



Housing Regulation 2009

Under the
Housing Act 2001

Consultation Report & Proposed changes

March 2009

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1. Introduction

This report provides an overview of the public consultation process undertaken in relation to the draft *Housing Regulation 2009* (the Regulation) and the Regulatory Impact Statement (RIS). Section Four outlines issues raised in submissions received during the public consultation process and changes made to the Regulation that relate to these issues. Section Five presents a comprehensive list of changes proposed to the draft Regulation and RIS.

2. Background

The Housing Amendment (Community Housing Providers) Act 2007 and the proposed *Housing Regulation 2009* provides the legislative framework for the regulation of community housing providers by the Registrar of Community Housing. The draft Regulation prescribes a Regulatory Code that registered community housing providers must comply with in relation to their operations and the provision of community housing. It also defines what is meant by very low, low and moderate income under the *Housing Act 2001 (NSW)*.

3. Consultation process

The draft Regulation and the RIS were exhibited for public consultation from 21 November 2008 to 30 January 2009. Information regarding the draft regulation was distributed to all community housing providers, peak housing and industry bodies, and other stakeholders, including relevant government departments. Information was also made available on the Housing NSW website.

Housing NSW held five briefing sessions in metropolitan and regional locations during the consultation period. These sessions provided further detail on the new system and information on how stakeholders can respond to consultation. There were 103 attendees, including 79 from not for profit organisations, 20 from housing associations and 4 from co-operatives. The main focus of issues raised by attendees was in relation to the registration process rather than the Regulatory Code.

Formal submissions on the draft Regulation were received from 11 government, non-government and peak organisations. Advice on the Regulation was also provided by the Registrar of Community Housing through the Director-General. Issues raised in submissions were considered by Housing NSW and the advisory group of external stakeholders that has been working with the Department since 2007 to develop the new Regulation.

Overall, there was broad support for the Regulation. A common theme in submissions received related to concern around regulatory burden for smaller providers and a request for additional support. Additional resources for the community housing sector have been allocated to support the implementation of the Regulation. Another issue raised during the consultation process relates to the use of 'tenant' in the Regulatory Code. In some forms of community housing, for example, short term crisis accommodation, occupants are not legally regarded as tenants. It is proposed that the broader term 'residents', which refers to all forms of occupancy, be used instead. The definitions of the classes of registration in the RIS have also been amended in line with advice received. The submissions were forwarded to the Registrar as information to support the implementation of the Regulatory Code.

The following stakeholders 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
Ms Roxane Shaw	Registrar of Community Housing (Appointed in July 2008)

4. Issues raised in written submissions

	Issue	Response	Issue raised by:
1.	Concern that the new regulatory system may place an inappropriate burden of costs or resources on small community housing providers and may hinder their ability to provide specialist support services.	Additional resources for the community housing sector have been allocated to support the implementation of the Regulation.	<ul style="list-style-type: none"> • Northern Region Young Women's Accommodation Project (NRYWAP) • Cabonne Council • Northcott Disability Services • Ability Options • Southern Youth and Family Services Association Inc
2.	Request that additional support and extra time be allocated to small agencies that have not previously been involved with Housing NSW's existing Performance Based Registration System.	As above.	Southern Youth and Family Services Association Inc
3.	Request that reporting requirements under the Regulatory Code be aligned with those of other agencies to avoid duplication.	The Regulatory Code focuses on the provision of housing services and so it differs from the regulatory mechanisms of other agencies. There appears to be little scope in the short term for regulatory synergies, but this issue will be monitored by the Registrar.	Northcott Disability Services
4.	Request for clarification of whether any current or new partnership arrangement that involves a church-based organisation will require that organisation to be registered under the new Regulatory Code, regardless of whether the organisation is conducting the tenancy and property management services.	The Registrar of Community Housing has sought legal advice from the Crown Solicitor in relation to how different corporate structures, including those in the churches sector, will be captured by the Regulation. Further liaison and consideration of this issue is being undertaken by the Registrar in order to resolve this issue.	Churches Community Housing Ltd.
5.	That the Regulation be extended to all other social and affordable housing providers, particularly for-profit organisations utilising government support.	The Regulation does not make a distinction between non-profit and for profit providers.	NSW Federation of Housing Associations

	Issue	Response	Issue raised by:
6.	That clause 6,18 be reworded to require that providers "...act to prevent any serious or repeated fraud, corruption or criminal conduct	<p>Clauses 18 and 20 were combined and amended to:</p> <p>18 Fraud and corruption <i>A registered community housing provider must:</i> <i>(a) have support systems in place that are designed to prevent, monitor, report on, and respond to, instances of fraud, corruption and criminal conduct of a similar kind, and</i> <i>(b) ensure that there are no serious or repeated instances of fraud, corruption or criminal conduct of a similar kind in connection with its operations.</i></p>	NSW Federation of Housing Associations
7.	That 6, 21 be reworded to read: "...show a commitment to maintaining the good reputation of the community housing sector and appropriately respond to incidents that damage, or may damage, that reputation".	<p>20 Reputation of community housing sector <i>A registered community housing provider must notify the Registrar, in a timely manner, of any incident relating to its operations that damages, or may damage, the reputation of the community housing sector.</i></p>	NSW Federation of Housing Associations
8.	That the Object of Part 9 reflect the wording in 30 (d): "ensure management of community housing developments that minimises variations to timeframes and budgets".	<p>Clauses 30(a) and 30(b) were combined and amended to:</p> <p>29 Planning and costs: class 1 or 2 <i>A Class 1 or 2 registered community housing provider must undertake community housing development project planning that is appropriate to the scale of projects undertaken and that demonstrates that projects will meet relevant statutory requirements and policy guidelines.</i></p> <p>Clauses 30(c) and (d) were removed.</p>	NSW Federation of Housing Associations

	Issue	Response	Issue raised by:
9.	That 9, 31 be rewritten. Consideration be given to the following wording: "...provider will achieve appropriate financial leverage rates for development projects, that are, in the opinion of the Registrar, financially viable."	Clause 30 was amended to: 30 Financial leverage: class 1 <i>A class 1 registered community housing provider must leverage its assets at a rate that, in the opinion of the Registrar, delivers sustainable and optimal growth.</i>	NSW Federation of Housing Associations
10.	That Part 7 Protection of government investment be renamed "Protection of investment" and that the object of the part be revised accordingly	There is no intent to guarantee all financial liabilities of organisations. The object of this part is to protect government investment in community housing.	NSW Federation of Housing Associations
11.	That 5, 15 be rephrased to avoid any implication that all providers must undertake full quality assurance audits against the National Community Housing Standards.	This issue is dealt with at the policy level. That is, the Registrar will issue the Evidence Guidelines to indicate how community housing providers can meet the outcomes in the Regulatory Code.	NSW Federation of Housing Associations
12.	Regulatory Impact Statement That the Registrar have responsibility for and control of the performance data required for regulatory oversight. That only the Registrar collect performance data, and that all other performance decisions be based on registration status.	These are policy and operational matters that fall within the responsibilities of Housing NSW rather than the Registrar. Further discussions regarding these issues are to occur during the implementation phase of the Regulation. External stakeholders will be involved in these discussions.	NSW Federation of Housing Associations
13.	Regulatory Impact Statement Expand the number of tenancies regarded as appropriate to be classed as a small scale housing provider (from 1-30 to 1-50). When classifying providers, the importance of taking into account the specialised nature of support services provided, alongside the number of properties, was highlighted.	RIS was amended to allow more flexibility. See Section 5 below.	Southern Youth and Family Services Association Inc.
14.	Clarification was sought with regard to the impact of the Regulation on their organisation, Phoebe House Inc., which is a residential alcohol and other drug rehabilitation service for women on a methadone maintenance program. They hold a lease with Housing NSW.	The Registrar will determine which organisations fall within the scope of the Regulation. In addition, to clarify the intent of the Regulation, it is proposed that ' <i>resident</i> ' replace ' <i>tenant</i> ' in the Regulation. Resident captures all forms of legal occupancy in community housing.	Phoebe House Inc.

5. Proposed changes to the draft *Housing Regulation 2009*

Changing Tenant to Resident

- Replace the term ‘tenant’ with ‘resident’, in order to describe all forms of legal occupancy in community housing.
 - In the Part 2 heading – *Fairness and **resident** satisfaction*
 - In Clause 2 – *The object of this Part is to ensure that **residents** and applicants are treated fairly by community housing providers.*
 - In the Clause 4 heading – ***Resident** Satisfaction with the overall quality*
 - In Clause 4 – *A registered community housing provider must ensure that it maintains a level of **resident** satisfaction with the overall quality of its services ...*
 - In the Clause 6 heading – *Support arrangements for **residents***
 - In Clause 6 – see below
 - In Clause 8 – *The object of this Part ... to meet **residents**’ housing needs and preferences ...*
 - In the Clause 11 Heading – ***Resident** satisfaction with condition and maintenance of property: class 1 and 2*
 - In Clause 11 - *A class 1 or 2 ... maintains a level of **resident** satisfaction ...*

Original	Suggested change
<p>Part 3 Sustainable communities and tenancies</p> <p>6 Partnership arrangements and support for tenants A registered community housing provider must develop and maintain partnership arrangements that are adequate, in the opinion of the Registrar, to ensure tenants receive appropriate support and are able to maintain their tenancies.</p>	<p>6 Support arrangements for residents A registered community housing provider must develop and maintain arrangements that are adequate, in the opinion of the Registrar, to ensure residents with support needs receive appropriate support and, if relevant, are able to maintain their tenancies.</p>

Original	Suggested change
<p>Part 6 Standards of probity</p> <p>18 Fraud and corruption A registered community housing provider must ensure that there are no serious or repeated instances of fraud, corruption or criminal conduct of a similar kind in connection with its operations.</p> <p>20 Preventing fraud and corruption: class 1 or 2 A class 1 or 2 registered community housing provider must have a fraud and corruption prevention plan setting out ethical standards and requirements for directors and staff and the strategies to be employed to prevent fraud and corruption.</p>	<ul style="list-style-type: none"> • Combine and amend clauses 18 and 20 to: <p>18 Fraud and corruption <i>A registered community housing provider must:</i> <i>(a) have support systems in place that are designed to prevent, monitor, report on, and respond to, instances of fraud, corruption and criminal conduct of a similar kind, and</i> <i>(b) ensure that there are no serious or repeated instances of fraud, corruption or criminal conduct of a similar kind in connection with its operations.</i></p>
<p>Part 6 Standards of probity</p> <p>21 Reputation of community housing sector A registered community housing provider must notify the Registrar, in a timely manner, of any incident that damages, or may damage, the reputation of the community housing sector.</p>	<p>20 Reputation of community housing sector <i>A registered community housing provider must notify the Registrar, in a timely manner, of any incident relating to its operations that damages, or may damage, the reputation of the community housing sector.</i></p>
<p>27 Competitive management costs: class 1, 2 or 3 A class 1, 2 or 3 registered community housing provider must demonstrate that the costs of the management of its community housing properties is, in the opinion of the Registrar, competitive.</p>	<p>27 Competitive management costs: class 1, 2 or 3 <i>A class 1, 2 or 3 registered community housing provider must demonstrate that the costs of the management of its community housing properties are, in the opinion of the Registrar, competitive.</i></p>
<p>Part 9 Development projects</p> <p>30 Planning and costs: class 1 or 2 A class 1 or 2 registered community housing provider must: (a) undertake project management planning that, in the opinion of the Registrar, is appropriate to the scale of the community housing development project, and (b) undertake development planning that demonstrates that new housing will meet statutory requirements and policy guidelines relevant to new housing developments, and (c) ensure that the costs for any community housing development</p>	<ul style="list-style-type: none"> • Combine and amend clauses 30(a) and 30(b) to: <p>29 Planning and costs: class 1 or 2 <i>A Class 1 or 2 registered community housing provider must undertake community housing development project planning that is appropriate to the scale of projects undertaken and that demonstrates that projects will meet relevant statutory requirements and policy guidelines.</i></p> <ul style="list-style-type: none"> • Remove clauses 30(c) and (d)

Original	Suggested change
<p>projects are, in the opinion of the Registrar, competitive, and (d) ensure that any such projects are monitored and managed in a manner that minimises any variations to timeframes and budgets.</p>	
<p>Part 9 Development projects</p> <p>31 Financial leverage: class 1 or 2 A class 1 or 2 registered community housing provider must achieve financial leverage rates that, in the opinion of the Registrar, will ensure non-government investment in community housing development projects.</p>	<p>30 Financial leverage: class 1 <i>A class 1 registered community housing provider must leverage its assets at a rate that, in the opinion of the Registrar, delivers sustainable and optimal growth.</i></p>
<p>Regulatory Impact Statement - Definitions for classes of registration</p> <p>1. Growth provider: typically organisations managing a large portfolio of properties (400 or more) and undertaking projects to develop affordable housing 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 development activities.</p> <p>2. Housing provider: housing associations and organisations managing a large portfolio of properties (200 or more) with some organisations involved in small scale borrowing and development activities. Organisations in this class will be subject to medium to high levels of regulatory engagement dependant on the scale of their community housing operations and their level of involvement, if any, in affordable housing development projects.</p> <p>3. Housing manager: organisations managing a small to medium sized portfolio of properties (1 – 199) focused on property and tenancy management. To be registered in this class community housing providers will be required to meet the requirements that are proportionate to the scale of their community housing business activities.</p>	<p>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.</p> <p>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.</p> <p>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.</p>

Original	Suggested change
<p>4. Small housing manager: organisations managing tenancies for a small portfolio of properties (1 - 30) with some also undertaking property management. To be registered in this class, organisations are only required to meet the requirements that are appropriate to small scale housing operations.</p>	<p>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.</p>