



# Regulatory Impact Statement

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## Housing Regulation 2009

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March 2009

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## REGULATORY IMPACT STATEMENT

TITLE OF REGULATORY PROPOSAL: *Housing Regulation 2009*

PROPONENT: Housing NSW

RESPONSIBLE MINISTER: The Hon David Borger MP  
Minister for Housing  
Minister for Western Sydney

RELEVANT ACT: *Housing Amendment (Community Housing Providers) Act 2007*

### **How to make a submission**

Public notice of the exhibition of this Regulatory Impact Statement has appeared in the NSW Government Gazette and a range of metropolitan and regional newspapers. The Regulatory Impact Statement is also accessible at: [www.housing.nsw.gov.au](http://www.housing.nsw.gov.au).

Interested parties are invited to submit written comments on the proposed *Housing Regulation 2009* and this Regulatory Impact Statement.

Submissions can be made to:

Consultation: Housing Regulation  
Housing NSW  
Locked Bag 4001  
ASHFIELD BC NSW 1800

or by email to [ConsultationHousingRegulation@housing.nsw.gov.au](mailto:ConsultationHousingRegulation@housing.nsw.gov.au).

***Submissions due by close of business 30 January 2009.***

## **1 The proposed regulation**

The proposed regulation, *Housing Regulation 2009*, falls under the regulation making powers of the *Housing Act 2001* (as amended by the *Housing Amendment (Community Housing Providers) Act 2007*). Section 75 (2) allows for the making of regulation to prescribe a regulatory code for registered community housing providers which sets out the requirements that community housing providers must comply with in relation to their community housing operations. The Act also makes provision for a definition of very low, low or moderate income to be set out in regulation.

In keeping with the provisions of the amendments to the *Housing Act 2001*, the *Housing Regulation 2009* (the “proposed regulation”) sets a regulatory code for registered community housing providers and a definition of very low, low and moderate income.

## **2 Approach taken in this regulatory impact statement**

The *Subordinate Legislation Act 1989* requires the agency responsible for developing a regulation, in this case Housing NSW, to prepare a Regulatory Impact Statement (RIS) to assess the economic and social costs and benefits of the regulation compared to its alternatives.

This RIS is concerned with the regulatory impact of new provisions to register and regulate community housing providers. As background, the RIS provides an overview of the *Housing Amendment (Community Housing Providers) Act 2007* that amends the *Housing Act 2001* to make provisions for regulating community housing. The RIS then considers the objectives of the proposed regulation and the rationale for the approach to prescribing the regulatory code.

Then this RIS examines the options for making of the regulation. These options include: making the proposed regulation that contains a risk based regulatory code; making an alternative regulation with a regulatory code focus on compliance with standards; or, no regulation.

## **3 Background**

### **3.1 Community housing in NSW**

Community housing is subsidised rental accommodation that not for profit community based organisations or housing providers make available for people of low incomes and people with additional needs. Some providers also develop and manage affordable rental housing for people on low to moderate incomes.

Nationally, community housing is recognised as a responsive, flexible and desirable provider of social housing. NSW has the largest community housing sector in Australia and community housing accounts for over ten per cent of the social housing stock. During 2006/07 community housing in NSW assisted almost 70,000 people through long-term community housing and crisis accommodation.

Housing NSW provides assistance, for the purpose of community housing, in the form of funding, land and property to over 500 organisations. Over \$2.3 billion of government assets are managed by these community housing organisations. During 2007/08 over \$160 million of Commonwealth and State Government funding will be spent on community housing programs in NSW. This includes funding for homelessness accommodation, new community housing supply, leasing of private

rental housing for low income households and general resourcing and operating costs. In addition the Government has established the Affordable Housing Innovations Fund and will invest over four years \$49.8 million in community housing through debt equity partnerships in locations of housing demand and developing 70 new rental properties in Western Sydney.

Community housing organisations assisted by Housing NSW are diverse in their operations and structures; they range from specialist housing associations managing over 1,000 properties to organisations managing one property for supported housing such as crisis accommodation for people experiencing homelessness. There are:

- 34 housing associations managing from 50 to more than 2000 properties
- 39 housing cooperatives managing up to 55 properties each
- 156 crisis accommodation providers managing on average 5 properties
- more than 300 organisations mostly managing between 1 and 30 properties.

In addition to the providers assisted by Housing NSW there are a range of not for profit organisations that provide supported accommodation for older people, people with disabilities and people suffering from a mental illness. These organisations that do not have a relationship to Housing NSW, through the receipt of funding or the use of properties, are not subject to the proposed regulation.

### **3.2 Current regulatory control framework**

There are a range of risks to government, tenants and the good reputation of community housing with the management of social housing by not for profit housing providers. These risks include:

- Service delivery quality for tenants and applicants
- Appropriate use of public funds
- Protection of public assets

There are currently three mechanisms available to government to control these risks:

1. *Performance management systems* - Housing NSW currently uses quarterly and annual reports and the administratively based registration system, Performance Based Registration System (PBRS) to manage provider performance.
2. *Contracts and leases* – as with all agencies funding service provision by non government organisation, Housing NSW uses contracts, funding agreements and policies to cover each of the programs funded by Housing NSW.
3. *Legislation* – community housing providers are constituted under existing legislation and aspects of their operations are managed under those Acts. The most important are: *Incorporation Act 1984*, *Cooperatives Act 1992* and the *Corporations Act 2001*.

In addition Housing NSW when faced with corrupt and illegal behaviour can make referrals to NSW Police, the Australian Securities and Investments Commission, the Australian Taxation Office and the NSW Independent Commission Against Corruption, for further investigation by these bodies. The relationships however are not systematically laid out in protocols or memorandums of understanding.

Each of these mechanisms offers only limited scope for intervention in the event of the failure of a community housing provider. The legislative tools are particularly limited, as they are designed to address company compliance. They do not recognise the role

of community housing organisations as providers of social services to vulnerable tenants or the role of providers as custodians of public assets.

A review of the controls employed by Housing NSW found that the existing control framework (annual funding agreements, leases, quarterly reports and the performance based registration system) provided opportunities to manage risks. However Housing NSW has limited intervention options to address criminal conduct, corruption fraud or misconduct. This is complicated by the different regulatory regimes that apply to the different types of housing providers that receive assistance from Housing NSW.

The review concluded that there are clear gaps in the current control framework; namely:

- the absence of an escalating hierarchy of intervention options in response to performance failures or other alerts;
- the lack of explicit provision for powers of investigation and audit; and
- the lack of requirement for strategies to genuinely assess legal status and risk awareness.

The community housing industry has also consistently stated that the current 'regulatory framework', based on unintegrated contractual, procedural and legislative tools hampers their attempts to achieve higher standards that they see as necessary if they are to grow their community housing business.

### **3.3 Legislative Council Report on Community Housing**

In 2002, the Legislative Council Standing Committee on Social Issues was tasked with undertaking an inquiry into community housing. The terms of reference for the inquiry covered a range of issues relating to the role of community housing in NSW, including the adequacy of reporting and regulatory frameworks in ensuring corporate governance and accountability. Submissions received from government and the community housing industry reported that the lack of an effective regulatory framework was a hindrance to dealing with poor performance of community housing providers and did not adequately meet the needs of a growing and changing sector.

The Committee concluded in their Report on Community Housing:

*'..that current provisions for the regulation of community housing are piecemeal and inadequately targeted to the sector. Regulation by the Department of Fair Trading and ASIC is either inadequate or inappropriate, and there are virtually no legislated regulatory mechanisms for the provision of community housing. The Department has little statutory power to enforce policies and procedures or to retract stock if providers are experiencing problems or have breached funding agreements.'*

*(Legislative Council Standing Committee on Social Issues Report on Community Housing, Report No.31, November 2003, p. 79)*

The Committee further noted that submissions to the Inquiry endorsed in principle the further development of a regulatory system for community housing. In response the Committee recommended that the Minister for Housing prepare an amendment to the *Housing Act 2001* that incorporates, among other things, a definition of community housing, clear regulatory roles and functions and a multi-tiered registration system.

### **3.4 Housing Amendment (Community Housing Providers) Act 2007**

Following extensive consultation with the community housing industry in 2005 a draft bill was prepared to amend the *Housing Act 2001* to recognise, register and regulate community housing providers.

The *Housing Amendment (Community Housing Providers) Act 2007* was passed by Parliament on 24 October 2007 and assented to on 1 November 2007. The amendments 'recognise community housing as a viable and diversified component of the NSW social housing sector' and provide the framework for a statutory registration and regulation system for community housing providers in NSW.

Specifically the amendments make provision for:

- the appointment of a Registrar of Community Housing, and
- the registration of community housing providers, and
- the giving of assistance to registered community housing providers so as to support the provision of housing for people on very low, low or moderate income.

The provisions will commence when the supporting regulation is made. Following the commencement of the provisions only organisations that are registered as a community housing provider will receive assistance from Housing NSW (as the Land and Housing Corporation). Assistance is defined as (but not limited to) funding, land, property and partnership arrangements. Organisations that currently receive assistance will have up to two years to become registered in accordance with the provisions of the Act.

### **3.5 National Regulatory Framework**

A proposal for a National Regulatory Framework for not for profit housing providers undertaking large scale affordable housing projects was endorsed nationally by Commonwealth, State and Territory Housing Ministers on 14 March 2008. The National Regulatory Framework is a nationally consistent system of legislative and administrative controls adopted by state and territory governments to regulate not for profit housing providers involved in growth activities. The Framework aims to facilitate these providers to operate easily across state and territory borders by introducing a consistent regulatory regime that will reduce the reporting and regulatory burden.

The Regulatory Framework will only apply to not for profit growth providers, organisations that have the capability to operate at scale in partnership with government and the private sector to create new affordable housing opportunities. These may be housing associations already managing a large portfolio of properties with the ability to grow significantly within the next five years or new not for profit organisations specifically created to undertake large scale affordable housing developments.

Under the proposal NSW and other states and territories have committed to implement a multi-tiered registration and regulatory framework in their jurisdiction that adopts a National Regulatory Code as the basis for registering organisations involved in growth activities. The proposed regulation has been developed in accordance with the requirements of the Nationally Regulatory Framework and the proposed regulatory requirements for the Growth Provider class of registration align with the National Regulatory Code.

## **4 Objectives of regulatory proposal**

The objectives of the proposed regulation are to:

- Define what is meant by a very low, low or moderate income under the *Housing Act 2001*
- Prescribe a regulatory code that registered community housing providers must comply with in relation to their operations and the provision of community housing.

## **5 Rationale for defining income levels and prescribing a regulatory code**

### **5.1 Defining very low, low and moderate income for the purposes of the Act**

The proposed regulation defines what is meant by a very low, low and moderate income for the purposes of the *Housing Act 2001* (as amended by the *Housing Amendment (Community Housing Providers) Act 2007*). This definition provides further clarification to the definition of community housing as 'housing (other than public housing) for people on a very low, low or moderate income or people with additional needs'.

This definition sets the parameters of income levels of households that community housing accommodates. Very low, low and moderate income is defined using median household income data from the Australian Bureau of Statistics for the Sydney Statistical Division or for the whole of NSW, as applicable. The definition is consistent with the definition of affordable housing in *State Environmental Planning Policy No. 70 - Affordable Housing (Revised Schemes)* under the *Environmental Planning and Assessment Act 1979*.

### **5.2 Prescribing a regulatory code**

In accordance with the *Housing Act 2001* (as amended by the *Housing Amendment (Community Housing Providers) Act 2007*) the proposed regulation prescribes a regulatory code for classes of providers. The regulatory code sets out the requirements that registered community housing providers must comply with in relation to their operations and the provision of community housing.

The Registrar of Community Housing, a statutory position established under the *Housing Act 2001* (as amended by the *Housing Amendment (Community Housing Providers) Act 2007*) will determine the registration status of community housing organisations in accordance with the requirements of the regulatory code. The requirements are focused on key areas of risk in community housing business activities, including:

- Tenancy management
- Community housing partnerships and initiatives
- Asset management
- Financial management
- Housing development.

The code also requires community housing providers to demonstrate a sound governance framework for these activities and that high standards of probity and conduct are maintained.

The requirements aim to assist stakeholders to manage the risks that arise out of the community housing business and:

- secure for community housing tenants and applicants appropriate and affordable housing which meets community standards;
- secure for the taxpayer proper assurance that resources available for community housing are utilised efficiently and effectively; and
- provide confidence to private sector investors and partners that registered community housing providers are viable, properly governed and managed organisations.

The regulatory code has been drafted to meet the aims set out above and the following nine outcomes that relate to the key business activities of community housing providers:

1. The fair treatment of tenants and applicants
2. Community housing services that contribute to sustainable tenancies and sustainable communities
3. Strategic asset management that seeks to meet tenants' housing needs and preferences now and in the future
4. Sound governance that supports funder, investor and community confidence in community housing industry
5. Maintaining high standards of probity
6. The protection of government investment in community housing
7. Value for money in delivering community housing with government assistance
8. On-time and on-budget delivery of community housing developments.
9. New housing developments that deliver appropriate and affordable new homes

The regulatory code sets these requirements for four classes of community housing providers. The Registrar will determine an application for registration and undertake ongoing regulatory engagement by assessing compliance with the required provisions of the regulatory code for the required class of registration.

*Classes of registration (as at March 2009 - amended from the November 2008 version)*

1. **Growth provider:** typically organisations managing a large portfolio of properties (400 or more) and undertaking community housing development projects utilising private sector funds and investment. Organisations registered in this class are subject to the highest level of regulatory requirements which reflects the greater level of resources committed by government to these providers and the increased level of risk involved in borrowing and community housing development projects.
2. **Housing provider:** typically, organisations managing a large portfolio of properties (200 or more) and undertaking small scale projects to develop community housing. Organisations registered in this class are subject to medium to high levels of regulatory requirements dependant on the scale of their community housing operations and their level of borrowing and involvement, if any, in community housing development projects.

3. **Housing manager:** typically, organisations managing a small to medium sized portfolio of properties (30 or more) focused on property and tenancy management. Organisations registered in this class are subject to regulatory requirements that are proportionate to the scale of their community housing operations.
4. **Small housing manager:** typically, organisations managing a small portfolio of properties (1 or more) focused on tenancy management. Organisations registered in this class are subject to regulatory requirements that are proportionate to small scale community housing operations.

The four registration classes reflect the scale and type of activities that providers are engaged in. The level of requirements is proportionate to the risk associated with the size and scale of activities of each class of provider. Not all classes are required to meet every requirement.

The Registrar will provide further supporting guidance on the interpretation of the requirements to assist organisations seeking registration and registered organisations subject to ongoing regulatory engagement. This will be in the form of evidence guidelines that will be revised and issued on a regular basis by the Registrar. The guidelines will detail the range of evidence sources that can be supplied to demonstrate compliance with the requirements. For each class of registration the detail and level of evidentiary guidance will be different reflecting a proportionate approach to managing the risks associated with each class.

## **6 Options to achieve objectives**

### **6.1 Options**

This RIS examines three options for the *Housing Regulation 2009*:

- 1) The proposed regulation, a risk based approach.
- 2) An alternate statutory regulation system that adopts a standardised approach.
- 3) No regulation. This would mean that no new Regulation would be developed to support the *Housing Amendment (Community Housing Providers) Act 2007*.

### **6.2 Analysis**

#### **6.2.1 Option 1 – A risk based approach (the proposed regulation)**

The proposed regulation adopts a risk based approach to tailor the level of regulatory engagement to the risks posed by individual organisations by:

- Establishing a tiered approach to regulation with four classes of registration that reflect different risk categorisations. The tiered approach allows the regulatory burden to be proportionate to the risks faced and is targeted to the greatest areas of risk.
- Setting requirements to meet key outcomes for the delivery of community housing services.
- Limiting the application of the regulation to activities that represent a significant risk, and which can not be managed cost-effectively through other regulatory mechanisms.
- Focusing only on activities that relate to the community housing business of an organisation.

## **Benefits**

### **Government**

- Statutory regulation will enhance protection of government assets and investments by ensuring that assistance from Housing NSW is only available to organisations that comply with the regulatory requirements. In order to meet the requirements for registration and ongoing regulatory engagement, providers will need to demonstrate government investments are managed appropriately and that they provide value for money in the delivery of government assisted community housing.
- A statutory regulatory framework will provide confidence that government is committed to a healthy, vibrant community housing sector. This will support government objectives for growth of the community housing sector. A target has been set to grow community housing over the next ten years to 30,000 homes. Part of this growth will be achieved through the transfer of stock from public to community housing; part will be achieved through providing capital funding directly to community housing providers to develop new housing supply; and further growth will come through providers working with the private sector to attract private funds to housing.
- Specifically, the statutory regulatory framework will support growth through increased private sector investment in community housing. Financial institutions have indicated that statutory regulation will facilitate increased private sector investment as it will provide confidence that community housing providers are viable, properly governed and well managed organisations. This has been demonstrated in England, where there is a direct relationship between regulation and the cost of borrowing money for affordable housing investment. The Housing Corporation in England<sup>1</sup> identify two of key benefits of statutory regulation as enabling leverage of £35 billion of investment and creating a climate of lender confidence where loan interest rates are lower than available to the private sector development industry<sup>2</sup>.
- Increased private sector investment in community housing benefits government in two ways: increasing the provision of housing for those in need; and reducing the level of financial risk borne by government in funding community housing.
- Regulation will also ensure that only organisations who can demonstrate they meet the requirements for key areas of community housing business activities are registered community housing providers. Only organisations who can meet the requirements of the regulation will be registered. This will ensure public funds are targeted to efficient and viable community housing organisations.

### **Industry**

- A tiered approach to regulation recognises the range of services provided by community housing providers and caters for a diverse range of providers in terms of scale and type of activity. It also preserves flexibility of provider operations without disadvantaging some types of providers.
- This approach is also likely to reduce the compliance costs of meeting the regulatory requirements for community housing registration for the majority of providers who are currently registered under the current administrative registration system, the Performance Based Registration System (PBRS). In comparison to the requirements under PRBS the proposed tiered approach with four classes with different regulatory requirements will reduce the regulatory burden for these

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<sup>1</sup> The Housing Corporation is the Government agency responsible for regulating and investing in housing associations in England.

<sup>2</sup> Housing Corporation (2007) *Cave Review of Affordable Housing Regulation: Response of the Housing Corporation*.

providers. It will be only providers engaging in new development and borrowing activities that will be subject to higher regulatory requirements, which will be appropriate to the range and scale of these new activities.

- In the United Kingdom, analysis<sup>3</sup> undertaken in 2005 of the statutory regulatory framework for housing associations in England reported that a cost benefit analysis indicates net quantifiable benefits of the framework in the region of £175 million over a five year period. The benefits are primarily determined as result of the industry being able to borrow at reduced interest rates. Given the scale of borrowing in the English industry this represents substantial quantifiable benefits. These benefits increase with the size of an organisation, as larger associations, who tend to borrow for housing developments, see higher net benefits.

### ***Tenants, applicants and the community***

- Regulation will ensure the fair treatment of tenants and applicants and community housing services that meets tenants' needs. To meet the requirements for registration and to maintain registration providers will need to demonstrate tenants and applicants have been treated fairly and that services have been designed to meet tenant's needs. This is very important as community housing tenants are some of the most vulnerable members of the community.
- Regulation under the *Housing Act 2001* (as amended by the *Housing Amendment (Community Housing Providers) Act 2007*) provides for a new process for the investigation of complaints. One of the key functions of the Registrar of Community Housing is to investigate complaints and other matters in respect of registered community housing providers.

## **Costs**

### ***Government***

- Government will bear the costs of providing regulatory infrastructure including the Registrar of Community Housing and the administrative functions of the Office of the Registrar. These costs are split into:
  - Short term set up costs for the Office of the Registrar and the initial assessment of registration of providers who currently receive assistance from Housing NSW (500 + organisations) in a two year period as provided for in the 'grandfathering' provisions of the *Housing Act 2001* (as amended by the *Housing Amendment (Community Housing Providers) Act 2007*). This is calculated at \$2.4 million per annum for two years
  - Long term costs for registration and ongoing regulatory engagement. The recurrent costs are estimated to be \$1.3 million per annum.
- In comparison to the resources required to operate the PBRS the proposed regulation over the longer term is expected to be more cost effective as the tiered approach will require less resources to initially register organisations and the focus on managing risks will require less resources for assessment of ongoing compliance.
- There is also the potential additional cost to Government from applications to the Administrative Decisions Tribunal, to review registration decisions. However, these costs will be minimised by the implementation of a staged process for intervention when a provider can not demonstrate they meet the requirements for maintaining registration. The staged process will provide appropriate opportunities for registered providers to demonstrate compliance with the requirements of the regulatory code before the Registrar would seek to cancel any registration.

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<sup>3</sup> Foster Economics (2005) *Exploring costs and benefits of a regulatory regime, Final Report to the Housing Corporation.*

## **Industry**

- The main costs to industry will be the compliance costs for meeting the regulatory requirements of the regulation. The compliance costs will depend on the organisation, the class of registration and existing registration status. For this analysis community housing providers are split into three segments:
  - organisations already registered under the administrative based registration system, PBRS and maintaining their current business operations (approximately 65 providers)
  - organisations registered under PBRS that will be undertaking new growth activities such as property procurement and development utilising new funding and financing regimes (8 + providers)
  - organisations that are not currently registered under the PBRS (450 + organisations)
- For the first segment the costs of registration are likely to be less. A survey undertaken by Housing NSW has indicated that the preparation of evidence for the preliminary risk assessment under the PBRS takes 2-6 days for more than sixty per cent of providers and more than 6 days for the remaining providers surveyed. The tiered risk based approach of the proposed regulation is estimated to reduce the burden of compliance for a provider already registered and operating as business as usual.
- However organisations currently registered under the PBRS undertaking new activities will be subject to an increased regulatory burden commensurate with the scale of the new activities undertaken. This includes compliance with regulatory requirements related to development and borrowing activities.
- For organisations not currently registered under PBRS, regulation will represent a new cost of business. The majority of organisations who currently receive assistance from Housing NSW and who are not registered currently manage on average less than ten Housing NSW properties. Under the proposed regulation providers who manage a small number of properties and are not undertaking activities such as development or leveraging funds against government assets the level of regulatory burden will be low. It is expected for these providers the compliance costs would be equivalent to one to two days work per annum.
- To reduce the regulatory burden on the industry, the Registrar of Community Housing will implement reporting systems that align with existing systems to reduce the time taken for compliance by organisations. The Registrar will also issue guidance and practice notes that are updated regularly on the regulatory process to ensure that all regulatory practices are clear and transparent.
- To minimise regulatory costs any organisation currently receiving assistance from Housing NSW in the form of managing a property, may choose to enter into a relationship with a registered community housing provider regarding the responsibility for tenancy and property management. An organisation can negotiate with a registered community housing provider to take over the lease for the property, and subsequently the requirements for registration. If the organisation is a support service provider they can negotiate with the registered provider to continue operating the support services within the property.
- In addition to the costs of compliance and ongoing regulatory engagement there will be the cost of non-compliance. Some organisations who currently receive assistance from Housing NSW will fail to meet the requirements for registration. Organisations that fail to meet the registration requirements will not be eligible to receive assistance from Housing NSW. Organisations that are not eligible, and that currently manage properties, have the choice (as set out above) of the property

being managed by a registered community housing provider with their support service continuing. If such an alternative arrangement can not be made, Housing NSW will withdraw assistance and reallocate the properties to a registered community housing provider.

### **6.2.2 Option 2 – Standards based approach**

An alternative to the proposed approach is adopting a regulatory code that sets standards that must be met by all organisations to become registered. Under this approach the regulatory code would clearly set consistent benchmarks for all organisations. Every organisation would be required to meet the same standards for property and tenancy management and other standards for good governance and ensuring probity. In addition any organisation undertaking activities for housing developments would be required to meet the set standards for these activities.

#### **Benefits**

##### **Government**

- Statutory regulation will enhance protection of government assets and investments by ensuring that assistance from Housing NSW is only available to organisations that comply with the regulatory requirements. In order to meet the requirements for registration and ongoing regulatory engagement providers will need to demonstrate government investments are managed appropriately and they provide value for money in the delivery of government assisted community housing.
- A statutory regulatory framework will provide confidence that government is committed to a healthy, vibrant community housing sector. This will support government objectives for growth of the community housing sector. A target has been set to grow community housing over the next ten years to 30,000 homes. Part of this growth will be achieved through the transfer of stock from public to community housing; part will be achieved through providing capital funding directly to community housing providers to develop new housing supply; and further growth will come through providers working with the private sector to attract private funds to housing.
- Specifically, the statutory regulatory framework will support growth through increased private sector investment in community housing. Financial institutions have indicated that statutory regulation will facilitate increased private sector investment as it will provide confidence that community housing providers are viable, properly governed and managed organisations. This has been demonstrated in England where this is a direct relationship between regulation and the cost of borrowing money for affordable housing investment. The Housing Corporation in England<sup>4</sup> identify two of key benefits of statutory regulation as enabling leverage of £35 billion of investment and creating a climate of lender confidence where loan interest rates are lower than available to the private sector development industry<sup>5</sup>.
- Increased private sector investment in community housing benefits government in two ways: increasing the provision of housing for those in need; and reducing the level of financial risk borne by government in funding community housing.
- Regulation will ensure that only organisations who can demonstrate they meet the requirements for key areas of community housing business activities are registered community housing providers. Registration and ongoing regulatory engagement

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<sup>4</sup> The Housing Corporation is the Government agency responsible for regulating and investing in housing associations in England.

<sup>5</sup> Housing Corporation (2007) *Cave Review of Affordable Housing Regulation: Response of the Housing Corporation*.

will identify poor performers and ensure public funds are targeted to efficient and viable community housing organisations.

- A standards based approach that sets the same requirements for all providers enables government to establish clear, systems and processes for registration and regulatory engagement. Standardised systems and processes clearly set out the expectations of government. This has the potential to reduce areas for dispute regarding registration assessment and ongoing engagement.

### **Industry**

- A standards based approach to regulation will set out to all community providers the benchmarks that must be met for registration and ongoing regulatory compliance. This provides certainty to organisations regarding their community housing business and what is expected by government regarding appropriate standards for operations.
- In the United Kingdom, analysis undertaken in 2005 of the statutory regulatory framework for housing associations in England reported that a cost benefit analysis indicates net quantifiable benefits of the framework in the region of £175 million in a five year period. The benefits are primarily determined as result of the industry being able to borrow at reduced interest rates. Given the scale of borrowing in the English industry this represents substantial quantifiable benefits. These benefits increase with the size of an organisation, as larger associations, who tend to borrow for housing developments, see higher net benefits.

### **Tenants, applicants and the community**

- Regulation will ensure providers meet set standards for the delivery of tenancy management and support services. This will provide assurance to tenants and applicants they receive fair treatment and services that meet community standards. This is very important as community housing tenants are some of the most vulnerable members of the community.
- Regulation under the *Housing Act 2001* (as amended by the *Housing Amendment (Community Housing Providers) Act 2007*) provides for a new process for the investigation of complaints. One of the key functions of the Registrar of Community Housing is to investigate complaints and other matters in respect of registered community housing providers.

### **Costs**

#### **Government**

- Government will bear the costs of providing regulatory infrastructure including the Registrar of Community Housing and the administrative functions of the Office of the Registrar. Like Option 1 this will represent additional costs to government in the short term to establish the Office of the Registrar and undertake the preliminary intake of organisations in the first two year period.
- However, the costs for registration assessment and ongoing regulatory engagement will be higher as a standards based approach sets the same requirements for all community housing providers. This will require government to set standards at a level that appropriately manages the risk of all community housing businesses and therefore require a more resources for assessment and engagement. The recurrent costs of this approach are conservatively estimated as \$ 3.4 million per annum.

## **Industry**

- The main costs to industry will be the compliance costs for meeting the regulatory requirements of the registration and ongoing regulation. The compliance costs will depend on the existing registration status of the provider.
- For organisations currently registered under PBRs the costs of compliance are likely to remain relatively similar if the organisations are operating as business as usual. That is their operations are primarily tenancy and property management.
- For organisations registered under PBRs undertaking new activities such as development and borrowings the regulatory burden will increase as these organisations will also be subject to meeting the set standards for development activities. This is to ensure these activities are appropriately regulated and the organisations meet set standards for compliance relating to procurement, development and financial activities.
- For organisations not currently registered under PBRs (450+ providers) the standards based regulation will represent new costs of business. The costs are likely to reflect the costs currently experienced by organisations currently subject to PBRs requirements. A survey undertaken by Housing NSW found that for the majority of providers the preparation of the evidence for the preliminary risk assessment takes between 2 – 6 days of provider's time per annum.
- In addition to the costs of compliance and ongoing regulatory engagement there will be the cost of non-compliance. Some organisations who currently receive assistance from Housing NSW will fail to meet the standards set for registration. Organisations that fail to meet the registration standards are not eligible to receive assistance from Housing NSW.

### **6.2.3 Option 3 – No regulation**

The third option considered was no regulation is made to support the *Housing Amendment (Community Housing Providers) Act 2007*. Government would continue to manage the risks of the community housing industry through the existing regulatory control framework. This includes reporting, contracts, leases and the administrative registration system, Performance Based Registration System (PBRs). Under this option PBRs could be expanded (from 74 organisations) to cover all organisations (over 500) that receive funding or manage Housing NSW properties as a way to improve the performance of community housing providers.

## **Benefits**

### **Government**

- Government can utilise existing systems and processes for regulating community housing providers. This would avoid the additional cost to government of establishing a new statutory framework and establishing the Office of the Registrar of Community Housing. However this saving would be negligible if the PBRs was expanded to cover all organisations who receive assistance from Housing NSW as new systems and process would need to be established to adapt the system to cover the additional organisations subject to registration. Additional staff would also be required for the initial registration period and the ongoing review or registered organisations.

## **Industry**

- Community housing organisations that currently manage Housing NSW properties would not be subject to statutory requirements for registration and compliance in

order to continue to manage a portfolio of Housing NSW properties. For some organisations this would represent a saving of the costs required to meet the statutory regulatory burden. The cost savings would be dependent on the type and size of the organisations. However, the costs would be negligible if the PBR system was extended to apply to all organisations who receive assistance from Housing NSW.

- For organisations currently registered under PBR, the continuation of this system will enable registered organisations to continue to use the systems established for registration compliance. This represents a cost saving as they would not need to adapt their existing system to meet the requirements of a new statutory regulation system.

## **Costs**

### ***Government***

- Failure to identify poor performance or provider failure through the existing regulatory control framework will continue to cost government in a number of ways. Poor performing organisations provide unsatisfactory services to tenants and applicants and do not appropriately manage and maintain government assets. This represents poor service efficiency and does not provide value for money on government investment, which results in additional costs to government.
- The failure of community housing providers and the subsequent closure of their operations place additional costs to be borne by government. This includes the additional costs of rehousing tenants and reallocating properties to another community housing provider. There are also significant additional costs to government if the assets have not been appropriately managed and maintained and require maintenance and upgrading before they can be allocated to another provider.
- Financial institutions have indicated that regulation will facilitate increased private sector investment in community housing. The lack of an appropriate framework limits opportunities for the community housing industry to partner with the private sector to deliver more community housing. This represents a cost to government as the significant potential to utilise government investment in community housing as leverage for additional funds to create more affordable housing is negated.

### ***Industry***

- The failure to identify poor performance and provider failure through the existing regulatory control framework can also impact on the reputation of the community housing industry. Poor performing providers and incidents of organisational failure can reduce public confidence in community housing providing a safe and secure alternative to public housing.
- Financial institutions have indicated that statutory regulation will facilitate increased private sector investment in community housing. For organisations interested in expanding their housing development activities through private partnerships the lack of statutory framework is a constraint on their business operations. The lack of an appropriate framework limits opportunities for organisations to partner with the private sector to deliver more community housing.

### ***Tenants and applicants***

- A lack of an appropriate framework to manage poorly performing providers presents a number of costs to tenants and applicants. This could include poor community housing and support services, inappropriate housing and unfair

treatment. This is of particular concern as community housing tenants are some of the most vulnerable people in the community.

### 6.3 Discussion

The proposed regulation (Option 1) draws on national and international experience to develop a risk based regulation system for not for profit housing providers. Registration of organisations in different classes aims to ensure that regulation is proportionate to the risks of the size and type of community housing operations. The proposed regulation is targeted to the key risks of community housing business activities in keeping with regulatory best practice and current government policy directions aimed at reducing 'red tape'. Specifically in this regard the approach:

- builds on the existing Performance Based Registration System (PBRs), administered by Housing NSW.
- builds on international experience and best practice studies for regulating not for profit housing providers.
- represents national best practice and has been developed to align with the National Regulatory Framework for not for profit growth providers.
- does not attempt to duplicate existing legislation as contained in constituting Acts, for example Corporations Law.
- is unlikely to increase the regulatory requirements for most community housing providers already subject to reporting requirements under PBRs.
- is confined to the area of the current regulatory framework that is inadequate, particularly providing a predictable path of intervention in the event of provider failure.

Option 1, the proposed regulation is the **preferred option** as it represents the greatest net benefit to government, industry and the community. Option 1 best reflects government's intention to adopt a flexible and proportional system for regulating community housing providers in NSW. The tiered based approach recognises the range of services provided by community housing providers and caters for a diversity of providers in terms of scale and activity. The regulatory code has been designed to allow providers to demonstrate compliance with the regulatory requirements with a range of evidence sources. This approach ensures that the key risks of community housing business activities are managed and preserves the independent operation of community housing providers.

The proposed approach also represents the least cost to government in terms of systems operation. In comparison to the standards based approach (Option 2) and the existing administratively based registration system (Option 3), the proposed tiered approach is the most cost effective. The four classes of registration require fewer resources (financial and staff) for the initial registration assessment and for assessment of ongoing compliance.

Furthermore, the proposed regulation provides appropriate tools for government to protect tenants and government investment in the case of provider failure. Only providers who meet the requirements of the regulatory code will receive assistance from Housing NSW. This will ensure that limited government resources are targeted cost effectively to efficient and viable community housing providers. Registered providers who fail to comply with the regulatory code will face the cancellation of registration if compliance can not be demonstrated within a reasonable time period.

While Option 2 provides many of the benefits of Option 1 in terms of clear tools for intervention in the event of provider failure, which has benefits to government, industry

and tenants, the standardised approach of Option 2 does not recognise the diversity of the community housing industry. Under Option 2 organisations would be subject to the same level of regulation regardless of the level of risk. For example an organisation with one property under management would be required to meet the same property management standards as an organisation that managed 1,000 properties. Organisations engaged in one small development project would be required to meet the same development project standards as an organisation undertaking multiple development projects.

Option 2 will assist providers by clearly stating what is required for registration. However, it does not provide the flexibility to deal with the range of organisations and services provided by community housing providers in NSW. The standards based assessment does not consider the local context and scale of the organisation's activities and as a result the registration assessment may not reflect an organisation's actual performance. This lack of flexibility to recognise a range of community housing business activities will place additional burdens on providers to adapt their operations to meet the standards or, result in the cost of non-compliance. This significantly limits a community housing provider's independence to provide community housing services to best meet their needs of their clients.

Under Option 3, no regulation is made to support the *Housing Amendment (Community Housing Providers) Act 2007*; Housing NSW would be limited to the existing regulatory control framework to manage the risks associated with community housing business. As the Report of the Legislative Council Standing Committee on Social Issues (2003) on Community Housing noted the current control framework is inadequate for the community housing industry in NSW. It does not provide government with the appropriate tools to intervene in the event of provider failure, to ensure that tenants are protected and government investments are effectively managed. Furthermore, the lack of a statutory framework has the potential to limit opportunities for the community housing industry to grow through investment and partnerships with the private sector.

## 7 Consultation

### 7.1 Consultation to date

Consultation on the development of the regulatory code for registered community housing providers has been held with a stakeholder advisory group. The following stakeholders have participated in the advisory group:

Ms Sue Cripps	Homelessness NSW
Mr Adam Farrar	NSW Federation of Housing Associations
Mr Anthony Hardy	Housing Registrar, Victorian Department of Human Services
Mr Craig Johnston	Shelter NSW
Professor Bill Randolph	City Future Research Centre, UNSW
Ms Karine Shellshear	Association to Resource Co-operative Housing
Reverend Derek Yule	Churches Community Housing

## 7.2 Proposed consultation program

Advertisements in the NSW Government Gazette and a range of metropolitan and regional newspapers advising stakeholders of the public consultation during which submissions will be sought and analysed.

Copies of this RIS will be forwarded to the following organisations:

- Association to Resource Co-operative Housing
- Churches Community Housing
- Homelessness NSW
- NSW Federation of Housing Associations
- NSW Council of Social Service
- Shelter NSW
- Tenant's Union of NSW
- Youth Accommodation Association
- Women's Refuge Resource Centre
- Administrative Decisions Tribunal of NSW
- NSW Aboriginal Housing Office
- NSW Department of Community Services
- NSW Department of Disability, Ageing and Home Care
- NSW Department of Premier and Cabinet
- NSW Office of Fair Trading
- NSW Treasury

Housing NSW will be notifying every organisation that currently receives assistance from the Land and Housing Corporation as defined by the meaning of the *Housing Act 2001* (as amended by the *Housing Amendment (Community Housing Providers) Act 2007*) and advising of the consultation on the proposed regulation. Housing NSW will also be undertaking briefing sessions on the proposed regulation in different locations across the state with interested organisations on the contents of the proposed regulation.