

**Regulation and Growth of the Not-For-Profit
Housing Sector**

Shelter WA

**Submission
to the**

**Australian Government, Department of
Families, Housing, Community Services and
Indigenous Affairs
(FaHCSIA)**

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Introduction

This submission by Shelter WA is in response to the discussion paper on Regulation for the Not-For-Profit Housing Sector released by the Australian Government, Department for Families, Housing, Community Services and Indigenous Affairs (FaHCSIA). Shelter WA welcomes the opportunity to respond to the discussion paper and applauds the Australian Government and FaHCSIA for their initiative in beginning dialogue and development towards a new national regulatory framework designed to legislate standards and guide growth of the not-for-profit housing sector.

Who is Shelter WA?

Shelter WA is an independent Community Based Peak Organisation that is committed to the principle of safe secure appropriate and affordable housing for all people. Shelter WA has operated in Western Australia since 1979 and advocates on behalf of community groups and housing consumers. Shelter WA focuses on people who have low incomes or who are otherwise disadvantaged in the housing market. This includes people who are homeless or who are at risk of homelessness.

Shelter's role is to give an informed and effective voice on housing policy issues based on sound research, collaboration, consultation, representation and research with housing consumers and community based organisations working with housing and related issues. We do this by: holding regular forums and consultations in response to housing policy and practice issues; sitting on government and community sector committees; and, by informing and educating through the electronic circulation of regular newsletters, reports and fact sheets which are also made available on our website. We promote housing options for people on low incomes, including social housing (public housing and community housing), affordable housing provided through the private sector, and affordable home ownership.

Shelter WA is committed to the presence and extension of choice in the articulation of Government housing policy and therefore to the availability of a range of housing options for low income and special needs housing consumers.

Model for National Regulation

Shelter supports a single national regulatory framework and believes it will provide clarity and consistency for all organisations managing and developing affordable community housing programs in Australia. Shelter agrees that current state run systems are not consistent and that a national regulatory framework will:

- enable the growth of not-for-profit housing organisations by increasing their capacity especially by removing current restrictions regarding their ability to operate over multiple jurisdictions
- Attract and increase confidence for private sector investment;
- Manage risk for government and investors;
- Provide clarity and consistency for community housing tenants across Australia

Shelter WA supports in principle aspects of Options 3, 4 and 5 as the best models for a national regulatory framework and suggests the following considerations in developing the

model framework. The regulatory framework must be underpinned by legislative framework at a national level which stipulates the standards of housing and housing management including capital and maintenance, reporting requirements, tenancy rights and access to fair and proportionate dispute and complaints processes, administration of leases, and human resource management. It is important to ensure that, where possible, the regulatory framework is consistent with other regulatory frameworks that organisations will have to deal with, e.g. aged care regulation.

Shelter WA supports an autonomous body such as a National Accreditation Council or Authority for administration and regulation of the system. This national regulatory body would need to be an independent organisation operating outside of government and the sector, similar to that which presently exists in a number of other sectors, such as health. A national independent advisory council should comprise of representatives from the Commonwealth, state and territory governments, the community housing sector and tenant advocacy bodies, and financial institutions/institutional investors. This body should be established to monitor standards and reporting requirements. The National Regulator should have representation or branches in different jurisdictions, and will be able to operate and engage with providers at a local level. Under a branch model, these branches would be able to operate across borders.

The administration of the system at the provider level must be conducted at the jurisdictional or regional level, not centrally. This could be done by either an arm of state government or branches of the national regulator (an advantage of this would be that branches could theoretically operate cross-border).

The regulatory system should cover all providers: small, large, government, and not-for-profit. It is important that all state and territory governments operate under the system to avoid a 'twin track' system, with some providers regulated by state and territory governments and others regulated through a national system, as suggested in Option 2 in Regulation and Growth (pp 21-22). Consistent application of National Residential Tenancy legislation should support this model.

Engagement and Development of a National Framework

As a key player and core component of the development and implementation of a national regulatory framework, Community Housing Providers (CH) must be informed and supported. Clear, reasonable and achievable targets must be identified and time-consuming, costly and unnecessary administrative and reporting barriers must be removed. Community Housing Organisations require confidence to grow and this will be best achieved through negotiation and articulation of expectations, information provision and a partnership, cooperative approach.

Dialogue and development needs to pass the Governance principles test of transparency, fairness, openness and accountability in process. Support in this instance refers to funding and training as well as access to knowledgeable and supportive commonwealth, state and regulatory body staff contact points.

Once there is agreement on the fundamental principles and basic framework for the system, there will need to be a clear process of engagement with all stakeholders—including the community housing sector and tenant representative bodies—to negotiate the details of the model.

Protecting the Interests of Tenants in Community Housing

Shelter's commitment to consumer and tenants rights emphasizes that the development of the national framework must remain tenant focussed and the rights of tenants must be protected and adhered to by community housing providers.

The implementation of the National Community Housing Standards covering all organisations that will provide protection to vulnerable tenants and ensure clear and consistent service quality to tenants of all housing providers is supported.

Currently not all tenants' rights are represented and some of the areas which need to be addressed are:

- Boarders and Lodgers lack of rights, protections and legislation;
- Community Housing provider obligations and requirement for repairs and maintenance of dwellings;
- Increased funding and provision for tenant support services;
- Clear, simple and transparent guidelines for Community Housing regulation, funding and reporting that maintain the autonomy of Community Housing organisations;
- Reporting of key performance indicators and statistics are designed to reflect quality service rather than quantity of service delivery;
- Appeals and grievance mechanisms for Community Housing tenants and providers preferably through an independent body.

Concerns and Barriers to a National Model

Shelter WA acknowledges that change at Commonwealth, State and Local Government Level is required to reduce local government and regional barriers that exist, limiting timely and efficient increase in community and social housing growth and supply through a national regulatory model. These barriers in WA include complicated, lengthy and costly approvals through planning processes, zoning restrictions and resistance at community and local level especially with regards to land zoning, town planning and building approvals processes, we note that it is these aspects that often impede the construction and delivery of timely, cost effective and necessary affordable housing supply responses. Shelter WA sees that the role of a higher authority (of the national regulatory body) could be to bypass, avoid or override these barriers in building an adequate supply of appropriate affordable dwellings for those in need, and curtail the power of local government or other groups and individuals to block essential housing provision. This resistance to increasing the supply of affordable housing negatively impacts on the whole of society. This authority (or council) to be effective will need Commonwealth and state government legislation and support to act.

It is hoped that national regulation of the sector does not consequently force out lower tier, smaller and specialist providers. Consideration needs to be given to the capacity of small CH providers to articulate prescribed performance standards without funding and other assistance committed by the national regulatory body. There is concern about increased administrative burden for the smaller tier providers who need to be adequately supported to be able to make these changes, and need to be valued and acknowledged for the important contribution they make to the supply of affordable and supported accommodation for disadvantaged low income local, regional and special needs households.

A national framework must recognise and value indispensable specialised services that such small providers have developed and are currently offering. With the implementation of a national regulatory framework – supporting only the largest providers, a possible outcome scenario is one devoid of smaller or specialised services. By nature, such services are more expensive to deliver and less attractive in a market driven solely by financial imperatives. Shelter WA questions whether such a predicament can be avoided to reduce this risk and ensure the hardest to house, or small local populations will have access to appropriate homes with the tailored service needed to sustain their tenancy.

Creating an enabling environment for the largest CH providers to grow may potentially squeeze small and specialised providers out of a market which is already exhausting social service capacity leaving many with housing and support needs on waiting lists or unable to be met. A growth strategy that gives priority to large size CH organisations may result in the availability of more generic CH accommodation, but with a raft of complex and individual tenancy support issues to contend with. Furthermore, there may be fear and uncertainty among small providers feeling pressure to grow or die ‘amalgamate or perish’ - despite recognition of quality care, service, tenancy satisfaction that they have successfully provided over many years

Though the intent to allow the not for profit sector to operate more efficiently is clear, the development of a national model must not make it difficult for smaller Third tier providers to start up and become viable. The move not a national model will severely challenge administrative capacity for smaller providers. Although this will help eliminate sub-standard practices, we are also cognisant of the possibility that its impact may result in a number of providers who currently deliver a valuable service having to withdraw from operation.

Shelter emphasizes that the not-for-profit community housing sector must be supported financially, organizationally and administratively, with training, governance, management and policy and procedures resources to implement the changes required by a national model.

Strengthening Indigenous Community Housing

Aboriginal and Torres Strait Islander persons experience marginalisation and discrimination within current mainstream services, and increasingly within the housing sector as it becomes overwhelmed. There is an absence of Indigenous workers within all services. Issues underpinning Indigenous housing and homelessness are not addressed by mainstream systems that do not cater to Indigenous people. Current responses to Aboriginal housing needs and homelessness are disjointed; outdated, irrelevant and must be expanded and improved to meet current indigenous challenges and demands.

Development of a national framework must address the housing needs of Aboriginal people living in urban and regional areas, inclusive of how they can actively participate in managing housing and establishing viable community housing organisations. Ways must be identified and implemented to support aboriginal people and communities to achieve adequate sustainable housing and the wellbeing and independence that springs from this. A principle of partnership and support toward a shared long-term goal must underpin these efforts, in contrast to the autocratic, paternalistic and punitive models that have resulted in long standing aboriginal disempowerment and disenfranchisement.

Development and implementation of a national model requires engagement, governance and support so that Aboriginal people can manage their own change within the regulatory framework. It would also need awareness that Aboriginal housing must incorporate community and cultural complexities providing for clusters of accommodation and shared spaces. This requires policy commitment and has long term implications – planning and funding must be ongoing and not just ‘project funding’.

Addressing the Protections of Boarders and Lodgers

Some Community Housing providers also manage shared accommodation and Boarding and Lodging Houses. While the majority of CH providers offer this form of accommodation at the highest physical standards with strong attention to residents’ safety, security, privacy and wellbeing, there are other private unregulated operators extracting maximum rents from highly disadvantaged tenants, and providing little privacy, security, safety or facilities and amenities which would be expected in a shared residential facility.

The Residential Tenancies Act (WA) is silent on the issue of Boarders and Lodgers and in WA the only governing regulation for providers of this form of housing is located in the antiquated Public Health Acts of Local Government Authorities. These local government bodies use discretion in pursuing operators of such accommodation to ensure adherence to public health standards in the provisions of bathroom, toilet and sewerage ablutions, fire escape and emergency procedures and kitchen and cooking facilities. Many operators are unknown to their local government body unless a complaint is made by neighbours of the property or other ratepayers. Complaints are rarely made by residents, and when a boarding house resident contacts a community legal centre or tenancy advocacy body about a grievance concerning their boarding house accommodation, they are told there is no avenue to offer legal advice, support or representation as there is no regulation surrounding the operation and provision of Boarding and Lodging Houses.

While Shelter WA does not in any way suggest Community Housing providers are not acting in way that is inappropriate for their Boarding and Lodging Houses we are concerned about the lack of residents protections and standards in these forms of accommodation predominantly being exploited by private individuals and unscrupulous landlords, and would welcome some clarity for CH providers and state and local authorities where these facilities are operating.

Conclusion

Despite the obvious complication and implementation time lag that is a function of the process to achieve shared decision making, Shelter WA promotes that the best, most durable and effective initiatives are realised when all players are ‘on board’, congruent and working towards mutually agreed outcomes. Potential synergies, financial and resource efficiencies that can be gained through coordination and joint efforts are far greater than what can be achieved by one player alone. Addressing the systemic disconnects, conflicting policies and fragmented related and complementary service systems must be confronted. For consumers, the myriad of conflicting access and regulatory criteria for the range of public and community housing systems, together with the inconsistent Residential Tenancy Legislation for private mainstream tenancies across Australia is confusing and frustrating and a major barrier. The lack of any legislated protections for shared housing tenancies or for boarders and lodgers, and the proportion of tenancies not protected by RTA and without

a clear lease contract by individual private landlords is also concerning and needs to be addressed.

Shelter WA supports the development of a national regulatory framework. We encourage State and Commonwealth Departments to prioritise work to identify and strengthen cooperation and collaboration and avoid working at cross purposes where Community not-for-profit housing is also a provider of specialised tenancy supports – such as housing for people with intellectual and physical disabilities, people living in psychiatric hostels and residential aged care providers. A related need is for the WA State Government to show leadership on the ground and insist Local Government Authorities will support reform and co-operation, and allow for the delivery of adequate stock of affordable housing built form.