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5th April 2019

The NRSCH Review
Director - Housing
Strategic Policy - Commissioning
Department of Families and Community Services
By email only

Re: Submission to the Review of the National Regulatory System for Community Housing

The Tenants' Union of NSW is the peak non-government organisation advocating for the interests of tenants and other renters in New South Wales since 1976. We are a specialist community legal centre accredited by NACLC and a member of the Law Society of NSW as well as the resourcing service for the statewide network of Tenants' Advice and Advocacy Services.

Much of our legal work centres on assisting social housing clients in all tenures and 2500 unique individuals sought advice concerning community housing providers from the TAAS network over 2017 and 2018. We draw upon these experiences and discussions with advocates for this submission.

The Tenants' Union believes the success of the social housing sector relies on being responsive to need and accountable to tenants who rely on it for secure affordable housing but also whose rent payments fund the system. The National Regulatory System's contribution to better outcomes for tenants would be far easier to demonstrate if the Code required from community housing providers a higher level of transparency and direct accountability to tenants.

This would take two forms, both of which we suggest should be reflected in changes to the Code. The first of these is a new standard in relation to governance requiring a systematic approach to tenant voice in decision-making. The second relates to management transparency through publication of vital performance and practice data.

In addition we argue that measures of compliance with institutional standards are insufficient on their own to ensure accountability for decisions affecting tenants and so these changes to the Code should be accompanied by ensuring access to external review of decisions through the Administrative Appeals Tribunal and/or an ombudsman.



Summary Recommendations

- 1. The Code should require housing providers to demonstrate a systematic approach to tenant involvement and empowerment, and to demonstrate that they provide support and training for tenants to participate in decision making.**
- 2. The regulatory framework should specify a clear role for tenant representative organisations in governance.**
- 3. The regulatory framework should require providers to collect and publish performance data as specified in this submission.**
- 4. The regulatory framework should ensure that community housing tenants have access to independent review of provider decisions affecting their tenancy.**
- 5. Registered providers should be subject to relevant state or federal freedom-of-information arrangements.**

Tenants' role in governance

The Tenants' Union agrees with the proposition in the discussion paper that the first purpose of community housing sector regulation is 'creating a framework to improve tenant outcomes and protect vulnerable tenants'. While measurable standards of customer service, complaints handling, asset management and probity can be usefully focussed on tenant outcomes, we contend that the credibility and effectiveness of this framework relies on guaranteeing a voice for tenants in sector and organisational governance.

This goes beyond conventional tenant consultation and engagement practices or satisfaction surveys. The National Regulatory System and the Code should specify accountability to, and empowerment of tenants as key elements of its governance standard. The available evidence now suggests that building robust forms of participation into governance structures not only leads to improved service standards and tenant satisfaction but also contributes to the financial sustainability of housing providers.

Both the English and Scottish regulatory regimes explicitly recognise the value of tenant involvement in governance, and accept the business case for meaningful forms of participation. Both place considerable emphasis on participation and empowerment arrangements as a threshold requirements for accreditation of providers. In 2015, UK Communities Minister Stephen Williams said:

"Social housing tenants know their homes and communities better than anyone else and with that insight comes the ability to make a huge contribution to the areas in which they live ... By giving tenants greater control the sector could create savings of up to £118 million a year helping to create a stronger economy and fairer society at the same time."

Opportunities for tenant participation in governance have been systematically reduced as Australian community housing providers have grown larger and emphasised professional skills on boards and company membership structures. The Tenants' Union contends that this trend needs to be balanced by recognition of the unique knowledge and experience that only tenants can bring to governance and decision making. Stewart Smyth¹ provided an excellent case study of the importance of 'everyday accountability' which was lost with the rise of governance by experts and elites associated with transfers to housing associations in the UK. Research commissioned by the UK Department for Communities and Local Government in 2015² found significant cost savings and management efficiencies arising from tenant involvement in governance. Participation in shaping local services, tenant scrutiny and tenant involvement in governance were identified as the most effective methods of involvement while surveys, market research and online involvement were seen as less important. This report suggested that regulation should play a role in ensuring effective tenant involvement and be accounted for in value-for-money assessments of housing providers.

Subsequently, the Homes and Community Agency (the English housing regulator) promulgated its *Tenant Involvement and Empowerment Standard*³ in 2017 which specifies, amongst other things, that registered providers must ensure that tenants are given a wide range of opportunities to influence and be involved in:

- formulation of housing-related policies and strategic priorities
- making of decisions about how housing-related services are delivered, including the setting of service standards
- scrutiny of landlords' performance and the making of recommendations about how performance might be improved
- management of their homes, where applicable
- management of repair and maintenance services.

The Scottish Social Housing Charter⁴ requires that social landlords manage their businesses so that '*tenants ... find it easy to participate in and influence their landlord's decisions*'. However the independent Scottish Housing Regulator, which administers the charter, goes further to ensure that its own work is accountable to tenants through systematic support and liaison with Registered Tenant Organisations and the recent establishment of a panel of 500 tenants and service users to provide feedback on the effectiveness of the regulatory regime.⁵

¹ Stewart Smyth, (2013) *The Privatization of Council Housing: Stock Transfer and the Struggle for Accountable Housing*, 33 *Critical Soc. Policy* 37

² Bliss N, Lambert B, Halfacre C, Bell T & Mullins D (2015) *An investment not a cost: the business benefits of tenant involvement* Department for Communities and Local Government (UK)
<https://nationaltenants.files.wordpress.com/2015/03/tlc-an-investment-not-a-cost.pdf>

³ Homes and Community Agency (2017) *Tenant Involvement and Empowerment Standard*.

⁴ The Scottish Government (2017) *Scottish Social Housing Charter*.

⁵ Scottish Housing Regulator (2016) *Involving tenants and service users 2016-18*.

Greater responsiveness and commitment to tenant involvement have long been listed amongst the reasons for supporting the growth of community housing. But as Pawson et al⁶ point out the aspiration to enhance tenant participation has been far less prominent as a driver of growth in Australia. A case in point is the current program of tenancy transfers to community housing providers in NSW. This required enactment of legislative changes which specifically excluded tenant involvement or choice in decisions affecting management of their housing.

Very few if any Tier 1 providers have any form of tenant participation (let alone representation) on their boards, or structured opportunities for tenants to independently discuss and provide input to decision-making. The current code requires housing providers to 'engage' their communities but not to support or encourage an independent tenant voice. As research evidence shows, this is to the detriment of tenant outcomes and may diminish the financial strength of the sector and its attractiveness to investors. The small number of tenants who do participate at board level are usually selected on the basis of other skills. We contend that current experience as a tenant constitutes an area of knowledge and expertise that should be valued highly at board level. Community housing providers should be required to demonstrate that they provide support and training for those who wish to bring their experience as tenants to organisational decision making structures without compromising the independence or integrity of governance processes.

The Tenants' Union maintains that the NRSCH should recognise and promote the contribution of tenant participation in governance to both service outcomes and business viability. To this end the Code should require housing providers to demonstrate a systematic approach to tenant involvement and empowerment along the lines of the 2017 UK Homes and Community Agency Standard outlined above.

Understanding that elected tenant representation on boards is not constitutionally possible for most providers there is a need to specify a role for tenant representative organisations within the regulatory governance framework. Government support for the development of appropriate state and national structures will be required to facilitate this.

Data collection and transparency

A key purpose of community housing regulation is to support the growth of the sector in Australia. Growth is being promoted at least in part as a way of introducing a degree of contestability which should drive service improvement, innovation and value-for-money. However measuring these outcomes is not possible through consumer behaviour. That is, tenants are not able to express their preferences for any resulting improved service or innovative approaches by changing providers, or choosing between providers. Further in circumstances where state authorities enter long term contracts with community housing

⁶ Pawson, H., Milligan, V., Wiesel, I. and Hulse, K. (2013) *Public housing transfers: past, present and prospective*, AHURI Final Report No.215. Melbourne: Australian Housing and Urban Research Institute.

providers that are not open to detailed public scrutiny contestability and accountability are diminished. The framework of competitive behaviour and accountability through performance is therefore poorly applied. In order to compete on future government contracts, a provider with an innovative new approach is incentivised to hide their success from their 'competitors' – effectively also withholding the benefits from tens of thousands of other tenants. Thus we argue that regulatory standards should require providers to collect and publish detailed practice and performance data to encourage the spread of best practice behaviours.

We propose the following schedule of information should be collected by community housing providers and made available for public scrutiny on an individual provider and where appropriate area level. Some of this data is already published, most is already collected and submitted to the state registrar. It is also made available to participating providers for benchmarking purposes but on a strictly confidential basis. Community housing providers operate under government auspice and exist to fulfil a public purpose so we see no reason why such performance data should remain confidential. It is not intended that this should replace other reporting tools though where duplication of data and recording exists we support measures to streamline reporting requirements across government agencies and processes.

In constructing the list below we have drawn from both our experience being the peak organisation representing the interests of tenants, and the data schedules of similar registration schemes such as those identified in the Discussion Paper (particularly with reference to the publications made in England).

- Property data
 - Reporting for the following characteristics for each property. The intention is that it must be possible to analyse different combinations of these features. It is not the intention that individual properties can be identified in public reporting:
 - Owned, managed, headleased, planned for completion in next 12 months,
 - Social, affordable, market
 - Accessibility rating⁷
 - Bedrooms and dwelling structure⁸
 - Owner type (e.g. state government, local government, private company, private individual)
 - Locational need⁹
- Tenant provided income
 - Rent revenue
 - Rent collection rate

⁷ Livable Housing Guidelines – Silver, Gold, Platinum or not certified <http://www.livablehousingaustralia.org.au/>

⁸ As defined in Census category 'STRD – Dwelling Structure'
<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/2901.0Chapter9502016>)

⁹ To be defined – intention is not to identify location of property, but instead to measure the degree to which housing is provided in areas of need. The ABS SEIFA index rating of the property may be the most obvious measure but already includes rent as an indicator.

- CRA calculated and received
- Water and other charges
- Repairs responses
 - Maintenance requests and classification of expected time frame
 - Resolution rate within expected time frame
- Court or Tribunal activity
 - For applications made by provider and by tenants
 - Orders sought
 - Result (application successful, negotiated outcome, application unsuccessful)
- Bonds (where claimed within reporting period)
 - Claimed from tenant
- Exits
 - Tenant initiated
 - Reason (including unknown or not provided)
 - Landlord initiated
 - Reason
 - Notice of termination served
 - Tribunal action initiated
- Number of tenancies re-entering social housing after exit in last 12 months/last 5 years.
 - From the same provider
 - From a different provider

Consumer protection

The Tenants' Union is the central resource body for a state-wide network of tenants' advice and advocacy services covering tenants in public, community and private rental housing. As such we are acutely aware of the relatively high rate of appearance of community housing organisations in tenancy tribunals and also the weakness of state legislation in protecting tenants against arbitrary decisions and bureaucratic practices by landlords of all types.

In NSW, the NSW Civil and Administrative Tribunal can only hear disputes between tenants and landlords within the scope of the residential tenancy agreement contract. It cannot decide disputes on policy decisions, or on behaviour which does not reach a breach of the tenancy agreement.

The Housing Appeals Committee (HAC) is a ministerial committee which offers some level of review of decisions made by social housing providers. The scope of review can be limited by policy. Recommendations made by HAC are not binding on providers.

Decisions by government agencies can also be subject to administrative review. There is some debate whether community housing providers can be subject to the same process – arguably, they are delivering services on the government's behalf. This is especially so in

areas where there is no state-managed housing. Whether this avenue is open, it is likely to be an impractical way to resolve issues with provider's behaviour for most tenants.

In preparation for this review, we spoke to tenants and their advocates about their experiences with the complaint processes within the current registration scheme. They have also shared their experiences with the current systems of registration with us over the time. We are also aware of a number of complaints that have been made against a variety of providers across the state.

The common experience is that the Registrar and staff take complaints seriously and respectfully, but are hampered by a limited scope of review and regulatory powers. Several advocates reported the feeling that there is no real feedback loop – once a complaint is made tenants are not able to see any outcomes. The most common outcome appeared to be that the information provided would be used in a future review of the provider, and on occasion reviews were brought forward.

This lack of direct feedback resulted in experiences of resignation and pessimism that their effort would result in any change for other tenants. This was especially true for tenants who felt they had put their own housing at risk by exposing the behaviour. Whether there was actually any risk is less important than that the tenants felt the risk was real.

It is clear that internal complaints mechanisms required under the current regulatory regime are insufficient to provide the strong consumer protection that should be expected of a tenant-focussed housing system. Thus, in addition to the above strengthening of requirements concerning tenant participation and transparency, we strongly recommend that community housing tenants have access to independent review of providers' decisions through a body with power to make binding decisions.

This body may form part of the regulator, or it may be more appropriate that it sit alongside and inform the regulator of issues being raised with provider performance. Access to a body like the Administrative Appeals Tribunal should be made clear for residents of registered providers and adherence to binding review process decisions become a requirement for registered providers.

In order for such review mechanisms to work efficiently and effectively it is also vital that registered providers are subject to relevant state or federal freedom-of-information legislation (such as the *Government Information (Public Access) Act 2009* in NSW) so that tenants and their advocates are able to access all administrative records relevant to their tenancy.

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