on its in-principal commitment to address provider benefits at a later stage.
- *Intervention* – Sector concern that intervention will be ‘punitive’ rather than ‘supportive’. Establishing a process of intervention that focuses on prevention and ‘problem solving’ rather than policing – that is, operates in conjunction with risk management strategies and skills development, and early intervention as well as ensuring government has the legal capacity to intervene in ‘worst case scenarios’.
- *Accountability* – Government informants raised concerns that some CHOs would resist increased reporting.

Paternalism versus partnership - The examples above are just three of many that emerged in the provider and administrator workshops and were underscored in the joint findings seminar. Paternalism underpins this uneasy relationship. Sector informants identified a history of CHOs being treated as a ‘franchise’, rather than independent (not-for-profit) businesses and argued that SHAs were ‘nervous’ of initiatives that are not directly controlled. It was suggested that administrators want innovation *and* they want to control it. Ironically, administrators observed this tension in central agencies, who similarly expressed a desire for both (sector) innovation and (government) control.

Sector informants raised the concern that recent regulatory initiatives have sought to extend control over providers without specifying the consequent benefits to the community housing system and providers.⁹⁴ From a sector perspective, government’s role is not to define the business of CHOs. That is, CHOs are not simply an agent for government but rather, are funded to deliver a specific service because of the management model they offer. In turn, this service may form simply one part of their business.

⁹⁴ The recent failed attempt to introduce community housing legislation in NSW was offered as a key example. The sector was unable to support the proposed legislation precisely because it was seen to extend government control over aspects of the business in ways that were seen by the sector to undercut viability.

In response to this perceived history, sector informants, once again, stressed the importance of establishing the policy objectives up-front and ensuring that the system has the appropriate checks and balances in place to guarantee that:

- an appropriate weighting is given to compliance *and* capacity development
- there is a balance between administrative control and provider autonomy.

The move towards a ‘true’ partnership that recognises both parties as responsible, autonomous bodies could be either facilitated or undermined by the regulatory reform process. As broader experience and trends in regulation suggest, a prescriptive or heavy-handed approach that fails to adequately engage all stakeholders will effectively stifle innovation and further disenfranchise the industry.⁹⁵

Alongside this, we can learn from the Ontario regulatory experience (Section 3.3) where legislation was pushed through without fully engaging all stakeholders and specifying crucial details. This, in turn, created considerable uncertainty about the system and what it could achieve.

Alternatively, a co-regulatory approach that: actively engages industry in the design of regulation to ensure it is relevant and to foster ownership; is performance based; and underpinned by the five principles of good practice – transparency, accountability, proportionality, consistency and targeting – could improve relations between government, the sector (and other stakeholders) as well as contributing to improved outcomes for tenants and applicants.

Control of / access to the assets

Private finance sector informants identified access to the assets (free equity) from which to lever finance as one precondition to secure funds. In relation to this, providers and administrators argued that that this would not happen unless a more transparent regulatory framework was introduced with a charge over the assets to protect their use and disposal. This would reflect the approach in the UK and the Netherlands in which ownership of the assets by community organisations plays an important role in attracting private investment.

Three tensions relating to control and access emerged in the research:

- central agencies reluctant to relinquish control
- statutory charge – the use of the instrument
- statutory covenant may inhibit partnerships.

Central agencies reluctant to relinquish control – as discussed in Section 4.6, informants from central agencies expressed a disinclination to transfer control of the assets to community organisations. This was based on the view that it would expose government to increased financial risk and would obviate financial returns to government. However, it is important to note that these observations were based on minimal exposure to the arguments supporting transfer of control. It can therefore be described as a potentially transitory tension, which could be alleviated through further discussion of both the relevant policy objectives and regulatory approaches to managing the associated risks.⁹⁶

Statutory charge: use of the instrument – A tension around the *use* of the instrument emerged from the research and was restated in the joint findings seminar. From the perspective of some sector informants, a charge over the assets was seen as an extension of government control (that is, in areas previous ‘free’ from control). Related to this, a charge was viewed as a ‘permission-based’ instrument. That is, rather than being used as a ‘last resort’ if an organisation or initiative looked set to fail, it would be used in a stifling

⁹⁵ For a more detailed discussion on regulatory practices and recent trends see the Positioning Paper.

⁹⁶ It is worth noting, however, that a sector attendee at the joint findings seminar responded to government reluctance to transfer control with the observation that implicit in this concern is the assumption that government is the *owner* rather than the *caretaker* of public assets and monies.

way, in which permission had to be obtained before embarking on an asset related initiative.

It is important to consider this tension within the context of UK experience. As discussed earlier in the report (and in the Kennedy Report), the principal drive behind a statutory charge over the assets is two-fold:

- A charge works to prevent public assets from being inappropriately used or disposed of. That is, it makes explicit upfront the uses that are deemed appropriate. A charge is far less of an administrative burden than government holding a mortgage or caveat over an individual property to achieve the same protection.
- A charge model facilitates private investment because government only has to give consent to a first mortgage over a property. A charge basically gives government a second mortgage position *without* the need for preparation of further legal documents.

Experience in the UK suggests that with the introduction of an agreed upon charge the concerns expressed above may disappear. In the UK, providers are relatively unrestricted in their management and use of the assets unless a proposal is overly risky or dubious.

Statutory covenant may inhibit partnerships – Striking a balance between the protection of assets and encouraging partnership arrangements that can accommodate *all* potential partners emerged as a tension. While the intention of a covenant may be to protect the use of an asset for social purposes, for churches a covenant may contravene internal obligations around control over their assets. Church informants highlighted the concept of ‘stewardship’ – of holding the assets in trust – and explained that church law regulates the use and disposal of assets.

Relationship between the regulator and the private finance sector

As discussed in Section 3.2, the relationship between the regulator and the lender in the UK is well established and has been identified as a vital element in ensuring the viability of the lend. To reiterate, the regulator maintains this relationship in two key ways. Firstly, lenders are kept informed of any problems relating to RSLs that emerge in the regulation processes. Secondly, the regulator keeps abreast of the requirements of the lender through regular communication, access to relevant information and some assistance to new lenders entering the market.

However, when asked to consider the applicability of this relationship within an Australian context, administrators and policy makers expressed reservations. In general the view put forward was that engaging with lenders at this level was a considerable way off and could not be addressed within the context of immediate pressures to restructure and consolidate administrative processes. In contrast, private financiers had a relatively clear expectation that there is an immediate role for private financing of social and affordable housing in Australia and, importantly, mobilisation of this role is, in part, reliant on the introduction of new regulatory and associated arrangements.

In summary, while there is already actual engagement of the private sector and a readiness to extend this engagement, administrators and policy maker, do not seem interested in exploring the preconditions for fostering this engagement. This is in spite of administrators expressing clear recognition that attracting private investment is instrumental an adequate supply of social and affordable housing is to be achieved.

Following from this, it is also important to note that in some jurisdictions government is slow to recognize, or is not interested in, the particular requirements of the churches and local government that would support their increased involvement in community and affordable housing

Developer interests and consumer outcomes

Perhaps unsurprisingly, interviews with developers revealed a tension around the level of tolerance of high needs or high risk tenants. One view put forward was that a tougher standard (around rent arrears) would need to be implemented via regulation. As well as

presenting a potential and obvious problem in relation to good outcomes for high-risk tenants, this view also stands in sharp contrast to the provider perspective that tenancy management is the role of the community sector *not* the developer. Within this context, it is also worth noting that developers and some financiers expressed a preference for low risk or affordable rather than social housing tenants.

However, developers did offer a spectrum of views, which included recognition of the need for skilled (community) tenancy management as well as the more intrusive arguments for tougher standards and greater intervention (or micro-management), and externalising the risk cost to government.

Transparency and access in a competitive funding environment

The tension in this instance is evident in two ways:

- Firstly, between external stakeholder information needs and provider reluctance around public reporting within a competitive funding environment.
- Secondly, provider access to other providers' performance data for benchmarking and quality improvement purposes within a competitive funding environment.

External stakeholders emphasised that one of the current barriers to expanded involvement in social and affordable housing is a lack of information about potential community partners – that is, who they are and assurances around financial viability and management expertise. In turn, providers argued for access to meaningful data against which organisations could measure their performance and develop quality improvement plans.

Whilst both providers and administrators recognised the potential benefits of greater public reporting, this was qualified by the need to ensure both the appropriateness of the content and the manner in which information is released. Two key points were raised:

- Consistency in administrative arrangements and other conditions is a precondition to the 'usefulness' of comparative data.
- Cross-sector reporting should be conducted in a non-identifying way.⁹⁷

In summary, we can conclude that the decision to make information publicly available should be undertaken against a series of tests that ensure all relevant parties are in agreement on *why* the information should be made available, *who* the information should be made available to, *how* the information will be presented.

4.4. Policy Implications

The need for regulatory frameworks

Since the development and implementation of regulation is entirely a policy issue, almost all aspects of this research have been focused on identifying potential policy measures. In this section we do not intend to revisit the range of regulatory instruments that have been identified as having the potential, and in some cases as being essential, to enable wider engagement with external stakeholders to support the development of community housing. In what follows, we focus on the main policy-related conditions for achieving this and a few of the areas that appear to raise unresolved questions.

But first we should reiterate the two overall findings of the research. First, there is a strong view from the informants in this study that there is a real opportunity to attract substantial new resources and develop new forms of business in community housing and that appropriate regulation is a precondition and a significant aid to enabling these new opportunities to be realised and the sector to engage with them. Second, the current

⁹⁷ For example, the NSW Office of Community Housing recently produced data and averages across organisations for the first time. It was reported that CHOs found this information immensely useful. The success of this release of data was attributed to the following factors: a) the data project was undertaken with significant input from the sector b) the data was released in a non-identifying way – generic information, for example state averages around arrears, was sent to all organisations. Individual organisations were also sent a report of how their organisation fitted into the overall picture. This meant comparisons weren't made between organisations unless they chose to reveal their placing with other sector colleagues.

regulatory arrangements are not only a barrier to these new opportunities, but are significantly inhibiting the capacity of the sector to do its current business and develop as strong and innovative housing organisations.

The policy implication of these overall findings is clear. Regulatory reform will generate significant benefits for the sector; and should be pursued across all jurisdictions. But this should be the development of complete regulatory frameworks and their design should carefully consider the key elements described in section 4.3.

In some jurisdictions this has been recognised, and systematic regulatory reform is underway. Moreover, in the past few years a number of new initiatives, such as the development of national standards and, in some states, accreditation, have provided elements of a more effective regulatory framework. At the same time, some of the initiatives have not been seen by provider informants to have met a number of the principles identified in Section 4.4.

National co-ordination?

A significant policy question arising from this is whether there is an advantage in a more national, or at least co-ordinated, approach to regulatory reform. One of the opportunities – access to private financing – is now a condition of the current Commonwealth offer for a new CSHA, which clearly indicates a national interest in progressing the issue. Just as important, a number of the external stakeholders also argued that a national framework would greatly facilitate the establishment of the new markets needed. It is worth noting that a joint approach was taken by five jurisdictions to undertake the study on which this project builds to elaborate the broad toolkit of regulatory measures that might be applied in community housing.

Establish the underlying policy rationale

A second very broad policy implication is the need to provide a clear policy focus to the regulatory reform currently underway. It seems clear from this study that, while administrators (including those currently managing regulatory reform) have a broad desire to see more resources and greater innovation, this is not articulated as a purpose of the regulatory frameworks being developed. More importantly, the design of regulation does not ask the question that has underpinned this research – ‘how would the regulatory elements need to be designed or implemented to enable these outcomes?’. Instead, this is seen as a possible future question. This seems a striking omission given the sense of immediacy given by external informants, providers and the circumstances faced by the social housing system more generally. The need to articulate the purpose of the system in this way (and to design it with a view to meeting this objective) is reinforced by the views of the external stakeholders and non-government providers. There are three areas in which such policy underpinning is required: broad agreement about the future shape and direction of social housing; the specific financing and delivery approach to provide certainty in the policy framework; and an articulation of a growth and development objective for community housing as the underpinning of any regulatory framework.⁹⁸

Ensure that agreed regulatory principles inform development

The last of the overarching policy conclusions of the research relates, not to the objectives, but to the principles that should inform regulation. A significant driver of the work now being undertaken in states and territories is the inefficiency, cost and ineffectiveness of current arrangements. In this respect they are seeking to implement principles of efficiency, consistency, and transparency. However, as noted above, there are a substantial number of other principles. While some are largely proposed by various stakeholders, others are internationally accepted principles of regulation and are well accepted by central agencies. One – proportionality – has already won general

⁹⁸ It was argued that the extension of regulatory assurances does not make sense without this goal, given the current data from the National Customers Satisfaction Surveys undertaken under the National Housing Data Agreement which show that community housing has the highest level of satisfaction, rather than a high level of risk for tenants.

acceptance amongst those designing new systems. But others, such as accountability; a focus on confidence building – in particular co-regulation; a focus on not inhibiting innovation; and transparency were not described by informants as principles against which the regulation being designed was assessed. Some of these, such as a co-regulatory approach, would make a fundamental difference to the design of regulation. There would appear to be scope for more explicit policy discussion and decision on whether these principles will be embodied in new regulatory arrangements.

Explore a new role for regulators – liaison with external stakeholders

One more specific policy observation arising from the study and relating to the above comments on principles and purpose is the orientation of the regulatory framework and the regulator to external stakeholders. To date administrators have played a dual role of program administrator and regulator. The principal relationship has been between government and provider and, in some cases, a church, local government or welfare agency that enters into the agreement to bring additional resources to a specific project.⁹⁹ However, both the international observations and the information from stakeholders such as financiers, developers or local government, made it clear that a new and unfamiliar role is required of regulators. That is to be aware of and provide information on risks to these external stakeholders, and to develop a wider relationship to these sectors through liaison and development of market information. It seems clear that these new functions of the regulator have not been considered in the development to date of regulatory frameworks.

Clarify the roles of regulator and public investor (funder)

This leads to a more specific and unresolved policy issue to emerge from the study. There has been some early consideration of the structures and skills required of a regulator. A number of provider informants argued that the regulator itself and its obligations must be established in the same regulation that provides it with its powers. No informants reported that this has been considered in the drafting of legislation to date.¹⁰⁰ But the unresolved policy issue is the relationship between the roles of funder (or preferably, public investor) and regulator. The extent to which these should be separated or linked may have quite some significance for the level of assurance provided to external stakeholders (particularly financiers) by regulation.

Clear focus on regulating outcomes for tenants

The final broad issue for further policy attention is the need to explore in far more detail, the role of regulation in protecting outcomes for tenants. This was outside the specific aims of this study, which focused on what future sector development might be enabled. In particular, this study did not specifically consult with tenants. However, the question (and suggestive options) arose repeatedly through out the study. First, the need for mechanisms to extend and protect tenants rights through independent appeals processes was identified. Second, specific elements of the framework that establish minimum standards of access or affordability were proposed. Third, the UK reforms demonstrated a greater focus on tenants, particularly through the new inspection processes. Finally, the potential gap in responses if the future development of partnerships focused on affordable housing or low-risk tenants was identified. These point to a suite of issues that require further policy development and further research. In particular, they may require specific consultation with tenants.

Further development of elements of a regulatory framework

There are also a number of more specific issues that emerged through the study, but which will need further investigation. These are:

- *Further exploration of a statutory charge* – the form of the government control over any assets is crucial to private investment. Effective use of the asset and the ability to take

⁹⁹ These stakeholders reported that even such simple relationships have been particularly difficult.

¹⁰⁰ Although the funder: regulator in South Australia (SACHA) was established in this way ten years ago.

out a mortgage over it is essential if private finance is to be raised outside government borrowing. While there appears to be some, but not universal, support for a statutory charge as the most effective instrument to protect the government interest, the basis for its operation is not clear. In particular, some providers expressed concern that the establishment of a permission based approach would inhibit effective operations. From observation of the application of a similar charge in the UK, it seems that the expectations and preferably the specification of the ways in which the assets will be used – to expand the sector, to provide the most appropriate responses to tenants' needs – determine the extent to which the charge enables better use of assets. If this is the case, it is important to develop these criteria in order to embody them in the enabling legislation.

- *The balance between risk management and minimal compliance* – in 4.4 above there is some discussion of the distinctions between performance management systems that focus on indicators of risk, systems that focus on compliance with minimum standards, and those that require compliance with procedures such as rent setting. It is agreed that specific risk management arrangements (and for the emerging larger organisations with more complex financial arrangements, financial ratios that are far more sophisticated than any currently in use in Australia) will need to be established in addition to general early warning performance measures. But there is considerable ambiguity about where the boundary between quality, risk, performance and compliance measures lie, internationally as well as in Australia. Further investigation is needed to clarify this.
- *Data collection* – It was noted above that regulatory instruments are a rich source of data for policy development and market information. Because, to date the administrative data generated by existing reporting is of such poor quality, the national data is collected as far as possible by a separately administered survey. This imposes unnecessary compliance costs and further policy development is needed to ensure that the two needs can be better co-ordinated.
- *Structure of entities* – Finally, it was noted above that the identity of the reporting entity can be unclear in the case of joint ventures, umbrella structures, new partnerships and more diverse management arrangements. This has already emerged as an issue for the national accreditation system in terms of entities that are also accredited for disability or age care services as well as community housing management. This is an aspect of the policy development work needed to meet the principle of simplicity, but it is also important if the new regulatory framework is to enable rather than inhibit new partnerships and businesses.

Almost all informants expressed a sense of expectation and opportunity. The realisation of these opportunities will depend on wider policy decisions about the direction of social housing and the subsidies – both on capital and the income – that will support a new system that includes a wider range of stakeholder. But it is also clear that this will be greatly facilitated by appropriate, enabling, regulatory arrangements.

5. ATTACHMENTS

5.1. Attachment 1 – A new regulatory approach in England

The following describes the new approach to the regulation of housing associations or RSLs in England, launched in April 2002. The aims, objectives and key regulatory features are outlined.

The Housing Corporation

The Housing Corporation is a non-departmental public body. It is sponsored by the Office of the Deputy Prime Minister (ODPM) and has a board of up to 15 members including the Chief Executive.

The Corporation describes its mission as follows: “We are responsible for investing public money in housing associations, for protecting that investment and for ensuring it provides decent homes and services for tenants” (2002a: 3). In short, the Corporation’s principal functions are to fund and regulate RSLs.

A new approach

Following an extensive review of the Housing Corporation in 2000,¹⁰¹ significant changes were made to the way in which the Corporation operates. Based upon a comprehensive process of consultation and development, the Housing Corporation introduced its new regulatory approach in April 2002.

The new approach is underpinned by the following aims and objectives:

Aims:

- “to regulate and to promote a viable, properly governed and properly managed housing association sector
- to invest for the creation and maintenance of safe and sustainable communities;
- to champion a tenant focus in the housing association sector
- to be a modern, customer-centred, forward-looking organisation, leading change in the sector” (Housing Corporation, 2002a: 3).

Objectives:

- “maintaining a viable housing association sector and moving to a fairer, more understandable rent structure
- promoting high-quality governance, probity and the reputation of the housing association sector
- encouraging housing associations to provide decent homes and deliver high-quality and value-for-money services through continuous improvement” (2002a: 3).

As well as emphasising viability, proper governance and probity, these aims and objectives signify an increased focus on tenant outcomes and continuous quality improvement.

The new approach can be broadly characterised as follows:

- A shift from a “tick box assessment to a less prescriptive approach”.
- Outcome focused with common agreement with housing associations about the outcomes they should achieve and flexibility in how they might achieve them.
- In addition to mandatory minimum standards, a culture of continuous quality improvement has been introduced.

¹⁰¹ The review was undertaken by the Department of the Environment, Transport and Regions (now the Department for Transport, Local Government and the Regions).

- A tiered approach that is “tailored, appropriate and proportionate to the risks associations face”.
- An emphasis on self-assessment and increased opportunities for housing associations to assess their own performance with the intention of creating a “less intrusive” relationship.
- Greater consistency and transparency in the assessment process (2002a: 4).

Consistent with the principles identified by the UK Better Regulation Taskforce, outlined in Section 2.1, the principles underpinning the Housing Corporation’s new practices include: transparency; accountability; proportionality; consistency and targeting.

In addition to improving the regulatory processes for housing associations, the Corporation describes an increased effort to ensure that as the regulator it remains accountable and relevant to the sector. This is achieved through:

- ‘Evaluating regulation’ – regular scrutiny of the Corporation to assess whether it is meeting its objectives, through actively seeking feedback from the sector and commissioning an independent review.
- ‘Learning lessons from regulation’ – ensuring that the Corporation and the sector are able to learn from on-the-ground experience and the strategies employed to deal with particular situations.
- ‘Challenging regulatory judgements’ – establishing procedures for the contestation and resolution of judgments (2002a: 5).

Key elements of the regulatory framework

The regulatory code

The code is the fundamental (minimal) obligations of housing associations in meeting the Housing Corporation’s regulatory requirements. The ten-page code and guidance replace a seventy-page document of performance standards.

There are three principal codes – viable, properly governed and properly managed - which are broken down into a total of 16 outcomes (replacing 64 performance standards). The following is a summary of outcomes:¹⁰²

- Viable
 - operating a viable business demonstrated through robust business plans etc
 - adequate risk identification and management arrangements
- Properly governed
 - RSLs must operate according to the law and their constituents
 - an effective and expert board
 - maintain highest standards of probity
 - RSLs must protect public investment
 - responsiveness to tenant views and priorities
 - RSLs must deal with the Corporation in an open and co-operative manner
 - demonstrated commitment to equal opportunity
- Properly managed
 - appropriate rent setting

¹⁰² It is important to stress that outcomes are in summary form only, with the intention of giving a flavour of the outcomes. For a full description of the outcomes and the associated points of guidance refer to (Housing Corporation, 2002a: I – X). The code is available on the Corporation’s website at www.housingcorp.gov.uk.

- management arrangements, skills, resources and systems
- aim to deliver continuous improvements
- develop and manage good quality homes that meet tenants' needs (now and into the future)
- provision of good quality housing services
- work co-operatively with local authorities
- demonstrate that strategies and policies are responsive to the economic and social environment (2002a: III – X).

Guidance

The regulatory guidance has been designed to run alongside the regulatory code. The guidance “concisely defines” the Corporation’s “reasonable expectations” (2002a: 6).

When assessing a housing association’s compliance with the code, the Corporation takes into consideration whether the guidance has been followed. However, in keeping with its new focus on outcomes rather than processes, the Corporation also considers alternative actions undertaken by the housing association to achieve the same objective (2002a: 6).

Good practice

The Housing Corporation characterise their regulatory approach as, “based on an expectation that housing associations will both meet minimum standards and work towards continuous improvements in their services”. (2002a: 7)

To support good practice and continuous quality improvement an internet-based bank of good practice is being established. The bank of good practice is linked to the code and guidance. Key publications and examples will be highlighted in the relevant section of the Code. The bank is an ongoing resource that will be developed with the National Housing Federation, the Chartered Institute of Housing, House Mark and through examples drawn from in-field inspections and regulatory visits (2002a: 7).

Delivering regulation

Regulatory teams¹⁰³

New regulatory teams have been established which accommodate small and large organisations as well as enabling a separate focus on financial appraisal and on-the-ground service delivery. They are as follows:

- Lead regulation teams – have responsibility for ensuring lead-regulated housing associations (those with over 250 units) are coordinated and reflect the Corporation’s assessment of risk by developing a regulatory plan for each association.
- Regulatory arrangements for small associations (RASA) – RASA teams:
 - process new registration applications
 - assess small associations against the Code
 - assess service delivery
 - provide support and guidance
- Financial appraisal teams – are responsible for assessing the ‘overall financial position’ of associations through the identification of immediate and long-term financial risks and viability, and the review of financial returns and business plans (2002a: 8).

¹⁰³ It is worth noting that a new regulation staff code of conduct was developed as part of the changed approach to regulation (Housing Corporation, 2002a: 10).

- Inspection teams (which include tenant inspectors) focuses on 'on-the-ground service' and consumer experience. The introduction and subsequent changes to inspection are considered in more detail below.

Inspection

As a part of the Housing Corporation's new regulatory approach, a formal inspection process was introduced in April 2002. This was in keeping with the Corporation's decision to place "greater focus on consumers and on improving the performance of housing associations in service outcomes for tenants" (Housing Corporation, 2002b: 2).

The inspection approach was adopted after consultation with housing associations and their representative organisations, tenants and other stakeholders such as the Chartered Institute of Housing, the Council of Mortgage Lenders and the Audit Commission (2002b: 2). The Corporation describes the objectives of inspection as follows:

- "assessing compliance with the parts of the Regulatory Code relating to service delivery
- supporting associations' work on continuous improvement and assessing how far Best Value principles are driving it
- placing the consumer closer to the sector's work" (2002b: 5).

Pilots with a range of organisations were undertaken in 2001 and a tailored approach to accommodate small associations, newly established stock transfer associations and associations providing supported housing services¹⁰⁴ was developed (2002b: 5). It was intended that all large associations (250 units plus) would be inspected over the next three years. They would be given 12 to 18 months notice. All reports would be publicised on the Corporation's website to encourage continuous improvement across the sector (6).

However, following a Government Spending Review, the Deputy Prime Minister recently announced that a new single housing inspectorate would be introduced. As of April 2003, the single inspectorate will be located in the Audit Commission (NHF, 2002b).

The new inspectorate will include staff from the Housing Corporation and the existing Housing Inspectorate, which was established to inspect local authority housing. The principal purpose of this shift is to streamline inspection. Both the National Housing Federation and the Chartered Institute of Housing (CIH) have expressed support for a single inspectorate. However this is based on a number of conditions.

In an open letter to the Deputy Primer Minister on 14 August (2002), David Butler, Chief Executive Officer, CIH, reported that consultation with CIH's members showed strong support for a single inspectorate. A single inspectorate, to be run by either the Housing Corporation or the Audit Commission, Butler argued, could be "part of the drive to push up performance standards across the sector".

However, the CIH advised against a hasty decision and suggested a series of tests for institutional change. In summary these tests are:

- "will the new arrangement deliver improved performance?
- is any change consistent with delivering new investment?
- can the new arrangements be resourced?
- what sanctions will be available?
- what should be the scope of the new arrangement?
- will the new arrangement be robust in the longer term?
- will the new arrangement be more coherent?

¹⁰⁴ In the case of associations providing supported housing services inspection would take account of the monitoring framework for support services under Supporting People, thereby avoiding unnecessary duplication.

- what will be the impact on the existing bodies?” (Butler, 2002)

The tests propose a measured and thorough approach to a complex and ‘sensitive’ issue, including further consultation with all relevant stakeholders, consideration of whether the immediate cost-cutting measures will also deliver improved performance and service delivery over the longer-term and assurance that the new arrangements will adequately meet the needs of all stakeholders (consumers, providers, investors and other potential partners) into the future.

The National Housing Federation (NHF) reiterated the CIH’s suggestion of eight tests for institutional change and further highlighted the Better Regulation Taskforce’s observation that “[t]oo often new institutions are set up in haste...” (cited in NHF, 2002a: 6). In a press release following the Deputy Prime Minister’s announcement, the NHF suggested that the location of the inspectorate with the Audit Commission could enable the Housing Corporation to consolidate its regulation and investment functions (targeting organisational viability and housing supply), whilst the inspectorate will focus on service delivery (concentrating on tenant outcomes).¹⁰⁵

Performance concerns - intervention

The focus of the new regulatory approach is on continuous improvement rather than RSLs having to comply with a long list of requirements. However, if basic standards are not met the Corporation does have the powers to take action. The process has been structured so that intervention is based on early information. RSLs can be placed into one of three categories of unacceptable performance:

- ‘Continuing regulation’ – in the case of minor performance concerns an action plan is agreed with the housing association.
- ‘Intervention status’ – there are serious concerns, however the regulator feels that an agreement can be reached to address the concerns. Funding *may* be temporarily suspended until the agreed changes are made.
- ‘Enforcement status’ – there are serious concerns and the association is ‘unable or unwilling’ to address them. It is likely that funding will be suspended and the Corporation may use its statutory powers, which are detailed below. It is important to note that all enforcement and ‘high-profile cases’ are examined by the board’s Regulation and Supervision Committee (Housing Corporation, 2002a: 14).

In a recent paper produced by the NHF it is argued that the regulator’s powers of intervention are important for two interrelated reasons. Firstly, lender confidence is, in part, grounded in the Corporation’s statutory powers to intervene (2002a: 10). Secondly, it is noted that while achieving a balance between “robust inspection, helpful intervention” and “respect for the independence of the RSLs” and their capacity to innovate is important, “successful intervention” is vital. That is, “it is the ability to put things right that is the most important dimension of raising standards” (14).

Statutory Powers

Under the Housing Act 1996, the Corporation has the statutory powers to:

- make appointments to governing bodies
- direct an inquiry into the affairs of an association
- intervene if an association is threatened with insolvency (2002a: 15)

¹⁰⁵ It is worth noting that in its paper *Social housing – regulation, inspection and funding* (2002a), the NHF highlighted that although the inspection process could be transferred to the Audit Commission, the Housing Corporation role as regulator was integral to the social housing system. The Audit Commission does not hold the legal powers to act as a regulatory body for RSLs (10). In addition, the NHF argued that ideally an independent Housing Inspectorate could be set up to ensure that the inspectorate is independent of provider, government or regulator interests and is able to work for its ‘primary customer’, that is, tenants (13).

5.2. Attachment 2 – Financial and solvency criteria used in the UK

2a – A summary of criteria developed by the Council of Mortgage Lenders

The following is a brief summary of criteria used by financial institutions in the UK, focusing on large-scale financing of stock transfers.

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.¹⁰⁶

- *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 (for example, regeneration activity)
 - details of any ‘unusual’ issues relating to the transfer agreement (CML, 2002: 3).
- *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).
- *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 (that is, 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.¹⁰⁷
- *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 three areas:
 - business warranties – cover management issues such as the number of transfer units, rental details, intellectual property rights and so on;

¹⁰⁶ 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.

¹⁰⁷ 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*.

- 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 (for example, asbestos) and so on.
- *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. It is worth noting that 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.

5.3. Attachment 2b –

Table 2 Housing Corporation solvency ratios

Measures from the accounts review system	Ratio	Numerator	Denominator
	Solvency ratios		
	Quick ratio	Current assets less non liquid current assets	Current liabilities
	Funds from operations	Net cash flow from operating activities plus movement in other net current assets	Interest paid plus capitalised interest
	Re-financing risk	Loans due in less than one year x 100	Total loans
	Viability ratios		
	Interest cover	(Operating surplus plus interest receivable plus tax charge) x 100	Interest payable plus capitalised interest
	Gearing OMVEU	Total loans x 100	Capital grants plus reserves
	Gearing reserves	Total loans x 100	Loans plus capital grants plus reserves
	Gearing rent	Total loans x 100	Total loans plus (Rents x 10) less (Housing cost less capital grants) plus reserves
	Earnings before interest, tax and depreciation	(Operating surplus plus housing property depreciation plus interest receivable) x 100	Interest payable plus capitalised interest
	Rent losses	Voided and bad debts x 100	Gross rents
	Rent arrears	Gross arrears	Gross rents divided by 365
	Surplus	Results after tax as an absolute figure	

Table source: Sector Study 15, *Financial health and viability of housing associations*: Appendix 3 (Housing Corporation, 2002c)

5.4. Attachment 3 – Underlying preconditions for realising the opportunities identified by stakeholders

This attachment brings together some findings of the study that go beyond the specific project aims. These are in two parts. The first discusses a range of preconditions for the involvement of stakeholders. The second part shows, in table form, the relationship between the opportunities or objectives identified, the preconditions for these (including, in some cases, a second layer of preconditions), and the regulatory elements or principles that would enable these to be met.

Are there preconditions that must first be met?

While more effective community housing regulation is seen as a necessary condition for achieving some key outcomes by most (although not all) stakeholders, regulation is clearly not a sufficient condition. Other preconditions must also be met. In some cases, these can be assisted or will be reflected in aspects of a regulatory framework, but require prior public policy decisions or capacity building from within the industry itself.¹⁰⁸

- *A policy framework* - All non-government stakeholder groups identified the lack of a policy framework as a major impediment to the creation of the wider markets or opportunities – financial, development, church or local government partnerships. All external stakeholders perceived that such a policy framework is currently missing. There are a number of requirements that are captured under this broad heading. One of the most important is long-term certainty around the financing structures. Equally important is a clear statement of policy objectives (preferably a bi-partisan commitment or legislative certainty). In some important respects, external stakeholders see this as a proxy for government standing behind financing arrangements. A number of stakeholders also argued that consistent (preferably nationally consistent) frameworks for their involvement or the involvement of community housing providers are important for efficiency and to facilitate the emergence of new markets and products. Finally, a number of stakeholders – particularly churches and local government – identified a lack of trust as a major impediment to entering partnerships with government.¹⁰⁹ A transparent set of objectives and a framework may help build greater trust.
- *Government approaches that enable innovation* – Most stakeholders, in one form or another, identified difficulties in working with government. A number acknowledged that government had understandable requirements in terms of transparency that may reduce flexibility and that their own structures may create barriers for effective engagement. Nonetheless, they argued that government processes must enable innovation in all ways possible.
- *The creation of a vigorous new market* – Neither lenders nor developers wished to be the only players in financing, mixed tenure development, or new partnerships. In fact, the creation of a competitive market was seen as a precondition for developing the financial instruments or development models needed to be effective.¹¹⁰ Such a market reduced risk, while competition itself was seen as reducing the cost of funds. In a very similar way, both local government and churches called for well established models on which they could more easily base their entry into new partnerships.
- *Establishing a track record* – A number of informants argued that at this stage in the development of these opportunities, it is crucial to establish a track record to avoid early failures. Some informants pointed to the risk of government withdrawing from initiatives

¹⁰⁸ In this section we are considering the preconditions for the engagement of external stakeholders – although in some significant cases these may be shared by internal stakeholders. There are, of course, also preconditions for effective regulation and these will be discussed below.

¹⁰⁹ Providers were the other stakeholder group that explicitly identified a failure of trust as a major impediment to effective sector development and to clear thinking about the role of regulation.

¹¹⁰ The presentation of this as a precondition rather than (as well as) an outcome is not as contradictory as it might appear, since the full extent of potential benefits will only flow once a more active market is established.

in the face of difficulties. The success of each project was seen as crucial to establishing a sustainable market.

- *A volume business* – both financiers and developers are interested in a large scale business; whether this be large development with long time frames, or large tranches of finance. Equally, a substantial expansion of the role of community housing will require more than a cottage industry.¹¹¹
- *'Free equity'* – the viability of private sector involvement depends on the system delivering 'free equity'. This might be an asset to be redeveloped or a public investment on which no return is required as a platform for private borrowing,¹¹² but without this direct subsidies would be far too large.¹¹³ The crucial issue for providers is the level of control over this equity they require to be meaningful partners in such arrangements. Not all stakeholders saw the need for providers to take an equity position, arguing instead for a more limited tenancy management role. In part, this is a policy issue beyond the scope of this research and will rely on assessments of the circumstances in which the specific benefits of community provision are most effectively enabled. However, it will also determine who carries the risk, and it could be suggested from comparisons of the regulatory frameworks in Canada and the UK, that this will substantially alter the focus of performance management.
- *Support for income streams* – one of the most important preconditions for private involvement is the adequacy of income streams – particularly if, as discussed earlier, lenders do not in effect expect to secure their investment against the asset. This involves both long-term commitment to income stream subsidies, and just as important, a commitment by government to stand behind the income streams. The key issue is how this is done; and there was clear acceptance that government guarantees would not be forthcoming.¹¹⁴ Much of the discussion with informants in the UK and Australia, is the extent to which a regulatory system can provide a similar level of assurance.
- *Tenancy management vehicles that can provide expertise in local community management* – For all external stakeholders (except central agencies) a key precondition is an organisation to take on the management risk. But beyond this general issue, a number of stakeholders were concerned to have access to specific expertise in sustainable tenancies and in local community management. The latter was seen by one developer as the key to the management of mixed tenure developments. For local authorities, access to specialist tenancy managers is a precondition for utilising local planning powers to lever more affordable housing.
- *Partners* – In general, a number of the stakeholders said they required community partners, with knowledge of governments and programs, and with skills in management. The role for such partners extended to becoming part of the bid team.
- *Partners that can participate – large, skilled partners* – The need to undertake a volume business and the low tolerance for failure meant that both financiers and developers sought partners with a larger capacity than most existing providers. However, one finance sector informant noted that umbrella structures exist or can be created to bring this capacity to bear. At the same time, one developer argued that very large organisations were not desirable either, as they could not provide the local management focus required. A range from between 2,000 to 12,000 units was suggested. Other stakeholders, like churches or local government, while they looked to specialist social housing managers, did not report a need for such large organisations.

¹¹¹ It is significant to note that the transformation of housing associations in the UK saw large volumes of funds flow to a relatively small number of new style organisations, on the back of and side by side with a large number of small 'cottage' organisations.

¹¹² The mortgage subsidy provided in the Canadian model can also be seen in this light.

¹¹³ This concern is very similar to the argument of church stakeholders, that while they will bring assets to a partnership, this will not be sustainable unless the project and the system as a whole is better resourced.

¹¹⁴ In Canada the federal government provides mortgage insurance, indemnified by the province. This is a far more direct form of guarantee than could be expected in Australia or than is provided in the UK.

- *Frameworks to manage risk and to report on performance* – Local authorities generating affordable housing and financiers were most explicit about the need for organisations to be able to track and report on risks. While financial risks – solvency – were the most important of these, asset risks, tenancy risks, risks on the income stream, sustainability and human resources were all identified as needing a management framework to track and respond to emerging risks.
- *Standards of corporate governance* – Similarly, such organisations would need robust standards of corporate governance.
- *Information* – Finally, most stakeholders identified a need for far better information on the sector if either new markets or specific partnerships are to be established. There are at least three levels required: information on the sector as a whole – performance, financing and the like; information about the track record and expertise of individual organisations to enable external stakeholders to more effectively seek out potential partners; and systems for sharing information with external partners or financiers that relate to performance against the risks to the relationship. A number of informants argued that this role is generally a role for government.

Table 3 – Summary of opportunities, their preconditions, and enabling regulation

Outcomes enabled		Preconditions		CH regulation
Consumers				
- Access	Increased supply of housing – incl local responsiveness, social needs		Policy decision (See finance & new partnerships below)	Legislation objectives (to the extent that it bears on the CH role)
	Well-located affordable housing – enabling participation	Planning powers	Policy decisions (See finance & new partnerships below)	“
	Ensure accessibility to specific needs groups			Access/allocation standards
- Security	Financing models that build household and community capacity		Shared equity models Community financing structures	
	Flexible, supportive and sustainable tenancy management by community partners	Access to CH partners with the right skill set	Information	Registration/regulatory tiering
	Security because financing is not secured against the asset	Support for income streams	Regulatory assurance that organisations won't fall over	Performance management & intervention
- Rights	Service quality		Quality assurance/improvement	Standards & accreditation
	Independent appeals		Better interaction with Residential Tenancies Acts	Independent appeals mechanisms
Community housing sector growth				
- Finance		Subsidies	Policy decisions & long term certainty	
		Free equity to lever investment – access to existing assets, new public equity investments etc	- Assurance and a share of control to government - Assurances geared to level of involvement in new responsibilities for assets & finance	- Statutory charge (or equivalent) - Wider regulatory assurance to govt - Regulatory tiering
		Government backing	Regulatory assurance of financial viability	- Assurance of intervention to sustain financial agreements - Information of risks identified and responses to lenders
		Capacity – scale	Policy decision – free equity above or other growth strategies	
		Capacity -	Framework to manage	Reporting against:

Outcomes enabled		Preconditions		CH regulation
		management	risk and report on performance	<ul style="list-style-type: none"> - solvency - asset risk - tenancy risk - income streams - organisational sustainability - human resources
- new partnerships bringing new resources	Joint ventures/mixed tenure developments	Capacity – scale & management	Governance standards	Accreditation
		Establishing a market	Establish a track record – no early failures	Performance management
			Information on sector-wide performance, financial structures etc	Regulator collates & provides information
			<ul style="list-style-type: none"> - Facilitate innovation - Policy framework 	
	Affordable housing management	<ul style="list-style-type: none"> - As above - suitable partners/managers - Transfer management risk 	<ul style="list-style-type: none"> - As above - Assurance of risk management 	<ul style="list-style-type: none"> - Risk management framework - Regulator provides information to LG on identified risks & response
	Facilities/estate management	Suitable partners/managers	Ability to identify potential partners	- Registration
- New businesses & markets for CH	New business identification <ul style="list-style-type: none"> - new rental/shared equity etc - headlease business - managing agency business 	Remove inhibitions on innovation	<ul style="list-style-type: none"> - Administration that is outcomes focused - Build government confidence in the sector capacity - Build sector's business capacity 	Co-regulation
		Whole of business focus to planning and reporting	More holistic regulatory approaches to remove fragmented reporting & focus planning & governance capacity	Regulation of organisations rather than programs/funding agreements
Other outcomes for administrators and providers				
	Growth & innovation	A strategic framework	Evidence base	Data collection
	Viable & cost-effective system	Identification of risk and support for viability	<ul style="list-style-type: none"> - Powers to intervene to support viability - Intervention/support via industry bodies - Monitor & control compliance costs 	<ul style="list-style-type: none"> - Enabling legislation - Co-regulatory roles - Principle of proportionality
	Increased levels of accountability – quality, use of resources, probity	Appropriate administrative arrangements	<ul style="list-style-type: none"> - Consistency - less contract based 	<ul style="list-style-type: none"> - Review of contracts & reporting requirements - Legislation

Outcomes enabled		Preconditions		CH regulation
	& decision making		- capacity to interpret information	- Administrators' skills development
	Quality service delivery		Quality assurance & improvement	Standards & accreditation
	More effective relationships between government & sector	Trust and confidence between the main players	<ul style="list-style-type: none"> - Locate accountability in the context of sector development/capacity building - Establish role of the regulator & separate from other admin - Ownership of regulation - Checks & balances - Oversight proportional to risks in diverse sector - Clarity of purpose 	<ul style="list-style-type: none"> - Specify in legislation - Regulatory oversight body - Appeals processes - Regulatory tiering - Objectives specified in enabling legislation

5.5. Attachment 4 – Background paper to joint findings seminar

1. Background

1.1 Introduction

This seminar is the final stage in a research project funded by the Australian Housing and Urban Research Institute (AHURI) and being undertaken by the Sydney Research Centre in partnership with the AHURI Associate, the National Community Housing Forum (NCHF). The seminar brings together a range of stakeholders (sector representatives, administrators, Indigenous housing representatives and members of the research community) to familiarise and to test the responses of participants to the preliminary findings. The seminar will also enable differing interests and objectives to be explored.

Following the seminar, the final report of the project will be prepared. The project is due for completion in late November 2002.

1.2 About the project

This project broadly aims to identify the options for a regulatory framework for community housing in Australia that will be effective in enabling the sector to play a wider role in the social housing system.

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;
- identify any advantages to community housing providers that might flow from such outcomes and the limitations of the current arrangements;
- 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;
- 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; and
- familiarise administrators and providers with the findings and to test their applicability in the existing community housing systems – including Indigenous housing.

The project builds largely on a report on regulation funded by five jurisdictions through the Forum in 2001: *A Regulatory Framework for Community Housing in Australia (Vol. 1 & 2)* authored by Robyn Kennedy & Associates.

The Kennedy Report took the first step in identifying the regulatory options for community housing. It identified the public risks involved in community housing, the current administrative mechanisms for managing these and the needs of community housing government administrators. It then evaluated the effectiveness of existing mechanisms and reviewed the regulatory arrangements in related industries – including Indigenous housing – and provided some preliminary information on housing regulation in the UK and the Netherlands.

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

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.

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 – that is, providers, central agencies, local government, developers, financiers and the churches.

1.3 Policy relevance

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 and attitudes of key stakeholders. Two of the most important of these outcomes include:

- 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 and social inclusion strategies.

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.

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.

1.4 Project methodology

As noted above, the research largely seeks to build on the results contained in the Kennedy Report on a regulatory framework for community housing. The research is comprised of four elements as follows:

- Field research with key external stakeholders (private finance industry, developers, churches, local government and central agencies), and state community housing peak bodies for their strategic, sector wide perspectives. The selection of informants for interview in the field research stage was specifically targeted to organisations with sufficient familiarity with community housing to enable an informed response. The number of informants in each stakeholder group ranged between three and seven. The variation 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;

- Evaluation of international regulation through literature and key informants to enable data to be considered from the vantage point of an established non-government housing system, with well-established regulatory arrangements. The review focused predominantly on the UK, with additional material from Canada;
- Two workshops – one with providers and one with administrators. The provider workshop was designed to: find out what providers might want from a regulatory system; test these objectives against the regulatory toolkit proposed in the Kennedy Report; and to obtain practical details on the compliance implications that various tools elicit. The purpose of the administrators workshop was to explore the policy relevance and applicability of the findings from other stakeholders to the policy and administrative environment. The objectives were to explore: the administrative implications of the issues identified by key stakeholders; and the administrative implications and relevance of international approaches.
- Joint findings seminar with a broader constituency (administrators, sector representatives, Indigenous housing representatives and the research community) to review key findings.

1.5 What are the aims of the seminar?

This seminar is the final stage of the project. The purpose of the seminar is to assess the policy and sector implications of the outcomes of the research prior to preparing the final report.

The aim of the seminar is three-fold:

- To introduce the research findings to a range of stakeholders;
- To invite responses to the findings;
- To discuss some of the key issues/implications that these findings raise.

Outcomes of the seminar discussion will be incorporated into the final report.

2. A summary of findings

The hypothesis

“That a better regulatory framework is needed to achieve some of the significant objectives for the sector”

If this hypothesis is supported by the data it gives rise to a number of other questions:

- Are the changes in the regulatory framework necessary to achieve the objectives? And would they be enough by themselves?
- What aspects of a regulatory framework might help to achieve some objectives?
- How significant are the objectives that might be enabled in this way; and are they the significant sector development objectives that are implied by the idea of “an enabling regulatory framework”?

2.1 Literature review

- 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.
- 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.

- The UK Better Regulation Taskforce has developed five principles of good regulation: transparency, accountability, proportionality, consistency and targeting.
- 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 focused 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.
- 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.

2.2 Examination of UK regulatory arrangements¹¹⁵

Background

- The introduction of the Housing Act in 1988-89 transformed the sector
- It signalled a government intention to support the growth of Housing Associations (HA)
- It also established a regulator – the Housing Corporation
- Since then, approximately £20 billion has been lent into the sector in addition to approximately the same public investment
- There are now £48 billion of assets under management – 31% is loans, half is public investment
- This has seen the development of more than 100 large HA with an annual turnover of between £9.7m and £164m
- Despite this, more than 80% of the sector is of a comparable size to HAs in Australia – the average number of units is less than 200

Opportunities

- Introduction of private finance to meet critical social housing need
- Reduce cost of financing
- Greater sophistication in lending

Barriers that had to be overcome

- Professionalism of providers
- Professionalism of lenders
- More sophisticated credit analysis
- Political risk

What has helped realise opportunities?

- Regulation
- A supervisory regime that doesn't allow insolvency and informs lenders
- A risk based approach to regulation and early warning
- Linking govt investment and regulation
- Focus by regulator on the needs of lenders
- A range of lenders – products and competition
- Balanced approach to assets

¹¹⁵ Exploration of Canadian regulatory arrangements is currently being undertaken and will be considered in the final report.

- National consistency

Current regulatory arrangements

The regulator - the Housing Corporation is responsible for investing public money in HA, protecting that investment and for ensuring it provides decent homes and services for tenants.

A new approach - In April 2002 the Housing Corporation introduced a new regulatory approach, which is broadly characterised as follows:

- A shift from a 'tick box assessment to a less prescriptive approach'
- A greater consumer focus including mechanisms of participation
- Outcome focused - with common agreement with housing associations about the outcomes they should achieve
- HAs will work towards continuous improvement and not fall below minimum standards
- A tiered approach - 'tailored, appropriate and proportionate to the risks associations face'
- Based on the following principles of good regulation: transparency; accountability; proportionality; consistency; and targeting.

The Regulatory framework:

- The regulatory code - the code is the fundamental (minimal) obligations of housing associations in meeting the Housing Corporation's regulatory requirements. There are three principal codes, which are broken down into a total of 16 outcomes (replacing 64 performance standards). The three codes focus on viability, proper governance and effective management.
- Guidance - regulatory guidance has been developed to run alongside the regulatory code. The guidance 'concisely defines' the Corporation's 'reasonable expectations'. When assessing a housing association's compliance with the code, the Corporation takes into consideration whether the guidance has been followed, or whether alternative actions undertaken by the HA achieve the same objective.
- Good practice – to support good practice and continuous quality improvement an internet-based bank of good practice is being established. The bank of good practice is linked to the code and guidance and key publications and examples will be highlighted in the relevant section of the Code. The bank is an ongoing resource that will be developed with the National Housing Federation, the Chartered Institute of Housing, HouseMark and through examples drawn from in-field inspections and regulatory visits.

Delivering regulation

- *Regulatory teams:*
 - Lead regulation teams – have responsibility for ensuring lead-regulated HAs (those with over 250 homes) are coordinated and reflect the Corporation's assessment of risk by developing a regulatory plan for each association.
 - Regulatory arrangements for small associations (RASA) – RASA teams approve new registration applications, assess small HAs against the Code, assess the service delivery of small HAs and provide support and guidance.
 - Financial appraisal teams – are responsible for assessing the overall financial position of associations (identify immediate and long-term financial risks and viability; review financial returns & business plans)

- Inspection teams (which include tenant inspectors) – Inspection focuses on ‘on-the-ground’ service and consumer experience. The objectives of inspection are to: assess compliance with the parts of the code that relate to service delivery and support HAs work on continuous improvement. Organisations will be given 12 – 18 months notice. They will be invited to complete a self-assessment form to focus the inspection process. All reports will be publicised on the Corporation’s website.¹¹⁶
- *Regulatory engagement:* includes: Annual compliance statement from each (large) association (compliance with the Code); The Corporation’s cumulative knowledge of the association; and The Corporation’s assessment based on risk factors.
- *Performance concerns:* The focus of the new approach is on continuous improvement rather than HAs having to comply with a long list of requirements. However, if basic standards are not met the Corporation will intervene. HAs can be placed into one of three categories:
 1. Continuing regulation – in the case of minor performance concerns an action plan is agreed with the HA
 2. Intervention status – there are serious concerns, however the regulator feels that an agreement can be reached to address the concerns. Funding *may* be temporarily suspended until the agreed changes are made.
 3. Enforcement status – there are serious concerns and the association is unable or unwilling to deal with them. It is likely that funding will be suspended and the Corporation may use its statutory powers.¹¹⁷

Financial Risk Management

In 2000, the National Audit Office undertook a review of the Housing Corporation’s regulation of risk management – with an emphasis on financial risk management. This review informed the Corporation’s “regulation revolution”. The following list shows the 12 most common high-risk problems identified in HAs assessments:

1. Stock deterioration
2. Cash flow problems
3. failure of IT systems
4. Falling demands/voids
5. Changes in Housing Benefit Policy
6. Rent Controls
7. Interest Rate movements
8. Arrears/bad debts
9. Staff recruitment/retention
10. Falling grant levels
11. Development cost over-runs

¹¹⁶ It is important to note that as of April 2003, a new single housing inspectorate will be located in the Audit Commission. It will include staff from the Housing Corporation and the existing Housing Inspectorate, which was established to inspect local authority housing. The principal purpose of this shift is to streamline inspection. It has been suggested that the move will enable the Housing Corporation to concentrate its energy on it’s regulation and investment functions (Targeting organisational viability and housing supply), whilst the inspectorate will focus on service delivery (concentrating on tenant outcomes).

¹¹⁷ Under the Housing Act 1996, the Corporation has the statutory powers to: Make appointments to governing bodies; direct an inquiry into the affairs of an association; and intervene if an association is threatened with insolvency.

12. Fraud

Review Outcomes - The Corporation and the sector have a good record in avoiding association failure (no bankruptcies or tenants losing their homes over the past 10 years). However, sector growth and increasing complexity of business (diversification; new partnership arrangements) have lead to changing risks. As a result, the review recommended that:

- The Corporation strengthen its financial ratio analysis¹¹⁸
- Remedy problems more quickly
- Make it's regulatory assessments more transparent – to increase accessibility to other stakeholders (such as lenders)
- Improve collection and usage of information from HAs (i.e. ensure it's relevance)
- Improve regulatory staff training

2.3 Field research – interviews and workshops

The data

The data is the perceptions and assessments of informants drawn from four kinds of stakeholders:

- *Providers* – whose activities will be affected by the regulatory arrangements put in place and who will decide whether to pursue any sector development opportunities created (either by government or by themselves);
- *Administrators* – who will develop most regulatory arrangements that might be put in place and the policy positions that could lead to public support for various sector development directions;
- *Central government agencies* – that will affect the ability to pursue opportunities in two ways:
 - By agreeing to the regulatory approaches being proposed
 - By agreeing to some aspects of the use of government resources to support sector development – and whose decisions might be influenced by the regulatory arrangements
- *External stakeholders* – who could bring resources or partnerships needed for some sector development objectives, and whose decision to make these available might be influenced by the regulatory arrangements in place. These were financiers, developers, local government and church agencies.

The informants reflected on the opportunities they saw for being involved in the future development of the sector; the extent to which the current context supported these opportunities; the conditions for realising such opportunities; and the potential contribution of various aspects of possible regulatory frameworks to meeting these condition.

The informants were not *representative* of the particular stakeholder groups. Rather they were selected as informants whose opinions might be well-informed by experience. That is, the data

¹¹⁸ 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; and surplus.

does not represent to the current state of affairs, but rather a more robust assessment of the potential to achieve outcomes identified by informants.

While most of these informants were drawn from Australia; a small number of UK informants were included to provide data on (their opinions of) the influence of regulatory arrangements on the outcomes achieved in that country.

A literature review sought to identify the nature of these outcomes and the regulatory arrangements in place (see Section 2.1). Providers and administrators in Australia were able to reflect on these outcomes and whether they reflected their objectives for the Australian system. In this way, the research could reflect on both outcomes achieved (in the UK) and outcomes expected by Australian informants.

A literature review also identified the current evidence of and established good practice for regulatory arrangements (see Section 2.2). In particular, this identified current principles for effective regulation, the range of regulatory instruments that have been identified for community housing, and the most recent initiatives for regulatory reform in community housing in Australia.

The context

Discussion of possible regulatory changes or objectives for the sector took place against a background that would influence how they are perceived. This section gives a brief overview of the contextual elements identified by the various stakeholder groups. It then highlights some key themes and questions, which will be opened for further discussion in the seminar.

Providers

Policy

- Interminable delays in achieving clear policy framework – although a number of initiatives

Relationships

- Poor understanding by government of appropriate relationship between sector and government – i.e. paternalistic, franchise, un-transparent, lack of understanding of the range of business currently outside program frameworks. A failure to see providers as independent businesses with a number of other relationships and missions. Lack of reciprocal rights
- Some new initiatives seen to strengthen govt control and decision making over business rather than reduce it. Expanding administrative ‘empire’

Use of assets

- Seriously constrained by ownership or encumbrance, and some procurement procedures

Resources

- Varying levels of resourcing – but in a context of the wider CSHA constraints
- A concern that funding structures limit viability and responsible management

Sector structure

An industry with a large number of small organisations and small number of larger, growing businesses

Current regulatory framework

- Legislation – doesn't recognise CH, some poor interaction with CH regulation, limited recognition of the role of other legislation (incorporation, tenancy legislation), prevents some aspects of the business (agency), benefit to viability from company or co-op legislation
- Reporting – fragmented, uncoordinated, program focused, high compliance costs, contract based, un-transparent, unimplemented, ad hoc, lack of skills to utilise. But some recent development of effective risk identification tools
- Intervention – ill-informed, politically driven, unhelpful, undermining, a disincentive to disclose problems. Some better practice in intervention in partnership with peaks emerging.
- Standards, inspection/assessment and quality improvement – very effective where it exists, including audits

Administrators

Policy/ resources

- CSHA and possible state level resource constraints
- Major estate and asset reconfiguration challenge

Current regulation

- Uncoordinated, unused, fragmented and program driven.
- Fails to provide information needed for sector development,
- Fails to provide information needed for risk management

Central agencies

Policy framework

The policy objectives for sector development or social housing reform not yet agreed

- The drivers of housing unaffordability and demographic change and social exclusion in public housing understood. But the need for States to have a systematic policy response not yet accepted. The possibility of some new partnerships recognised, but the nature of these not yet developed.
- Some openness to discrete project responses (with specific identification of risks and risk management), but no interest in more systematic response yet.
- As a result, no enthusiasm for utilising state resources or assets to pursue as yet unarticulated policy objectives

External Stakeholders (Financiers, developers, churches and local government)

Housing context

- A new environment in of estate renewal and mixed tenure development, increasing use of inclusionary zoning
- An environment with increasing housing need and demand – particularly affordable housing, key workers and locational barriers

Policy environment

- A complete lack of policy clarity or consistency – few clear objectives

Relationships

- Lack of clarity inter-governmental relationships
- Difficult to develop mutual outcomes, processes that inhibit innovation – however, a general recognition of increasing good-will and interest
- Increasing openness to relationships with community housing partners – from investment bankers, to developers, to local government

Key themes

- Policy failure and frustration at a time of increasing identified demand and sense of a growing imperative for change. This particularly means lack of clarity about roles and objectives within a changed system.
- Affordable housing a consistent theme from external stakeholders, including central agencies
- Increasing engagement and good will, but relationships with government that constrain innovation. Considerable distrust between providers and administrators
- A mixed message re resources – ph assets increasingly available some initiatives, but central agencies still reluctant to move beyond circumscribed projects and administrators constraining viability.
- Regulatory history very poor – leading to three different currents: some initiatives which have been seen to be misguided and increasing inflexibility; exploration, some introduction and appreciation of/optimism about more effective instruments; unwillingness to give priority to further initiatives with such a poor track record of delivering benefits for providers.

What might be enabled?

The aim of the project was to understand how regulation might help enable some significant future developments in social/affordable housing. The developments identified by informants were broad ranging - from attracting significant new resources to improving administrative efficiency.

The developments or objectives identified by the different stakeholder groups are captured under the following five headings:

- *Outcomes for tenants and communities* – e.g.: increased capacity to meet unmet need (raised by financiers, developers, administrators, churches and local government); ensuring tenants' rights and security of tenure (providers); sustainable local community management of mixed tenure development (developers); and community strengthening through shared equity ownership – particularly in Indigenous communities (financiers).
- *New resources* – e.g. private investment – particularly debt finance (providers, financiers, administrators & churches); greater public and government confidence and hence access to public resources (providers); Joint ventures (churches, local government and providers); partnerships with developers (developers); and new housing vehicles in large-scale new privately financed development (financiers).
- *New markets* – e.g. creation of huge new markets (financiers and developers); new skills and expertise in mortgage management market (financiers); ability to achieve management for housing developed through new planning powers (local govt.).

- *Organizational effectiveness* – e.g. better capacity to identify and manage risks (providers and administrators); reduced compliance costs, especially time (providers, churches and administrators); access to quality improvement and capacity to diversify business (providers).
- *Administrative effectiveness* – e.g. more efficient and skilled use of administrative resources in regulation and reduced need to respond to concerns over political risks (administrators and providers); and access to meaningful data for planning and policy development (administrators);

Key themes & questions

- We see very significant expectations of potential change and new opportunities
 - There is quite a different range of foci – from the establishment of substantial new systems for financing, developing and management, to a concern to rationalise and make administration more effective. This may be a substantial tension.
 - Opportunities to deliver better outcomes for tenants were reflected across the board – notably including many external stakeholders and administrators
 - The expectations of providers focus on the ability to run their businesses more effectively and to attract new resources or areas of activity – perhaps more importantly, unless these expectations are shared by government, providers will not support regulatory change
 - The expectations of external stakeholders focus on new markets and new partnerships
 - The expectations of administrators focus on new resources and information and greater efficiency
 - The expectations of central agencies are quite unformed
1. The broad range of developments varies greatly in kind. Are they all equally important objectives for an enabling regulatory framework (i.e. where do we draw the line)?
 2. Some stakeholders have very strong interests in achieving these objectives – like freeing up the business and attracting new resources – while others are more interested in outcomes such as getting better information and consistency across programs. Is this an important tension? What difference will it make?

What else would have to happen for regulation to make a difference?

Informants were asked about other conditions that would need to be in place to enhance their capacity to engage in social/affordable housing. The following elements were identified that could affect the efficacy of a new regulatory framework.

- A policy framework to provide clarity about the structure of any deals and long term certainty – although legislations could embody this, if there is policy clarity
- Clear subsidy streams – especially tax benefits
- The capacity to do large volume deals
- Large enough community housing organizations to: utilise large tranches, to have the economies of scale needed to provide expertise in managing financing, to have a track record of or systems for management of large number of assets, units

- Overcoming one size fits all tenancy management and allocation practices in public housing; and overcoming the reluctance to transfer the estate management business
- Maintaining a balance between innovation and probity in public administration – a wider risk of public sector processes (around predetermined outcomes) inhibiting innovation. The other side of this is the risk of managing ‘cowboy’ proposals.
- Improved relationships between stakeholders – there is a poor track record of administrators in terms of relationships and regulation; leading to resistance and distrust of significant change

Question

- Do we need movement on these before it’s worth changing regulation? Or, could we take it one step at a time?

What barriers might effective regulation help overcome?

Informants came up with a number of existing barriers that they thought could be helped by regulation:

- The lack of an established market and the opportunities and competitive dynamic that brings – also the lack of market understanding of SH – but this is changing quickly
- The lack of consistency between and within states on the parameters and information – including roles and responsibilities between LG and State govt
- The lack of effective guarantees on the income stream
- The risk of poorly maintained asset values
- The cost of funds – in the context of very marginally viable income streams
- The lack of information on potential effective partners, agents
- The lack of financial information on the industry
- The lack of control over assets enable them to be used to deliver outcomes for tenants and used to lever off – *it is significant that central agencies did not commit to overcoming this through regulation (statutory charge) and it is unclear whether the proposal by administrators is to enable greater or less flexibility*
- Political perception of risk associated with community housing performance
- The current lack of skills amongst administrators to utilise regulatory information or provide effective intervention to support organisations at risk
- The risk of over-regulation, inefficient compliance costs – particularly in the context of very different scales of organisation
- The relative lack of shared and explicit roles between government and CH industry in developing good practice, quality and risk management/ assurance – this is already changing in some states

- Conflicting legislative and compliance requirements resulting in either constraint on business or illegal operation

How could regulation help overcome them?

Australian informants seemed to highlight five aspects of regulation that might make a difference:¹¹⁹

Legislation

- Explicit long-term objectives embodied in legislation
- Explicit assurance that the government is committed to new initiatives – particularly financing or partnerships – embodied in statements or legislation (implicit ‘guarantees’)
- Explicit recognition of community housing in legislation and the removal of any anomalies arising from other legislation
- More flexible treatment of community housing under other legislation

Information

- Registration – with regulatory tiering – to identify potential partners or managing agents
- Sector wide and individual financial information about the sector – linked to benchmarking. This is particularly useful if it is consistent nationally.
- Public and transparent information on performance

Performance management – risk identification

- Performance monitoring – to identify emerging risks in key areas of performance
- Parallel to this general monitoring – more explicit financial benchmarks
- Parallel regimes – financial covenants/ ratios would be administered separately by financial institutions. Complementary monitoring – particularly early information to lenders/ partners about risks identified by government and the remedies proposed
- An orientation by regulators to key external stakeholders to ensure that the system delivers information and assurance to them, as well as government or the sector
- Consistent reporting requirements across programs – minimum compliance requirements

Intervention

A system of effective intervention to ensure that the financial or partnership deals and tenants security are not compromised, by ensuring the continuity of a viable entity

Standards and quality

A framework of quality standards, focused on outcomes – including outcomes for tenants and communities – that are used as the basis for quality improvement and assurance.

A range of tools to support this – external evaluation, inspection focused on key areas of performance, accreditation of the quality standards achieved, good practice support and resourcing

Question

Not everyone agrees that these are the sorts of changes they want to see. What do you think?

How is regulation implemented?

A number of informants argue that the way in which regulation is implemented will affect whether it is enabling.

Principles of regulation highlighted

- Proportionality
- Cost-benefit
- Co-regulation
- Requirements for compliance do not inhibit innovation

Orientation to other stakeholders

- A changed regulatory approach needs to recognize providers as independent businesses;
- It's important for regulatory authorities to identify the information needs of external stakeholders;
- Regulatory information needs to be public, transparent and accessible to avoid duplication in monitoring.

Structures

- Appropriate relationship/ distance between sector development and funding and regulation
- Appeals processes
- Administrative oversight

Questions

How important are the principles highlighted above?

Different stakeholder groups place different weighting on these. Can we reform regulation effectively without a consensus on the approach?

How much difference would regulation really make?

- Some providers believe that there is a significant risk that a more explicit regulatory framework will be less enabling for community housing organization, and may simply delay other development initiatives.
- Most financiers said that regulatory arrangements to provide assurance were important. However, this ranged from the view that regulation is essential, because lending won't happen without a proper framework, to 'while helpful, it's not persuasive.'
- A few informants suggested that it would reduce the cost of funds.
- It was also argued that it would assist the availability of funds and would enable wider entry into the market.

Conclusion

The findings will be discussed in more detail at the seminar. The questions raised in this background paper will be opened to participants for further discussion and feedback and the outcomes will be incorporated into the final report.

¹¹⁹ It is important to note that UK informants strongly emphasised an additional two regulatory aspects: detailed financial reporting and inspection (focusing on service delivery).

5.6. Attachment 5 – Joint findings seminar participants

- Lucy Burgmann
NSW Federation of Housing Associations
- Carol Croce
Community Housing Federation of Australia
- Grant Gilluley
ATSIC
- Sue Hayes
Department of Family and Community Services
- Morag Mc Crone
Victorian Office of Housing
- Mike Myers
Queensland Community Housing Coalition
- Di Niyati
Community Housing Coalition of WA
- Derek Yule
NSW Churches Community Housing
- Juliana Zepcevski
Queensland Department of Housing

Researchers

- Claire Barbato
- Robyn Clough
- Adam Farrar
National Community Housing Forum
- Peter Phibbs
The University of Sydney

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Reference Abbreviations

AIHW see Australian Institute of Health and Welfare

CHFC see Co-operative Housing Federation of Canada

CMHC see Canada Mortgage and Housing Corporation
CML see Council of Mortgage Lenders
COAG see Council of Australian Governments
MMAH see Ministry of Municipal Affairs and Housing [Ontario]
NAO see National Audit Office
NCHF see National Community Housing Forum
NHF see National Housing Federation
NSWFHA see NSW Federation of Housing Associations
ODPM see Office of the Deputy Prime Minister
OECD see Organisation for Economic Co-operation and Development
ONPHA see Ontario Non Profit Housing Association
Qld DSD see Queensland Department of State Development
SACHA see South Australian Community Housing Authority
SCRCSSP see Steering Committee for the Review of Commonwealth/State Service Provision
SHRA see Social Housing Reform Act

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Canada Mortgage and Housing Corporation www.cmhc.ca
Communities Scotland: www.communitiesscotland.gov.uk/Communities
Consumer and Business Affairs, Victoria: www.consumer.vic.gov.au
Co-operative Housing Federation of Canada www.chfc.ca
Department of Fair Trading (NSW): www.fairtrading.nsw.gov.au
Housing Corporation (UK): www.housingcorp.gov.uk
National Community Housing Forum: www.nCHF.org.au
National Competition Council: www.ncc.gov.au
National Housing Federation (UK) www.housing.org.uk/
Office of the Deputy Prime Minister (UK) www.odpm.gov.uk/
Office of Regulation Review (Productivity Commission) www.pc.gov.au/orr/
Ontario Ministry of Municipal Affairs and Housing (Canada) www.mah.gov.on.ca
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Australian Housing and Urban Research Institute
Level 7 20 Queen Street, Melbourne Victoria 3000
Phone +61 3 9613 5400 Fax +61 3 9629 8536
Email information@ahuri.edu.au Web www.ahuri.edu.au