



Government of **Western Australia**
Department of **Housing**

REGULATORY IMPACT STATEMENT

- CONSULTATION PAPER -

NATIONAL REGULATORY SYSTEM FOR COMMUNITY HOUSING
Implementation of Nationally Consistent Legislation in Western Australia

QUERIES

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SUBMISSIONS

Submissions in writing are sought from interested parties.

Submissions must be received by the Department of Housing prior to the close of the consultation period.

Key issues of interest are outlined in the 'Consultation' section of this Regulatory Impact Statement (RIS). However, submissions may address any aspect of the RIS or the proposed National Regulatory Scheme more generally.

Consultation Start Date	2 July 2012
Consultation End Date	5pm, 31 August 2012

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EXECUTIVE SUMMARY

Social housing is a service provided to eligible households on low and very low incomes. In general, it involves the provision of rental housing where the rent charged is capped or calculated with regards to the income of the household. In some cases, social housing services are provided in conjunction with other support services.

In Western Australia, social housing is delivered by the public sector through the Housing Authority (the Department of Housing), which manages approximately 37,000 dwellings. Social housing is also delivered through the not-for-profit sector which manages more than 7,700 dwellings. The WA Government is committed to supporting increases in the housing stock managed by the not-for-profit sector.

Where social housing is managed by the public sector, it is often known as public housing. Where social housing is managed by the non-government sector, it is often known as community housing. Consistent with this, the draft *Community Housing Providers National Law* states that ‘community housing means housing for people on very low, low and moderate income or for people with additional needs that is delivered by non-government organisations.’

Community Housing in WA

In WA, there are currently approximately 266 not-for-profit and local government organisations providing community housing, managing more than 7,700 dwellings. Around 55% of these dwellings are managed by the eight largest providers, representing a portfolio of approximately \$1.5 billion. The ownership of approximately \$600 million worth of assets has been transferred to a number of these large providers in the last two to three years.

To date, the Department of Housing has operated a ‘policy-based’ regulatory scheme. This regulatory scheme is not based on State legislation, but is a voluntary scheme managed by the Department of Housing with only rudimentary checks around corporate governance, asset/portfolio management and risk and financial sustainability.

As the community housing sector in WA grows and takes on more risk, the current regulatory framework is likely to prove insufficient to protect government investment or to provide confidence to private investors and lenders to the sector. This will be particularly relevant for ‘Growth’ or Tier 1 providers seeking to grow independently through debt financing. Further, if community housing organisations (CHOs) are to grow, over time, to the scale achieved in jurisdictions such as the United Kingdom, in order to achieve economies of scale, it is likely that they will need to operate in multiple jurisdictions in order to mitigate location-specific risks. Inconsistent regulatory requirements across the country will make growth at this level less likely.

The key issues facing government and the CHO sector include ensuring that:

- CHOs operating ‘at scale’ have the capacity to sustainably manage their existing housing portfolios for growth;
- The sector delivers high-level tenancy and property management services that meet the needs of tenants; and
- Governments, philanthropic supports and private investors and lenders can continue to confidently invest in the operation and growth of CHOs.

Development of a project for nationally consistent regulation

In signing the *National Affordable Housing Agreement* in 2008/09 jurisdictions agreed to enhancing the capacity and growth of the not-for-profit housing sector, supported by a nationally consistent provider and regulatory framework. In April 2010, the then Commonwealth Housing Minister released a discussion paper on the 'Regulation and Growth of the Not-for-Profit Housing Sector'. The paper canvassed a number of options for national regulation. Consultation on the discussion paper was undertaken with stakeholders in the CHO sector including Indigenous Community Housing Organisations (ICHOs), church groups, the banking and development sectors, community housing peak bodies and industry groups and State and Territory housing authorities and regulators.

Following public consultations on the discussion paper, a number of discussions between the Commonwealth and State and Territory governments took place to decide on the most appropriate form of regulation. On 16 December 2010, the Housing Ministers' Conference (HMC) agreed to the development of a nationally consistent not-for-profit housing regulatory system with capacity to include for-profit providers at a later stage.

The nationally agreed objectives for regulation of this sector (regardless of level of registration) are to:

- Improve tenant outcomes and protect vulnerable tenants;
- Protect government funding and equity; and
- Ensure investor and partner confidence.

In addition, objectives specific to the WA Government are to:

- Increase the level of protection afforded to government funding and equity;
- Ensure regulation of the community housing sector is sufficiently responsive to the particular geographic, economic and social characteristics of WA, including the WA Government's commitment to the principles of partnership with the not-for-profit sector;
- Ensure government investment in regulation is cost effective; and
- Ensure that WA is not disadvantaged if future Commonwealth Government funding for social housing is tied to participation in a nationally consistent regulatory system.

Options to address the issues:

The Regulatory Impact Statement (RIS) will consider 3 options:

Option 1: Maintain the status quo, a policy-based regulatory scheme applying only to the WA CHO sector.

Option 2: Develop a legislation-based regulatory scheme applying only to the WA CHO sector.

Option 3: Develop a legislation-based regulatory scheme for WA that is consistent with the proposed national regulatory scheme.

The following table rates the effectiveness of each option in achieving the stated objectives for regulation of the community housing sector. It is anticipated that this assessment will be subject to review through the RIS consultation process.

	OPTION 1 <i>Status quo</i>	OPTION 2 <i>WA-only legislation</i>	OPTION 3 <i>National legislation</i>
Responsive to WA conditions	H	H	M
Improves tenant outcomes	M	H	H
Protects government funding and equity	M	H	H
Improves partner and investor confidence	L	M	H
Can be expanded to the for-profit sector	H	H	H
Reduces regulatory burden to CHOs	L	L	M
Cost effective for the WA Government to implement	M	L	H
Provides a level playing field across jurisdictions, enhances competition	L	L	H

Impact analysis

With respect to each option, the impact on each of the following stakeholders will be considered:

- (a) Large CHOs, defined as organisations operating in multiple jurisdictions or managing portfolios of more than 500 dwellings;
- (b) Small and medium CHOs;
- (c) Tenants;
- (d) Commonwealth Government;
- (e) WA State Government;
- (f) Local Governments in WA;
- (g) Finance sector including investors and lenders; and
- (h) Philanthropic partners;

The consultation period on the WA RIS will open on 2 July 2012, closing on 31 August 2012.

During the consultation period, the Department of Housing will conduct workshops to seek the views of community housing organisations and their representative peak bodies, the Community Housing Coalition of WA (CHCWA) and PowerHousing Australia.

The Department of Housing will also seek to meet with the following key organisations:

- Western Australia Council of Social Service;
- Shelter WA;
- Tenants Advisory Service of WA;
- Departments of the Premier and Cabinet, Treasury, Commerce and Local Government and the Small Business Development Corporation; and
- Equal Opportunity Commission;

1 – STATEMENT OF THE ISSUE

Social housing is a service provided to eligible households on low and very low incomes. In general, it involves the provision of rental housing where the rent charged is capped or calculated with regards to the income of the household. In some cases, social housing services are provided in conjunction with other support services.

In WA, social housing is delivered by the public sector through the Housing Authority (the Department of Housing), which manages approximately 37,000 dwellings. Social housing is also delivered through the not-for-profit sector which manages more than 7,700 dwellings. The WA Government is committed to supporting increases in the housing stock managed by the not-for-profit sector.

Where social housing is managed by the public sector, it is often known as public housing. Where social housing is managed by the non-government sector, it is often known as community housing. Consistent with this, the draft *Community Housing Providers National Law* states that ‘community housing means housing for people on very low, low and moderate income or for people with additional needs that is delivered by non-government organisations.’

Housing affordability, particularly for households with low and very low incomes, is a recognised problem in Australia. Social housing is likely to be a key element of any effective response to this need. The National Housing Supply Council (NHSC) has forecast the growth in demand for public housing between 2009 and 2029 at around 151,000 dwellings, or a 43% increase, under a medium population growth scenario (National Housing Supply Council, *Second State of Supply Report*, 2010).

In WA, the NHSC estimated that in 2010 demand for all housing outstripped supply by 30,200 houses state-wide (NHSC, *Second State of Supply Report*, 2010). Since 2005, low rental vacancy rates and a growing economy have put upward pressure on rents. The result is a reduction in available private-sector rental properties for low-income households (for which they compete with people on higher incomes) and increased pressure on the public housing system. As a result, the waitlist for public housing has swollen to more than 23,000 applications. In 2010, it was estimated that a further 34,000 households were experiencing housing stress in the private rental market (Productivity Commission, *Report on Government Services*, 2010). In addition, the rate of homelessness continues to increase, particularly amongst young people (Chamberlain C and Mackenzie D, *Counting the Homeless 2006: Western Australia*, Australian Institute of Health and Welfare, 2009).

The affordability gap is set to widen further as Perth’s population grows from 1.65 million to over 2.2 million by 2031 (WAPC, *Directions 2031: Metropolitan Planning and Beyond*, 2010) and 4.3 million by 2056 (Population Projections, Australia 2006-2101, Series A, ABS Cat No 3222.0). This growth will be exacerbated by an ageing population that will see the cohort aged over 65 double nationwide by 2056 and those above 85 quadruple (Population Projections, Australia 2006-2101, Series A, ABS Cat No 3222.0).

In addition, preliminary findings from the Department of Housing’s emerging demand model highlight not only increasing aggregate demand from low-to-moderate income households, but a disproportionate increase in regional areas as the State develops (Department of Housing, *Affordable Housing Strategy 2010-2010: Opening Doors to Affordable Housing*, 2010).

While rising housing prices are a symptom of the State’s broad economic success, it remains critical to ensure that housing is available to as many people as possible, and on terms that are both affordable and appropriate to their needs.

Community Housing in WA

In WA, there are currently approximately 266 not-for-profit and local government organisations providing community housing, managing at least 7,700 dwellings.

The Department of Housing has established a 'policy-based' regulatory scheme based on the *National Community Housing Standards* (3rd ed, 2010) (NCH Standards). This regulatory scheme is not based on State legislation, but is a voluntary scheme managed by the Department of Housing. The regulatory scheme recognises three tiers of registration.

- Growth Provider (Tier 1)
- Preferred Provider (Tier 2)
- Registered Provider (Tier 3)

The regulatory framework aims to ensure CHOs:

- Deliver key service outcomes for residents, tenants and communities;
- Effectively and efficiently use public assets;
- Operate with effective governance and administration;
- Ensure ongoing financial viability of the organisations;
- Comply with all legal obligations; and
- Effectively manage organisational risks.

To date, the current regulation framework has not been implemented to the full extent of the NCH Standards in Western Australia. As the community housing sector in WA grows and takes on more risk, the current regulatory framework is likely to prove insufficient to protect government investment or to provide confidence to private investors and lenders to the sector. This will be particularly relevant for 'Growth' or Tier 1 providers seeking to grow independently through debt financing. Further, if CHOs are to grow to the scale achieved in commensurate jurisdictions such as the United Kingdom, in order to achieve economies of scale, it is likely that they will need to operate in multiple jurisdictions in order to mitigate location-specific risks. Inconsistent regulatory requirements across the country will make growth at this level less likely. For CHOs operating in multiple jurisdictions, it will result in a complicated and burdensome regulatory context which differs from location to location.

Of the 266 providers in WA, as at March 2012:

- 6 are registered as Growth Providers. Together, these organisations manage more than 3,400 dwellings, or approximately 44% of community housing stock;
- 13 are registered as Preferred Providers. Together, these organisations manage more than 1,340 dwellings or approximately 17% of community housing stock;
- 17 are registered as Registered Providers. Together, these organisations manage more than 410 dwellings or approximately 5% of community housing stock;
- More than 60 are local governments. Together, they manage 729 dwellings or approximately 9.5% of community housing stock; and
- The remainder are mostly small 'unregistered' providers.

According to a sample-based survey undertaken by CHCWA, the peak body representing CHOs in WA:

- Approximately 59% of CHOs manage 20 or fewer dwellings;
- Approximately 83% of CHOs manage 50 or fewer dwellings; and

- Approximately 76% of CHOs specialise in providing services to a particular client group such as seniors, households in crisis, indigenous people, etc).

(CHCWA, *Community Housing Sector Survey 2011: Final Report*)

Since the introduction of policy-based regulation in WA, the WA Government, through the Department of Housing, has undertaken a program of significant investment in the growth and capacity of the WA CHO sector. Additionally, the large scale investment from the State and Commonwealth Economic Stimulus Packages has seen the construction of more than 3,000 social housing dwellings, the ownership of more than half of which have been transferred to the not-for-profit sector in exchange for commitments to deliver growth.

The CHO sector has been proactive in engaging with all levels of government to grasp these opportunities and as a result a number of organisations have experienced significant growth. WA has also seen the entrance of new providers to the sector.

The key issues facing government and the CHO sector include ensuring:

- CHOs have the capacity to manage their existing housing portfolios in an effective manner and maximise opportunity for future growth;
- The sector has continued success in delivering high-level tenancy and property management services that meet the needs of tenants; and
- Governments, philanthropic supports and private investors and lenders can continue to confidently invest in the operation and growth of CHOs.

A case for regulation

Regulation alone will not be sufficient to address the issues identified. However, not-for-profit housing providers and governments agree that effective regulation is required in order to manage risk, protect against failure, bring down the cost of finance and help create an expanded community housing market. Regulation that achieves these aims, while being proportionate, accountable, consistent, transparent, appropriately flexible and appropriately targeted, is likely to be considered effective regulation by both CHOs and the WA State government. Good prudential practice for not-for-profit housing can ensure that investment occurs on a manageable and affordable scale. A stronger regulatory framework is likely to create greater confidence in the sector for potential investors, tenants and the general community.

The principle of proportionality is of key importance. Risks to government and to investors and lenders vary across the sector and will tend to be concentrated in 'Growth' or Tier 1 providers seeking to grow independently through leveraging debt financing. A sound regulatory system will focus on providers where there is significant risk to government and investors, and is likely to have a minimal impact on small and low risk providers.

Development of a project for nationally consistent regulation

In April 2010, the then Commonwealth Housing Minister released a discussion paper on the 'Regulation and Growth of the Not-for-Profit Housing Sector'. The paper canvassed a number of options for national regulation. Consultation on the discussion paper was undertaken with stakeholders in the community housing sector including ICHOs, church groups, the banking and development sectors, community housing peak bodies and industry groups and State and Territory housing authorities and regulators.

Broadly, the public consultations indicated:

- Overall support for a consistent national system across the not-for-profit housing sectors, finance sectors and tenancy advocacy groups. This was seen to promote governance and management standards and protect against the risk of financial failure;
- Majority support for a tiered system of regulation where risk is proportionate to the size of organisations and nature of their business;
- Support from larger housing organisations for a national regulatory system for large and growth providers only, while peak organisations and welfare groups supported a system that included all operators; and
- State and Territory Governments' preference for a system of harmonised jurisdictional regulations. These views were largely based on the need for local monitoring and management of regulation of a dispersed sector and the value of retaining jurisdictional expertise, along with avoidance of duplicative systems.

Following public consultations on the discussion paper, a number of discussions between the Commonwealth and State and Territory governments took place to decide on the most appropriate form of regulation. On 16 December 2010, the HMC agreed to the development of a national not-for-profit housing regulatory system with capacity to include for-profit providers at a later stage. The six core elements upon which the regulatory system is to be developed are:

1. Common incorporation requirements;
2. A National Regulatory Code;
3. Registration;
4. Tiers of registration;
5. Mutual recognition; and
6. Lead Registrars.

Further information on the consultation process and the agreed core elements of the proposed national regulatory system can be found in the National Regulation Impact Statement (RIS) (Attachment A). There is also extensive information on the history of the development of the National Regulatory System available on the National Regulatory System – Community Housing website (www.nrsch.gov.au).

Regulation in Western Australia

The National RIS assesses the likely impact of the National Regulatory Scheme at a broad level across Australia. However, prior to considering legislation in WA, the WA Government is seeking to assess the likely impact of nationally consistent regulation as it relates specifically to the WA community housing sector and related stakeholders. This RIS has therefore been prepared with reference to the National RIS, but it is intended to more closely examine likely impacts in WA.

2 – OBJECTIVES

The nationally agreed objectives of government action are to support the growth of the not-for-profit housing sector and assist housing providers to operate across jurisdictions through the development of a national regulatory framework (with scope to include for-profit providers at a later stage).

The nationally agreed objectives for regulation of this sector (regardless of level of registration) are to:

- a) Improve tenant outcomes and protect vulnerable tenants;
- b) Protect government funding and equity; and
- c) Ensure investor and partner confidence.

Housing Ministers from all jurisdictions have agreed that the core objectives underpinning the development of a national approach to regulation of housing providers are to:

- Provide a consistent regulatory environment to support the growth and development of the not-for-profit housing sector;
- Provide the finance sector with confidence to invest;
- Provide an avenue for expansion of regulation to the for-profit housing sector to prepare for future housing product development;
- Reduce the regulatory burden for housing providers working across jurisdictions; and
- Provide a level playing field for providers seeking to enter new jurisdictions.

In addition, objectives specific to WA are to:

- Increase the level of protection afforded to government funding and equity compared to the current level;
- Ensure regulation of the community housing sector is sufficiently responsive to the particular geographic, economic and social characteristics of WA, including the WA Government's commitment to the principles of partnership with the not-for-profit sector;
- Ensure government investment in regulation is cost effective; and
- Ensure that WA is not disadvantaged if future Commonwealth Government funding for social housing is tied to participation in a nationally consistent regulatory system.

The RIS will consider 3 options :

Option 1: Maintain the status quo, a policy-based regulatory scheme applying only to the WA CHO sector.

The current regulatory system is based upon corporate eligibility criteria and the *National Community Housing Standards* (3rd ed, 2010) (NCH Standards). The NCH Standards were developed through a national project jointly funded by each State and Territory Government and the Commonwealth Government. The NCH Standards establish expectations with regards to CHO practices in:

- Tenancy management;
- Asset management;
- Tenant rights and participation;
- Working with the community;
- Governance and organisational management;
- Management systems; and
- Human resource management.

The current regulatory system is a tiered system where organisations are expected to provide evidence of practices consistent with the activities and risks of an organisation operating at the level at which they wish to be registered. The Department has been progressively increasing its sophistication and understanding of regulation. Compliance with the registration requirements is monitored by the Department of Housing through the annual return of financial statements, annual reports and insurance certificates. A full compliance review is scheduled to be undertaken every three years. The first of these are underway.

At present, less than 14% of organisations, managing around two thirds of community housing in WA, are registered. Registration is one of a number of matters taken into account when organisations apply for housing or enter into other arrangements with the Department of Housing.

Option 2: Develop a legislation-based regulatory scheme applying only to the WA CHO sector.

Prior to the development of the proposed National Regulatory System, a number of Australian jurisdictions developed legislatively-based regulatory systems applying to their local community housing sectors.

WA-only legislation could be specifically tailored to the current characteristics of the WA community housing sector. It is also likely to be significantly easier to amend legislation that only applies to a single jurisdiction, should that become necessary or appropriate.

A regulatory system based on legislation, rather than policy and agreements, is likely to provide improved outcomes for tenants, greater protection of government funding and equity, and increased investor and partner confidence. Legislation is subject to a rigorous, public process of development and debate. Legislative regulatory schemes are also likely to be more stable than policy-based schemes, thereby providing consistency and certainty for the public, housing providers and government.

Further, regulation based on legislation may provide an opportunity to better protect government investments in the community housing sector. Legislation provides the opportunity to create conditions that go beyond, and are more easily enforced, than normally available contractual conditions. Contractual conditions can also be disputed, a potentially time-consuming process. A legislated regulatory system is able to provide for timely resolution of non-compliance with registration requirements.

Option 3: Develop a legislation-based regulatory scheme for WA which is consistent with the proposed national regulatory scheme.

Currently New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory apply legislation-based regulatory schemes to CHOs operating in those jurisdictions. Tasmania and the Northern Territory have very small CHO sectors and do not apply a regulatory system of any kind to CHOs operating in their jurisdictions.

Nationally consistent legislation enables the regulation of CHOs operating at scale or with a significant measure of risk to be relatively consistent. WA legislation will be able to reflect some elements of local need provided it is not materially different. However, it is also likely to be relatively difficult for WA to amend nationally consistent legislation, beyond non-material aspects, given the requirement to achieve agreement to amendments among participating jurisdictions.

Nationally consistent regulation is likely to create greater confidence among philanthropic partners and private investors and lenders (especially larger banks that operate on a national basis) than policy-based regulation or WA-only legislation. It is likely to be a more stable regulatory system.

Nationally consistent regulation will result in lowered barriers to entry and a lower regulatory burden for organisations seeking to operate in multiple jurisdictions. At present, there are only two CHOs operating in WA that also operate in other jurisdictions, although it is anticipated that this number will increase over time. For CHOs that only operate in WA, the regulatory burden under Option 1, 2 or 3 is likely to be relatively similar as these regulatory schemes are all likely to require similar registration and compliance activities.

Participation in a nationally consistent regulation scheme will create some extra costs for the WA Government that would not be present under Option 1 or 2, principally relating to participation in national governance processes. However, participation will also provide WA with direct access to national policy and drafting expertise and national best practice in the management of community housing regulation, which may result in some cost savings.

In recent years, WA has sought to increase the level of regulatory oversight of CHOs that pose greater risk to government through either the size of their portfolios, the fact that they hold title to transferred government assets (rather than head-leasing them), or their leveraging activities. This has required the investment of additional resources into regulation by both government and CHOs. The additional cost of participation in a nationally consistent regulatory system is likely to be relatively minor in comparison to the effective implementation of Option 1 or Option 2.

Assessment of options against regulatory objectives

The following table rates the effectiveness of each option in achieving the stated objectives for regulation of the community housing sector. It is anticipated that this assessment will be subject to review through the RIS consultation process.

	OPTION 1 <i>Status quo</i>	OPTION 2 <i>WA-only legislation</i>	OPTION 3 <i>National legislation</i>
Responsive to WA conditions	H	H	M
Improves tenant outcomes	M	H	H
Protects government funding and equity	M	H	H
Improves partner and investor confidence	L	M	H
Can be expanded to the for-profit sector	H	H	H

Reduces regulatory burden to CHOs	L	L	M
Cost effective for the WA Government to implement	M	L	H
Provides a level playing field across jurisdictions, enhances competition	L	L	H

With respect to each option, the impact on each of the following stakeholders will be considered:

- (a) Large CHOs, defined as organisations operating in multiple jurisdictions or managing portfolios of more than 500 dwellings;
- (b) Small and medium CHOs;
- (c) Tenants;
- (d) Commonwealth Government;
- (e) WA State Government;
- (f) Local Governments in WA;
- (g) Finance sector including investors and lenders; and,
- (h) Philanthropic partners;

Option 1: Maintain the status quo, a policy-based regulatory scheme applying only to the WA CHO sector.

(a) Large CHOs

CHOs operating in multiple jurisdictions would bear the burden of duplicative regulatory systems. At present, there are only two CHOs operating in WA that also operate in other jurisdictions. Large CHOs would continue to have the same levels of access to funding as they currently experience.

(b) Small and medium CHOs

Small and medium CHOs would continue to experience similar levels of regulatory burden and access to funding as they currently experience.

(c) CHO tenants

The current regulatory community housing system in WA includes standards that regulate the tenancy management practices of registered CHOs, and this would be expected to continue.

(d) Commonwealth Government

At present, the Commonwealth Government does not require that the WA Government or WA CHOs participate in the National Regulatory System in order to access funding for housing. Given the Commonwealth Government's stated commitment to the development of the sector under nationally consistent regulation, this may change at some point in the future. There is therefore a risk under Option 1 that WA may find it difficult or impossible to access Commonwealth funding to the social housing sector.

(e) WA State Government

The WA State Government would continue to be able to exercise a high level of flexible influence over the regulation of the community housing sector.

Under the current system, disputes over registration matters are likely to be contractual disputes, which would be dealt with through appropriate contractual dispute resolution measures, including litigation.

(f) Local Governments in WA

Local Governments are not currently required to register unless they are seeking further funding from the State Government.

(g) Finance sector including investors and lenders

It is anticipated that current levels of access to for-profit financing would continue. It is considered unlikely that a risk averse credit market would increase its investment significantly in an unfamiliar sector with limited prudential supervision by government.

(g) Philanthropic partners

It is anticipated that current levels of access to forms of non-government funding would continue.

Option 2: Develop a legislation-based regulatory scheme applying only to the WA CHO sector.

(a) Large CHOs

CHOs operating in multiple jurisdictions would bear the burden of duplicative regulatory systems. At present, there are only two CHOs operating in WA that also operate in other jurisdictions.

CHOs may experience increased access to funding or the availability of better terms, given the greater stability provided by a legislatively-based regulatory system. The National RIS asserts that the introduction of a national regulatory regime for community housing in the UK in 1998-89 led to a decrease in the borrowing costs of CHOs of 60 basis points (*National RIS*, p18). Improvements in the availability of funding or the terms on which it was available would be expected to lead to further growth in the sector.

(b) Small and medium CHOs

Small and medium CHOs would continue to experience similar levels of regulatory burden as they currently experience.

For the same reasons as large CHOs, small and medium CHOs may experience increased access to funding or the availability of better terms under Option 2.

(c) CHO tenants

A regulatory scheme based on legislation may provide an increased level of comfort to tenants and the public that the tenancy management practices of registered CHOs will be consistent with the relevant standards.

(d) Commonwealth Government

At present, the Commonwealth Government does not require that the WA government or WA CHOs participate in the National Regulatory System in order to access funding. Given the Commonwealth Government's stated commitment to the development of nationally consistent regulation, this may change at some point in the future. There is therefore a risk under Option 2 that WA may find it difficult or impossible to access Commonwealth funding to the social housing sector.

(e) WA State Government

The WA State Government would continue to be able to exercise a high level of influence over the regulation of the community housing sector.

If the implemented regulatory system does bring the anticipated benefits to CHOs, the Department of Housing may see more CHOs seeking registration. To the extent that sector consolidation occurs (eg smaller providers merging), this may offset any increases in the number of CHOs registered.

Legislatively based regulation would increase the WA State Government's oversight of all aspects of the management of regulated CHOs, including financial and tenancy management. This would decrease the level of risk to the WA Government associated with the CHO sector and increase confidence in CHOs' capacity.

Establishment of a legislation-based regulatory scheme would involve some establishment costs to the WA State Government over and above the status quo costs of administrative regulation.

Under a legislation-based regulatory system, it is likely that disputes over registration matters would be appealable to the State Administrative Tribunal.

(f) Local Governments in WA

Local Governments are not currently required to register unless they are seeking further funding from the State Government. The position for local government under a proposed WA-only legislative scheme would be subject to the development of a policy position.

(g) Finance sector including investors and lenders

Stronger regulation of the CHO sector is likely to increase the confidence of the finance sector in the CHO sector, leading to an increased willingness to lend or invest.

(g) Philanthropic partners

Providers of non-government funding may be more likely to engage with the CHO sector, or to engage on better terms, as a result of the greater confidence engendered by a legislatively-based regulatory system.

Option 3: Develop a legislation-based regulatory scheme for WA which is consistent with the proposed national regulatory scheme.

(a) Large CHOs

CHOs operating in multiple jurisdictions would not bear the burden of duplicative regulatory systems. At present, there are only two CHOs operating in WA that also operate in other jurisdictions. Overall, it is likely that the greatest benefits from nationally consistent regulation would be experienced by CHOs operating in multiple jurisdictions.

The national development process for the Evidence Guidelines associated with the National Regulatory System will include participation from representative CHOs, although the details of the development process are under negotiation. The consultation process on the National RIS identified this opportunity to potentially reduce the regulatory burden on CHOs as a perceived benefit of the National Regulatory System.

Large CHOs are likely to experience increased access to funding or the availability of better terms given the increased confidence engendered through regulation under a stable, nationally consistent system. The National RIS asserts that the introduction of a national regulatory regime for community housing in the UK in 1998-89 led to a decrease in the borrowing costs of CHOs of 60 basis points (*National RIS*, p18). As with Option 2, improvements in the availability of funding or the terms on which it was available would be expected to lead to further growth in the sector.

(b) Small and medium CHOs

As with large CHOs, representative small and medium CHOs are likely to have the opportunity to influence the development of the Evidence Guidelines associated with the National Regulatory System, ensuring that the level of regulatory burden is proportionate to the risks associated with their organisations. As with Option 2, regulation of small and medium CHOs is likely to remain optional where they are not seeking significant new investment from the WA Government.

Small and medium CHOs, like large CHOs, may experience increases in access to funding or to funding which is available on better terms as a result of the generally increased visibility and credibility of the CHO sector.

(c) CHO tenants

A regulatory scheme based on legislation may provide an increased level of comfort to tenants and the public that the tenancy management practices of registered CHOs will be consistent with the relevant standards.

The National RIS noted that, during the consultation process, tenancy advocacy bodies had expressed a preference for the national regulation of all social housing providers to ensure consistent service standards.

(d) Commonwealth Government

Pursuing Option 3 would eliminate the risk that WA may be unable to access Commonwealth funding if, at some future time, participation in the national system is made a condition of such access.

(e) WA State Government

Participation in a nationally consistent regulation scheme would honour the commitment given by all Australian Housing Ministers to participate in a nationally consistent regulatory system. It may decrease the WA Government's capacity to influence the regulation of the WA community housing sector.

Given the extra benefits that are expected to accrue to CHOs under Option 3, the WA Government would expect to see more CHOs seeking registration if this option is implemented. As with Option 2, any consolidation in the sector may offset these increases to some extent. Increases in the number of registered CHOs would allow the WA Government to better manage risks associated with CHOs, as registration allows more effective monitoring of their activities.

Nationally consistent, legislatively based regulation will increase Government oversight of all aspects of the management of regulated CHOs, including financial and tenancy management. This would decrease the level of risk associated with the CHO sector for both the WA and Commonwealth Governments, providing a sound basis for future investment by all levels of government.

Under a legislation-based regulatory system, it is likely that disputes over registration matters would be appealable to the State Administrative Tribunal.

Costs to government of participation in a nationally consistent regulatory system are currently difficult to estimate. However, they are likely to be relatively insignificant in the context of the overall level of government investment in the CHO sector.

(f) Local Governments in WA

Local Governments are not currently required to register unless they are seeking further funding from the State Government. It is likely that Local Governments would be required to register under a nationally consistent legislative scheme.

(g) Finance sector including investors and lenders

As with Option 2, stronger regulation of the CHO sector is likely to increase the confidence of the finance sector in the CHO sector, leading to an increased willingness to lend or invest. The adoption of a nationally consistent scheme would enhance the credibility of both the regulatory system and the CHOs regulated under it, which is likely to enhance this effect.

(g) Philanthropic partners

Providers of non-government funding are likely to engage with the CHO sector, or to engage on better terms, as a result of the greater confidence engendered by a legislatively-based regulatory system.

Consultation on the National Regulatory Impact Statement (RIS)

Industry and community consultation on the National RIS occurred between 23 November 2011 and 20 January 2012. It included a general request for written submissions and a series of public workshops. In WA, a half-day workshop held in Perth on 5 December 2011 was attended by representatives of approximately 20 stakeholders, including peak bodies and CHOs.

The *Final Report on Public Consultations on the National Regulatory System for Community Housing* is included as an attachment to this document (Attachment B).

In WA, the consultation process identified a range of perceived benefits including:

- Reducing the regulatory burden on community housing providers that want to operate in multiple jurisdictions;
- Potentially reducing the regulatory burden on all community housing providers, depending on the final form of the Evidence Guidelines; and
- Providing greater confidence for banks and financiers about investing in the community housing sector.

Overall, workshop participants indicated that most of the design elements of the National Law appeared to be sound, although they indicated that the ‘devil would be in the detail’ and further consideration was needed in a number of key areas. In particular, further detail on the content of the Evidence Guidelines would be necessary for providers to fully assess the regulatory burden associated with registration under the National Regulatory System. Workshop participants also highlighted a number of implementation issues that would need to be addressed if the National Regulatory System were adopted, including the importance of industry representation throughout the process.

Overall, workshop participants expressed unanimous in-principle support for the policy intent of the National Regulatory System. However, providers wanted greater assurance that the national system would be implemented in a way that did not lead to an increased regulatory burden and did not exclude WA participants from competing for future growth opportunities at either the State or national level.

Consultation on the WA Regulatory Impact Statement (RIS)

Consultation on the WA RIS will encompass all key stakeholder groups identified as being potentially impacted by each of the proposed Options.

The WA Consultation RIS will be publicly released on 2 July 2012, closing on 31 August 2012.

The Department of Housing has written to key stakeholders to notify them of the upcoming consultation process and the timeframes for response.

The WA Consultation RIS will be made available through:

- The Regulatory Gatekeeping Unit’s website (<http://www.treasury.wa.gov.au/cms/content.aspx?id=3824>);
- The Department of Housing’s website (www.housing.wa.gov.au); and
- Upon request by email to CommunityHousing@housing.wa.gov.au.

The request for submissions will be publicly advertised in *The West Australian* and through relevant industry newsletters.

During the consultation period, the Department of Housing will conduct workshops to seek the views of CHOs and their representative peak bodies, CHCWA and PowerHousing Australia.

The Department of Housing will also seek to meet with the following key organisations:

- Western Australia Council of Social Service, Shelter WA and the Tenants Advisory Service of WA;
- Departments of the Premier and Cabinet, Treasury, Commerce and Local Government and the Small Business Development Corporation; and
- Equal Opportunity Commission;

Key areas of interest during the consultation process will include:

- The scope of the regulatory burden borne by providers registered under the current system, including estimates of the cost of participation in the current regulatory framework;
- Developing a baseline understanding of the availability of credit to CHOs and the terms on which they can access this credit; and
- Developing an understanding of the relative importance of the stated objectives for regulation to different stakeholders, and identifying other objectives that may also be important to consider.

6 – PREFERRED OPTION

The preferred option is Option 3. Option 3 would result in a reduction on the restrictions on competition in the provision of community housing by reducing barriers to entry across jurisdictions. It is also likely to result in a reduction in the regulatory burden borne by CHOs, with the most significant benefits accruing to large and nationally-operating CHOs. These organisations will play a key role in the future growth of the community housing sector as they are the organisations most likely to achieve growth independent of government investment.

Given the confidence engendered by a stable, nationally consistent, legislatively-based regulatory system for CHOs, it is likely that all registered CHOs will be able to access more non-government funding or funding that is available on better terms under Option 3. This broad benefit would increase the capacity of all CHOs to grow independent of government investment and increase overall affordable housing supply – something that is a key initiative in the State Government’s *Affordable Housing Strategy 2010-2020: Opening Doors to Affordable Housing*.

Under Option 3, there will be a reduction in the degree to which the regulation of the community housing sector can be flexibly modified and tailored to WA conditions. However, implementation of Option 3 effectively manages the potential risk that the Commonwealth Government may in future tie access to funding for the community housing sector to participation in the National Regulatory System.

As is generally the case where WA seeks to participate in a nationally consistent legislative regime, the consistent legislation would be submitted to the WA Parliament, rather than the adoption or application in WA of legislation passed in a ‘host’ jurisdiction.

7 – IMPLEMENTATION AND EVALUATION

The National Regulatory Scheme proposes joint national oversight of the establishment and ongoing implementation of regulation in each jurisdiction in order to ensure appropriate levels of consistency. This will include sharing of data, annual reporting to a Ministerial Council on matters such as the quality and consistency of regulatory decisions, and collaborative review of the system after an agreed period.

Over time, the Department of Housing intends to monitor:

- The number of CHOs registered under the implemented regulatory scheme;
- The number of CHOs operating in WA and one or more other jurisdictions; and
- The growth in housing stock managed by CHOs.

8 - CERTIFICATION

1. This Regulatory Impact Statement has been prepared in compliance with the WA Government's requirement for Regulatory Impact Assessment and to effectively facilitate consultation and decision making effectively.
2. To the best of my ability, all information provided within this document is true and correct.

CERTIFIED BY	
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Date	29 June 2012

9 - ATTACHMENTS

Attachment A: National Regulatory Impact Statement

(<http://www.nrsch.gov.au/NR/rdonlyres/0DC3AE82-5FF1-4C76-A9BD-E054E5489A92/0/RISConsultation.pdf#xml=http://www.nrsch.gov.au/nrsch9/isysquery/939f069b-c276-4d4c-84cc-b9c1f2c5ce69/1/hilite/>)

Attachment B: Final Report on National Regulatory Impact Statement Consultation Report

(http://www.nrsch.gov.au/NR/rdonlyres/83C8660E-6EE3-4F86-80C1-92D2D8095E98/0/NRSCHPublicConsultations_FinalReport.pdf)