

Charter





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1. Purpose of this document

2. Background



The Charter sets out the overarching vision, objectives, regulatory principles and philosophy of the National Regulatory System for Community Housing (NRSCH).

The Charter complements and is consistent with other NRSCH documents; in particular the Inter-Government Agreement for a National Regulatory System for Community Housing Providers (Inter-Government Agreement), the Community Housing Providers National Law and Operational Guidelines approved by ministers.

The Commonwealth and state and territory governments have committed to a number of social housing reforms under the National Affordable Housing Agreement (NAHA).

One of these reforms is the development of a nationally consistent regulatory system which will enhance the sector's capacity to operate across and support the capacity and growth of a national community housing industry.

The NRSCH has been introduced through an applied law scheme, which involves each participating jurisdiction applying or adopting the National Law.

In August 2012, the NSW Parliament, as the 'host' jurisdiction, enacted the National Law when it passed the Community Housing Providers (Adoption of National Law) Act 2012.

The Inter-Government Agreement provides the framework for establishing and maintaining ongoing arrangements for the National Regulatory System.

3. Vision

A well governed, well managed and viable community housing sector that meets the housing needs of tenants and provides assurance for government and investors.



4. Objectives

The key objectives of the NRSCH are to:

- Provide a consistent regulatory environment to support the growth and development of the community housing sector
- Pave the way for future housing product development
- Reduce the regulatory burden on housing providers working across jurisdictions
- Provide a level playing field for providers seeking to enter new jurisdictions.



5. Regulatory principles

The NRSCH will be implemented to ensure that the regulation of community housing providers is:

- Proportionate – reflecting the scale and scope of regulated activities
- Accountable – able to justify regulatory assessments and be subject to scrutiny
- Consistent – based on standardised information and methods
- Transparent – clear and open processes and decisions
- Flexible – avoiding unnecessary rules about how housing providers organise their business and demonstrate compliance with the National Regulatory Code
- Targeted – focused on the core purposes of improving tenant outcomes and protecting vulnerable tenants; protecting government funding and equity; and ensuring investor and partner confidence.

6. Regulatory philosophy and practice

The NRSCH is designed to identify, monitor and respond to risks that have serious consequences for tenants, funders and investors, community housing assets and the reputation of the sector.

However, the risk profile of the sector is increasingly diverse and is not necessarily related to the past performance of providers or factors within their direct control.

Where community housing providers are involved in housing development activities and complex financing arrangements, Registrars increasingly need to focus on the providers' medium and long term plans and financial projections, and to conduct a sensitivity analysis of critical assumptions. Registrars cannot simply rely on a 'rear vision mirror' view of past performance.

In addition, the environment in which the sector is operating is becoming more complex. This complexity requires Registrars to adapt to ensure the level of regulatory oversight keeps pace with business developments and more complex business models. This includes supervision of multi-functional providers whose business extends to diverse non-community housing functions and involves complex affiliated entity arrangements.

At the same time, there are a large number of small community housing providers involved primarily in tenancy management activities that have a different risk profile and therefore require different levels of regulatory oversight.

Within this operating environment, a nuanced regulatory approach is needed that balances the level of regulatory engagement for community housing providers with different risk profiles.

Greatest regulatory focus and scrutiny will be on:

- Governance and financial viability outcomes – failure in these two areas has the most significant flow on impacts to other outcomes – and the most serious consequences for tenants, assets and sector reputation
- Registered providers assessed to have the greatest risk (Tier 1) due to the scale and scope of their activities and where the realisation of the risks would translate into significant impacts for tenants, assets and sector reputation.

A nuanced regulatory approach is needed that balances the level of regulatory engagement for community housing providers with different risk profiles.



7. Features of the National Regulatory System for Community Housing

The NRSCH is a voluntary registration system. Community housing providers will not be compelled to register, although jurisdictional housing (policy/funding) agencies¹ may make registration a precondition for future funding or assistance and require organisations with existing jurisdictional funding or assets to register.

The NRSCH contains the following key elements which are provided in the National Law, the Inter-Government Agreement and/or approved Ministerial Guidelines.

1. A National Regulatory Code

The National Regulatory Code sets out the performance outcomes and requirements that must be met, and complied with, by registered community housing providers under the NRSCH. The performance outcomes are:

- Tenant and housing services – the community housing provider is fair, transparent and responsive in delivering housing assistance to tenants, residents and other clients
- Housing assets – the community housing provider manages its community housing assets in a manner that ensures suitable properties are available at present and in the future
- Community engagement – the community housing provider works in partnership with relevant organisations to promote community housing and to contribute to socially inclusive communities
- Governance – the community housing provider is well governed to support the aims and intended outcomes of its business
- Probity – the community housing provider maintains high standards of probity relating to the business of the provider

- Management – the community housing provider manages its resources to achieve the intended outcomes of its business in a cost effective manner
- Financial viability – the community housing provider is financially viable at all times.

2. A National Register

The National Register of Community Housing Providers is a single national register and contains details of all registered community housing providers as defined by the National Law.

3. Registrars

Each state and territory has a Registrar or appoints a Registrar from another jurisdiction to apply the National Law and regulate providers within their jurisdiction. The role of each Registrar includes:

- maintaining the National Register jointly with the Registrars of other jurisdictions
- assessing and registering community housing providers
- monitoring registered providers' compliance with the National Law
- intervening when registered providers do not comply with the National Law and taking appropriate enforcement action, and
- cancelling the registration of a non-compliant provider where necessary.

¹ Policy and funding agencies are usually, but not always, the housing agency in the particular jurisdiction. For the purposes of this document, the term 'housing agency' will be used, but it is acknowledged that this will include policy and funding agencies for those jurisdictions where relevant.

4. Primary Registrar for multi-jurisdictional providers

Under the National Law, a Primary Registrar will be appointed for all registered community housing providers.

Where a provider operates across multiple jurisdictions, a primary jurisdiction will be determined in accordance with the National Law and applicable Operational Guidelines. The provider's Primary Registrar will be the Registrar of its primary jurisdiction.

Under the National Law, the primary jurisdiction is:

- the participating jurisdiction in which the unregistered entity or registered community provider provides the majority of its community housing, or
- in the case of an unregistered entity that provides no community housing in a participating jurisdiction, the participating jurisdiction in which it intends to provide the majority of its community housing, or
- if the Registrars for each participating jurisdiction agree on a different participating jurisdiction, that jurisdiction.

5. Tiers of Registration

Community housing providers will be registered in one of three tiers of registration.

The Registrar will determine a provider's tier of registration by assessing the level of risk, by reference to the scale and scope of their community housing activities. The tier of registration in turn determines the performance requirements and the intensity of regulatory engagement applicable to each provider.

The tiers of registration are as follows:

- **Tier 1** – these providers face the highest level of performance requirements and regulatory engagement, reflecting that these providers are involved in activities that necessitate management of a higher level of risk
- **Tier 2** – these providers face an intermediate level of performance requirements and regulatory engagement – reflecting that these providers are involved in activities that necessitate management of a level of risk that is lower than tier 1 but greater than tier 3
- **Tier 3** – these providers face a lower level of performance requirements and engagement – reflecting that these providers are involved in activities that necessitate management of a lower level of risk.



6. Governance

Housing ministers have responsibility for setting the policies in relation to, and for overall supervision of the National Regulatory System, using the decision making processes of the COAG Select Council on Housing and Homelessness (SCOHH).

The Housing and Homelessness Ministers' Advisory Committee (HHMAC) will continue to advise housing ministers on policy requirements for regulation to meet government priorities and objectives. HHMAC will also be responsible for resolving cross-jurisdictional disputes that cannot be resolved using the national system protocols or Operational Guidelines (e.g. disputes between Registrars concerning the determination of a primary jurisdiction of a provider).

A National Regulatory Council (NRC), an independent advisory committee appointed by housing ministers, is responsible for providing advice on systemic issues that may have an impact on the implementation and effectiveness of the NRSCH.

In general and where practical and appropriate, advice and recommendations from NRC and HHMAC will be co-ordinated to allow Ministers to jointly consider them.

Individual ministers, to whom Registrars in particular jurisdictions are accountable, can refer advice from that Registrar to the NRC or HHMAC or directly to the SCOHH for consideration.



8. Relationship of the NRSCH with jurisdictional policy and funding decisions

The community housing sector in each state and territory has developed under different conditions and over different timeframes. Each jurisdiction has adopted different policy and funding approaches, resulting in sectors that are different in size and structure.

Each participating jurisdiction will need to consider the regulation of community housing providers in making policy, funding and industry development decisions. However, the scope of a Registrar's functions under the NRSCH is limited to regulatory activities.

In contrast, state and territory housing agencies, depending on the arrangements in each jurisdiction, have responsibility for policy and funding activities and decisions such as:

- administering state or territory legislation relating to the delivery of housing assistance, including the control and use of assets where the jurisdiction has a registered interest
- assessing the suitability of housing providers to receive assistance
- monitoring the outcomes and performance of the provider under the contractual arrangements entered into as part of a funding allocation
- entering into agreements with housing providers and, where relevant, other jurisdictions, about the use of community housing assets and the transfer of surplus assets to another registered agency in the event of deregistration or wind-up.

Importantly, under the NRSCH each individual housing agency will continue to have responsibility for priorities, policy and funding decisions and approaches within that jurisdiction, including decisions concerning the growth and development of the social housing sector.

Each jurisdiction has adopted different policy and funding approaches

Glossary

Community housing

Housing for people on a very low, low or moderate income or for people with additional needs that is delivered by non-government organisations.

Community housing legislation

The National Law as applied in or adopted by a jurisdiction, together with any other legislation declared to be community housing legislation by the law of that jurisdiction.

Community housing provider

An organisation that provides community housing.

Enforcement Guidelines

Guidelines setting out the enforcement actions available to Registrars under the National Law if they reasonably believe that a provider is not complying with the community housing legislation of a participating jurisdiction.

Housing agency

A Commonwealth, state or territory government department or agency with responsibility for policy and funding decisions relating to community and other housing

Inter-Government Agreement (IGA)

A joint ministerial agreement, signed by relevant Ministers which commits governments to proceeding with the National Regulatory System for Community Housing and outlines the basis for its establishment and operation.

National Law

The state and territory based legislation through which the NRSCH is being introduced. The National Law is enacted in the host jurisdiction, New South Wales, and either applied or adopted by participating jurisdictions.

National Register

A single national database with the details of all registered community housing providers that is made publicly available.

National Regulatory Code

The performance requirements that registered housing providers must meet and comply with in providing community housing.

National Regulatory Council (NRC)

An independent advisory committee to be appointed by housing Ministers as an independent advisory committee to oversee the operation of the NRSCH with Secretariat support.

National Regulatory System for Community Housing (NRSCH)

A national system of registration, monitoring and regulation of community housing providers to encourage the development, viability and quality of community housing to promote confidence in the good governance of registered community housing providers so as to:

- facilitate greater investment in the sector
- make it easier for community housing providers to operate in more than one participating jurisdiction, and
- identify appropriate entities to which government funding for community housing might be provided under other legislation or policies of a jurisdiction.

Operational Guidelines

The suite of guidelines that governs the operation of the NRSCH. including the Evidence Guidelines, Tier Guidelines and Enforcement Guidelines.

Participating jurisdiction

Commonwealth, states and territories whose governments have agreed to participate in the NRSCH, e.g. a jurisdiction that applies or adopts the National Law.

Primary Registrar

The Registrar for the primary jurisdiction in which the community housing provider operates: generally the Registrar in the state or territory in which the provider undertakes the majority of its community housing activity.

Tier Guidelines

Guidelines for the application of the three-tiered registration system based on risk, whereby different levels of regulatory oversight apply to providers based on the scale and scope of their community housing activities.

Please note: Some common terms may have slightly different definitions in different jurisdictions that reflect variations in their legislation and/or existing terminology.



For more information

For more information on the National
Regulatory System for Community Housing,
please visit: www.nrsch.gov.au

