



Final Report

Stakeholder views of the regulation of affordable housing providers in Australia

authored by

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ACRONYMS

ABA	Australian Bankers' Association
ACT	Australian Capital Territory
AIHW	Australian Institute of Health and Welfare
AHI	Australasian Housing Institute
AHURI	Australian Housing and Urban Research Institute Limited
ALMO	Arms-Length Management Organisation
CEO	Chief Executive Officer
CHFA	Community Housing Federation of Australia
CHFV	Community Housing Federation of Victoria
CLG	Department for Communities and Local Government (UK)
COAG	Council of Australian Governments
FaHCSIA	Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs
HCA	Homes and Communities Agency (England)
NAHA	National Affordable Housing Agreement
NGO	Non-government organisation
NBJP	Nation Building and Jobs Plan
NRAS	National Rental Affordability Scheme
NSW	New South Wales
NT	Northern Territory
QLD	Queensland
SA	South Australia
TSA	Tenant Services Authority (England)
TAS	Tasmania
WA	Western Australia
VIC	Victoria

EXECUTIVE SUMMARY

This study contributes to discussions in government and among not-for-profit housing providers about the way regulation can assist their efforts to increase the supply of affordable rental housing in Australia. It is based on conducting interviews with large and small providers, regulators, non-government organisations (NGOs) representing tenants' interests and investors in affordable housing in the states of Victoria, New South Wales (NSW), Queensland and Tasmania.

In March 2010, the authors published a Positioning Paper (Travers et al. 2010) reviewing the potential strengths and weaknesses of regulation as a core component of plans to expand the not-for-profit sector in Australian housing. There were three main arguments. First, we suggested that regulation by itself is not a panacea or magic bullet that can address what is widely recognised as a housing crisis. However, it is one condition alongside a long-term program of investment directed at providers that will enable them to leverage private capital from banks and investors. Second, through reviewing literature in public administration and regulation studies, we identified that there are potential risks, as well as benefits, from regulation. These include creating administrative burdens. Third, we argued that effective regulation has to balance the interests of different stakeholders, such as providers, tenants and investors. Experience in other countries, such as England, the Netherlands and the USA, indicates that getting this balance right and maintaining it can be difficult.

In this Final Report, we address these issues in more depth, drawing on interviews with those working in affordable housing. Chapter 1 introduces the research questions, and how these relate both to the policy context and the academic field of regulation studies. Chapter 2 examines how our interviewees understood the purpose of regulation. All interviewees agreed that there were four main purposes: accountability; reducing risks; establishing confidence; and protecting tenants. NGOs representing tenants felt that regulation could do more in ensuring affordable rents, as happens in England. Some providers believed that regulation does not influence the lending decisions of banks, and should not constrain their own commercial activities. Chapter 3 considers the impact of regulation, which we argue is conceptually difficult since stakeholders have different expectations. The chapter focuses particularly on the issue of administrative burdens and 'red tape'. Some interviewees expressed concerns about the amount of work, and the limited amount of feedback received from regulators. The chapter suggests practical steps that can be taken to improve the effectiveness of regulation, and combat perceptions of ritualism. Chapter 4 considers views on how regulation should develop. Through analysing responses to a consultation paper (Australian Government 2010), it demonstrates that there is widespread support for a national framework, although there are considerable differences in how stakeholders understand the issues. It also reviews concerns among providers about the independence of regulators from State Housing Authorities, and suggests some policy options.

Chapter 5 considers the future of regulation. It argues that the stakeholder model offers a valuable tool for governments and regulators in identifying the potential risks in regulation. It suggests that the problem of administrative burdens may grow, and it is important to streamline the operations of different agencies. The chapter argues that we should have realistic expectations of regulation. It can create the conditions for the expansion of affordable housing, but this will also require considerable public and private investment. The main recommendation is that effective regulation has to bring together different stakeholders. It is only possible to build a consensus on

regulation through recognising that there are different interests, and encouraging public discussion of the inevitable tensions and occasional conflicts.

1 INTRODUCTION

This report is the final output of a research project that considers the role and value of regulation with regard to the goal of increasing the supply of affordable rental housing in Australia. For those readers who know little about this area of public policy, we should state that it is broadly accepted that there is an affordable housing crisis in Australia (Yates & Milligan 2007), and that one of the main strategies for addressing the housing needs of lower-income households is through expanding the role of the not-for-profit sector (e.g. SGS Economics & Planning 2009; Australian Government 2010; Jacobs et al. 2010). The thinking behind this is that not-for-profit providers will leverage investment from the private sector, as has happened in other countries (Milligan & Pawson 2010). However, this will only happen if these providers can operate at scale, which requires considerable investment in new supply and/or large-scale transfers of public housing. The purpose of specialist regulation is to provide a framework to facilitate this process, and also to make providers accountable when receiving public funding and assets. This study has occurred in a context of national consultation on establishing a national regulatory system to apply to housing not-for-profit organisations. However, as yet, there is no agreement between the Commonwealth and state governments on how this will be achieved. There is also the start of a debate and some new policy and funding initiatives, but nothing like a comprehensive strategy for increasing the supply of affordable housing.

Our earlier Positioning Paper (Travers et al. 2010), considered the case made for the benefits of regulation in the academic and policy literatures on housing. It also discussed possible risks that can arise through over-regulation, and also under-regulation. Drawing on the expertise of some international researchers, we illustrated these problems through a discussion of the development of affordable housing in England, the Netherlands and the USA. However, we were conscious that only so much could be learnt from secondary analysis. It was important to conduct empirical research to obtain the views and perspectives of regulators, those being regulated and other key stakeholders. This report is based on conducting 46 interviews in the states of Victoria, NSW, Queensland and Tasmania. The objective is to show how those working in the field of affordable housing understand these issues. We hope that this will prove useful for those seeking to establish regulatory systems. We also hope to interest a wider audience in these debates and problems, given that this sector is seeking large-scale funding at a time when government policy is directed to containing public spending.

The report is structured in the following way. This introductory chapter sets out the research questions, data collection methods and the context of the project, both in relation to policy debates in Australia, but also the academic literature on regulation theory. Chapter 2 provides an analysis of the way different stakeholders understand and value the purpose of regulation. Chapter 3 considers the impact of regulation and an assessment of its utility and its limitations as a policy instrument. Chapter 4 explores how regulation has been developed and considers the prospects for a national regulatory framework. Chapter 5 discusses the future of regulation, and offers some recommendations for regulators and for the Commonwealth government as it seeks to establish a national system.

1.1 Research questions

The project began with six aims:

1. To identify potential risks in the provision of not-for-profit housing.

2. To comment on the range of options for regulating the sector, including Australian and international best practice.
3. To consider the effectiveness of regulatory systems from a range of different stakeholder perspectives.
4. To gauge the organisational impact for the not-for-profit housing sector of new regulatory frameworks.
5. To analyse the impact of existing regulatory systems for the not-for-profit sector.
6. To identify best practice for the development of a national regulatory framework for the not-for-profit housing sector.

We developed these into a set of three inter-related questions. These questions encompass issues relating to: the purpose of regulatory frameworks; their impact in terms of service outcomes and organisational culture; and the development of effective regulation.

The purpose of the regulatory framework

- What can be learnt from international best practice in respect of regulatory frameworks for the not-for-profit housing sector?
- What are the benefits and risks associated with regulatory frameworks?
- What is the nature of risk in providing housing?

The impact of regulatory systems

- What has been the impact of regulatory frameworks for the delivery of services?
- How have regulatory frameworks affected organisational performance?
- How have regulatory frameworks affected financial management in agencies?
- What measures are used to assess performance? Are these effective?
- How are the regulatory frameworks perceived by different stakeholders?
- Is there a commitment to 'continuous improvement'? If so, how is this achieved?
- How is evidence of performance communicated to stakeholders? Is this successful?

The development of effective regulation

- What are the challenges in developing a national regulatory framework for the not-for-profit sector?
- How should regulatory frameworks be reviewed and evaluated?

In the Positioning Paper we reviewed the relevant literature in housing policy and regulation studies. We also commissioned advice from academics with specialist knowledge on the development of affordable housing in England, the Netherlands and the USA. For this Final Report, we conducted interviews with those working in the sector. This has enabled us to understand how regulators, organisations being regulated and other stakeholders understand the actual issues and problems that arise in different states.

1.2 Methods

This section gives details on how we collected and analysed the data. It also explains how we approached conflicting views expressed by the stakeholders.

1.2.1 Data collection

The resources available for the study allowed for coverage of four jurisdictions. Victoria, NSW, Queensland and Tasmania were chosen because they provide a range of approaches to regulation and because a different context for community housing has evolved in each state.

- Victoria, at this point in time, has the most rigorous and developed model. A regulatory framework has been in place since 2005 and supervised since 2006 by a registrar who has extensive powers to intervene in the management of organisations that fail to comply with performance expectations. Currently 40 organisations are registered.
- NSW' regulatory framework was enacted in 2007 under the auspices of an amendment to the 2001 Housing Act. It has less scope for intervention than Victoria. Currently 90 organisations have submitted applications for registration, of which 35 have been formally assessed.
- Queensland's regulation framework is contained in provisions set out in the Housing Act 2003. Over 350 organisations are currently registered, including providers of services for the homeless, tenant advisory bodies and agencies that provide repair services for the elderly. Queensland's regulatory framework, while less comprehensive in scope than Victoria, does have provisions for the registrar to establish minimum standards in areas such as finance, governance and housing management.
- In Tasmania a comparatively smaller share of social housing is managed by not-for-profits than for the other jurisdictions above (AIHW 2010). Tasmania's policy is to deploy formal contracts as a way of regulating not-for-profit housing providers. The state government is considering transferring public housing stock to not-for-profit providers, and options for establishing a regulatory system.

We completed 46 interviews between February and April 2010. Table 1 lists interviewees by jurisdiction and type of stakeholder. As it was not feasible to access a cross-section of tenants directly, interviews for this stakeholder group were conducted with tenant advocacy organisations. In addition to interviewing, we were able to spend a day with various staff in one provider which made it possible to gain a sense of the practical work involved, such as inputting information in computer reporting systems, or completing a financial spreadsheet. In the summary of participants in Table1, identities of individuals and organisations are anonymised, with the exception of regulators and State Housing Authorities.

1.2.2 Data analysis

Most of the interviews were digitally recorded. In a few cases, interviewees requested that they should not be recorded. When listening to the recordings, and reading the transcripts, we sought to identify sections relating to three themes: the purpose, impact and development of regulation.

In presenting the data, we have tried to allow interviewees to express viewpoints in their own words. In many reports, there is little sense of people having a variety of views about policy, or their day-to-day practical concerns. Interviews are collected but not used, or the views of participants presented as having less weight than the argument or policy recommendations developed by the authors. In this study, which is influenced by qualitative research traditions in sociology concerned with addressing lived experience and meaning, the policy argument is mostly made through the interview extracts. One rationale is that this makes the report more accessible to a general readership. This is important given that the future of affordable housing

ultimately depends on obtaining greater public understanding and engagement with the issues.

Table 1: Interviews in four states

	<i>Interviewee types</i>
Victoria Max Travers and Rhonda Phillips 21 interviews	Large provider A—Housing Services Manager, Manager Strategic Partnerships Large provider B—Housing Manager Large provider C—CEO, Regulation Compliance Officer, Development Officer, Financial Officer. Small provider A—Housing Manager Small provider B—CEO, Finance Manager, Housing Manager (group interview) Small provider C—CEO Small provider D—CEO, Housing Manager, Finance Manager Regulator—Director, Office of the Registrar (two meetings), two inspectors (group interview) Investor Tenants' Advocacy Group (joint interview)
Tasmania Max Travers 6 interviews	Housing Tasmania—Three managers (two group interviews) Large provider A, Housing Manager Large provider B, Managing Director Small provider A, Housing Manager Tenants' advocacy group
NSW Tony Gilmour Bill Randolph, and Vivienne Milligan 10 interviews	Regulator—The Registrar Community Housing Division—three managers (group interview) Large provider A—Senior Project Officer Large provider B—CEO, CPM, Social Housing Manager (group interview) Large provider C—CEO Large provider D—Executive Officer, Operations Manager (group interview) Large provider E—CEO Small provider A—CEO Tenants' advocacy group (joint interview) Peak body—Executive Officer
Queensland Rhonda Phillips and Vivienne Milligan 9 interviews	Large provider A—CEO Large provider B—CEO Small provider A—CEO Small provider B—CEO Small provider C—CEO Investor Regulator—Executive Director, Social Housing programs, regulatory team (group interview) Tenants' advocacy group Tenants' advocacy group

1.2.3 *Conflicting views*

We are very conscious of the need to reflect on the relationship between our own views, and those expressed by interviewees. It is, for example, easy for any researcher to advance a position, and find support for this in interview data. It is also possible to be selective in choosing interviewees, knowing that they will support a particular position. It is also possible to frame a research question narrowly so that it supports a particular viewpoint. However, we have endeavoured to recognise the complexity of these issues and to reflect the diversity of perspectives that we found. Regulators, housing providers, NGOs representing tenants and investors inevitably have different, and sometimes conflicting, views about the value and purpose of regulation. Each chapter in this report presents a variety of views on most issues.

Some readers, with a commitment to a natural science model or interest in evidence-based policy (Davies et al. 2000) may want to know how the interview extracts are representative of larger populations. They may also want a definitive view on what is the 'real' position, as against how the interviewees understand the purpose or impact of regulation. There are different views on this issue among our research group, which is inevitable since we come from different social science traditions. What distinguishes this report from many contributions to policy research is that it has broadly constructionist assumptions (Jacobs et al. 2004). There is no 'real' position other than the views of the different stakeholders. This will be most apparent when we discuss the issue of administrative burdens and 'red tape'. Some providers are concerned about this, and see regulation as mostly ritualistic. Regulators tend to see the administrative work as manageable, and necessary to reduce the risk of business failures. One benefit of a constructionist approach is that one can accept that there are different views, without needing to take sides.

1.3 **The policy context**

The not-for-profit housing sector is an umbrella term used to describe non-government agencies that utilise government funding and their own resources to provide low-cost rental housing in Australia. This encompasses what is variously termed social, affordable and community housing. The sector is diverse and encompasses welfare, co-operative, religious, community, Indigenous, local authority and charity-based organisations. Administrative data is only collected and collated for parts of the sector where funds are allocated through State Housing Authorities. This part of the sector tends also to be the subject of recent revised regulatory arrangements, although this varies across jurisdictions.

Currently the primary providers manage over 40 000 dwellings across Australia, representing approximately 11 per cent of social housing (Milligan & Pawson 2010). Historically, the sector has been characterised by having a large number of agencies that manage on average only a small portfolio of properties. However, this scene is changing rapidly as a result of sector growth and organisational restructuring, led by NSW and Victoria. The latest data (from over 900 organisations) show that 45 larger organisations managed 63 per cent of all tenancies in the mainstream sector in 2008/09 (Australian Government 2010; AIHW 2010). In addition to tenancy and property management, the larger organisations are active in housing procurement, using a mix of public funding and private finance (Milligan et al. 2009).

These developments reflect a push initially from state governments and, after 2007, from the Commonwealth to create scale in the sector through expansion and restructuring. Government sees having larger and more independent not-for-profits as a vehicle to expand the number of low-cost affordable housing units that are required to address the major shortfall in demand. To help achieve this, several State Housing

Authorities have initiated a transfer of title or management of some of their stock to not-for-profit housing agencies and most have also steered capital funds for new development toward these organisations. The sector has received a further boost under the auspices of the National Rental Affordability Scheme (NRAS) and the social housing initiative within the Nation Building and Jobs Plan (NBJP) established in 2008. The target announced by the Commonwealth Housing Minister was for at least 75 per cent of these new social housing units to be managed by not-for-profit providers. Housing Ministers have now committed to developing a larger not-for-profit sector comprising *up to* 35 per cent of social housing to be owned and/or managed by not-for-profit organisations *by 2014* (Housing Ministers Council 2009).

A major driver underpinning support is the view within government that a diverse sector is desirable and one of the ways to overcome financial limitations faced by public housing (such as public tenants not receiving rent assistance and government borrowing limits) as well as its tarnished image as a tenure of the last resort. Supporters contend that not-for-profit housing agencies can attract financial benefits and have greater scope to be responsive and accountable to their tenants than large, monolithic State Housing Authorities. In addition, there are those who believe a not-for-profit sector has the scope to operate more entrepreneurially, with greater independence and less political interference. On the other hand, there is some concern about whether the sector has the capacity and scale to meet the challenges of developing new housing stock and attracting private sector investment. Gilmour (2009) examines the capacity issue in detail. Part of the focus on this concern in Australia may be because of the more nascent state of development of the not-for-profit housing sector compared to the USA, the Netherlands and England.

Promotion of a specialised regulatory framework can best be understood as a government response to these concerns. The advocates of regulation claim that a framework will provide confidence to investors and ensure that high standards of service and accountability are maintained within the sector. Regulation is also seen as a means of assisting development and restructuring of the sector by establishing performance requirements that need to be satisfied for funding or other incentives to be offered. To pursue this, most jurisdictions have adopted a tiered approach to registration, through which organisations are classified using dimensions such as scale, function and risk profile. Public investment, stock transfers or tender opportunities may then be targeted by regulatory class.

In the Positioning Paper we set out some of the necessary prerequisites that must underpin a robust regulatory framework drawing on earlier research. These include: a clear statement in relation to the commercial and social imperatives for delivering new housing stock; a set of objectives that are shared by both regulators and the housing sector and can engender trust and transparency; reliable data to enable effective performance monitoring; formal arbitration arrangements to resolve disputes; clear methodologies for performance assessment; demonstrable capacity for intervention and sanctions when problems arise; and a shared commitment from providers to provide support for the maintenance of the regulatory framework and abide by its rulings.

In Australia, there is general consensus that the aims of a regulatory framework should be to minimise risks by: maintaining financial probity; establishing a registration and monitoring process; putting in place safeguards to protect the rights of tenants and investors; and making available to consumers the findings of annual reviews and inspections. Most states and territories have put in place legislation to facilitate both multiple or tiered registration protocols for 'not-for-profit housing' providers (see Table 2 for more details).

1.3.1 The Commonwealth government's consultation exercise

In April 2010, the Commonwealth government published a wide-ranging discussion paper on the role of regulation and growth of the not-for-profit housing sector (Australian Government 2010). The discussion paper advanced five model options for a national framework. The first model option is a national accreditation scheme in conjunction with state/territory regulation. This model envisages a split in responsibilities between state and Commonwealth governments with the states taking responsibility for asset management, tenants' rights and program compliance. The second option is a Commonwealth regulation of large-scale national housing associations that operate across different jurisdictions. The objective of this model option would be to develop a new grouping of large developing associations that could maximise their economies of scale and retain necessary skills in-house. The third model option is a model that transfers all the existing regulatory powers of the state and territory governments to the Commonwealth in order to provide a national unitary system. The fourth model option is to harmonise regulation in each state and territory through alignment with common standards to ensure a consistent approach. A fifth model option is for one state government to take on the role of a national regulator rather than the Commonwealth.

The date for submission to the Commonwealth ended in June 2010. At the time of writing, there has not been any announcement about the Commonwealth's preferred option.

1.3.2 Developments in England, the Netherlands and USA

It is helpful to situate current debates in the context of international developments. In the Positioning Paper, we set out developments in England, the Netherlands and the USA. In England, the main regulatory body of the not-for-profit housing sector has been the Housing Corporation, which was also the main funding body until 2008. Following the recommendations of the Cave Report (2007), its regulatory role was transferred to the Tenant Services Authority (TSA). This undertakes regular reviews of all social housing agencies. The Cave Report had recommended both a greater emphasis on protecting the rights of tenants, but also a lighter touch approach to regulation to assist providers. The TSA had started to achieve this balance in addressing the concerns of different stakeholders. However, the large public sector debt in the UK has been an impetus for the newly elected Conservative/Liberal coalition government to reduce administrative costs across the public service, including reductions in quangos and unnecessary regulation. As widely anticipated, the government has announced that the TSA will be abolished. In its place a scaled-back regulatory function centred on economic regulation (with a focus on value for money) will be conducted by the Homes and Communities Agency. In relation to consumer protection, greater emphasis is to be placed on using local mechanisms, such as giving elected representatives a stronger role and establishing local tenant panels to empower tenants to advocate (Shapps 2010). Some NGOs had previously expressed their concern that the interests of tenants would not be protected if there is a new emphasis on 'local regulation' (Macdonald 2010).

The Netherlands has promoted the independence of its housing association sector since the 1990s in part by relying on forms of self-regulation and self-financing. This approach has not proved effective in maintaining investment in new stock by existing housing associations. We noted in the Positioning Paper how many social housing associations sought to develop higher-value housing to make up for shortfalls in government funding and that both housing affordability and the financial viability of associations had been adversely affected in the long-term. Existing regulation to

cajole social housing organisations to provide more dwellings for vulnerable tenants has proved ineffective as they have been overwhelmed by the financial imperatives they face (Travers et al. 2010). The debate about how regulation should develop in the Netherlands is far from resolved. Plans to strengthen the regulatory powers of the government in relation to housing associations have fallen into abeyance during a period of political uncertainty throughout much of 2010. In this environment many powerful stakeholder groups have been seeking to influence the debate about housing policy and the role of the housing associations with considerable attention focused on how lower-income households can be assisted more effectively, such as by having greater supervision of associations (Lawson, verbal advice).

In the USA, the not-for-profit housing sector is not subject to any specialised regulatory framework. The main subsidies provided to housing organisations are channelled through the low-income housing tax credit scheme, through which investors such as private companies and community development corporations are able to obtain credits to offset against their tax liability. There is no central regulatory system, in addition to regulation through contracts. While this has worked well for most not-for-profits, there have been some business failures and corruption scandals (see, e.g. Rheingold & Johnson 2003). There is cultural and institutional resistance to state regulation in the USA. However, one could also argue that there are fewer concerns either about excessive administrative burdens or a failure to control rents. Contractual mechanisms, and informal coalitions between different agencies, have achieved some success in addressing the needs of different stakeholders (Gilmour 2009).

The debates within England, the Netherlands and the USA are similar to those in Australia in that there is a tension between the desire to ensure compliance and good performance outcomes and the concerns that regulation can become too bureaucratic and expensive. It is evident that there are different stakeholder interests in respect of regulation in all four countries. *Government agencies* are keen to ensure that public subsidies are not squandered and are therefore well disposed to regulation. *Providers* are concerned that over-regulation will stymie their ability to meet their objectives or make ends meet. *Tenants* have concerns about the governance of organisations and the mechanisms that are in place to influence decision making (rent setting, allocation policies etc.). *Institutional investors* are keen to ensure that their investment is secure and that mechanisms are in place to minimise risks. Much of the impetus in Australia for regulation stems from a belief within government that attracting private investment into the not-for-profit sector will only materialise if regulatory safeguards are in place.

1.3.3 Terminology

This report is mainly concerned with specialist regulation, enacted through legislation, that mandates registration, compliance with prescribed requirements and provides the regulator with enforceable intervention powers. However, the scope of the study also includes other forms of regulation, such as through contracts or accreditation schemes. It is the combined effect of these different types of regulation that interests us in relation to the administrative burdens experienced by some not-for-profit housing providers. The terms not-for-profit organisations, and community housing providers (often abbreviated to 'providers') and agencies are used inter-changeably. We also note that the terms social, affordable and community housing have different usages across jurisdictions. See Travers et al. (2010) for a fuller discussion of definitions.

1.4 A contribution to regulation theory

The aim of this report is to contribute to discussions within government, and among not-for-profit housing providers in Australia, on how the regulatory system should

develop. We are also hoping that the approach, and findings, will interest a wider audience in the field of housing research and regulation studies.

1.4.1 From top-down models to the concept of 'regulatory space'

Much writing on regulation sees this as a policy instrument, designed to achieve some objective, such as environmental safety or fair competition (Baldwin et al. 1998; Hawkins 2002). This suggests the need for studies that examine its effectiveness in securing compliance, and policy measures to overcome the barriers that prevent government achieving these outcomes. While this describes the nature of regulation in general terms, many social scientists have suggested that the relationship between state and civil society is more complex. Hancher and Moran (1989) have argued that 'it is sensible to speak of a regulatory space' in which different groups seek to influence the character of regulation:

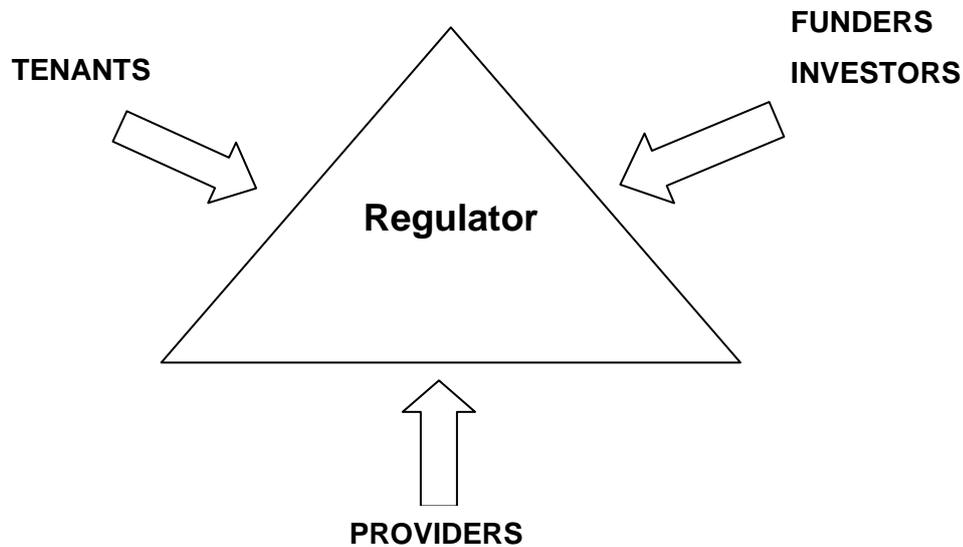
In these terms, regulatory space may be furiously contested. Its occupants are involved in an often ferocious struggle for advantage. Any investigation of the concept involves examining the outcomes of competitive struggles, the resources used in those struggles, and the distribution of those resources between the different institutions involved. In other words, the play of power is at the centre of this process (Morgan & Yeung 2007, p.64).

These ideas have already been taken up by researchers who have considered the development of housing regulation in England. In an early contribution, David Mullins (1997) argued that large housing associations obtained a favourable position in the regulatory system established during the 1970s. Mullins saw this as an example of 'regulatory capture', which happens when the original goals of a regulator are abandoned or modified. A recent study by Morag McDermont (2010) has documented how housing associations have struggled to maintain independence from the state. Mullins (2006) has also looked at tensions within associations between the 'institutional logics' of working with local communities, and developing into large commercial organisations.

1.4.2 A stakeholder model

The analytic framework proposed in our Positioning Paper has something in common with this literature. We suggested that there were four stakeholders concerned with the development of housing regulation: not-for-profit providers; regulators; NGOs representing tenants' interests; and investors.

Figure 1: Housing regulation—a stakeholder model



Source: authors

This slightly simplifies matters in a number of ways, and we are not claiming that this report tells the whole story, or does full justice to each perspective. In the background, or perhaps standing behind the regulator, is the government that provides the resources for the sector to develop. This happens through stock transfers from State Housing Authorities, and through national and state government funding programs. The other complicating factor is that there are divisions and debates within the stakeholders. To give an example, there is a divide on some issues between large and small providers. There are many very small organisations, closely connected to particular communities, and they perceive new regulatory systems as contributing to their exclusion from funding opportunities. There are also the organisations that we studied that are growing, but have different responses to growth. Another example is that there are different approaches among regulators, as will be apparent in Chapter 4.

The benefit of a stakeholder model is that it makes these perspectives, and social processes, visible. We would also like to see it as preferable to some versions of regulation theory that advance an idealised model, and then try to fit everything observed into its categories. To give an example, Hancher and Moran (1989) describe the relationship between interest groups in terms of 'power relations'. However, this is not how the housing providers we interviewed described their relationship with the regulators. Another way of making this point is that much of the extensive literature on regulation (Morgan & Yeung 2007) is not based on interviewing different stakeholders about their actual concerns or interests.

As discussed in our review of this literature in Chapter 4 of the Positioning Paper (Travers et al. 2010), few regulation theorists in recent times see administrative burdens and 'red tape' as creating great hardships for those being regulated, or as constituting waste in the delivery of government programs. They generally adopt a positive view toward the state. However, other traditions in social science, such as those influenced by the sociologist Max Weber (1991), see bureaucracy in darker terms. Again, it is the stakeholder perspective that allows us to see different views on this issue, without taking sides.

2 THE PURPOSE OF REGULATION

There has been much discussion of the purpose of regulation in the past decade (Robyn Kennedy & Co. 2001; Milligan et al. 2004; Plibersek 2009). The most recent consultation paper proposing a national system identified four broad objectives (Australian Government 2010, p.ii). Regulation would:

- Increase the accountability of providers, which was required if they were in receipt of public money and property assets.
- Reduce the risks of financial failure through ensuring that providers employ sound business practices.
- Create confidence among banks and investors considering putting their money into affordable housing.
- Protect tenants as a vulnerable group.

Given that regulatory systems have already been established in some states, one question that arises is whether regulation has achieved these objectives. However, it is first worth considering how our interviewees understood the purpose of regulation. In most respects, their views are similar to those expressed in policy documents. However, there were significant differences between stakeholders. In addition, some providers had a realistic, or even sceptical, view of what regulation can achieve.

2.1 Accountability

A central purpose of regulation in the field of affordable housing is to make not-for-profit providers accountable to the wider public. This was particularly clear in the debates that took place in England during the 1980s and 1990s (Malpass 2000; Pawson & Mullins 2010). Local authorities had transferred large amounts of council housing to associations and other organisations at arms' length from government. Under the old system, whatever its imperfections, tenants and anyone affected in the area could hold the housing department to account through their local councillors (Mullins 2006). Regulation offers an alternative means of accountability by requiring providers to account for their performance. Ideally this involves establishing an independent body separate from the housing department, and also publishing performance information in a meaningful way for the general public.

Australian states have not established an independent regulator, separate from housing authorities. Nor do they publish performance information in the form of league tables. However, every stakeholder interviewed recognised the need for accountability. Those working in government saw it as a necessary precondition for transferring the title or control of publicly owned properties:

It is seen as a new business sector and as long as new regulation is appropriate, it helps that government can be continually assured and the community as well.

Providers also recognised that they were providing a service to the community, supported by public funds, and should be accountable:

We didn't have a problem with regulation because we work on the basis that if public money is provided, you need to be accountable for how it is spent, every cent of it.

Providers also recognised the distinction between a regulatory system based on annual reporting and regulation through separate contracts:

Q: Do you need the regulation?

P: Oh yes. Most of our money comes from government and I think we need the accountability structures that have been put in place. I've got a suspicion that if you didn't have the regulation, you'd get sharks in this industry just as you have them in any other industry. You need a regulator and to be accountable to the community you serve in this game.¹

Q: Could this be achieved through contracts from the [government agency]?

P: My experience in providing housing with government grants for a long period of time is that governments change the way in which they manage their contracts. Often they manage their contracts by losing them. They don't even know what's in them anymore. There is no ongoing assessment of whether or not properties are used properly. It doesn't work. The regulation ensures you are answerable on at least an annual basis for monies you've received, the work you've signed up to do, the goals you're there to do. Another difference with contracts is that regulation is in the public arena. Tenants can see you've got a green light or a red light.

The increased emphasis on accountability, both in the public and private sector, has led critics to complain of ritualism (e.g. Power 1997). Do audit reports actually protect the public, or shareholders, or do they simply make us feel better? This interviewee acknowledged that there was, in practice, little scrutiny of the information supplied annually, and it did not always give a full picture of what the provider was doing. Nevertheless, one can see why providers in receipt of public money or assets should be made accountable. State and Commonwealth governments are answerable, both to parliament with an opposition whose task is to scrutinise the performance of departments, and ultimately to the electorate. When government transfers assets or powers to third sector bodies, there is a need for regulation, even if this only has symbolic value.

2.2 Reducing risk

However, there is more to regulation than reassuring different audiences that public money is being used properly and effectively. Everyone we interviewed believed that regulation improved the way providers ran their businesses, and reduced the risk of financial failure. Moreover, providers saw themselves not as individual organisations but as part of a sector. It was therefore important to have collective standards, whether through regulation or industry-led quality systems:

Q: There is a lot of work involved in regulation. Does it help you in any respect?

P: I would have to say it does. If you look at the complexity of the projects we're doing ... You need a high degree of skill. I think the regulation gives us great comfort. We might disagree with how they do things but I know there is a high standard. I know I am putting in this hard work and I am not carrying some other organisation that is doing a poor job to start with. This is a highly complex area. It has to be carefully monitored. It has to do with the reputation of social housing. It's important to me that other housing associations do not fall over.

¹ This extract illustrates that providers and State Housing Authorities belong to what the sociologist Anselm Strauss (1991) would call distinct 'social worlds'. No government agency would describe the provision of services as a 'game', or openly talk about 'sharks' or (from other interviews) 'doing deals'. The dynamism of the not-for-profit sector comes from this business culture, even though it is directed at social goals.

I see a lot of positives ... I think in terms of ensuring quality in the sector, it's gone a long way to make sure that happens. I mean we're going through accreditation as well but the registration process doesn't cover off on everything that accreditation covers off on. However, they've put the two together and I think we've got a sector that's going to be extremely well run and it's of high quality.

The organisations were also happy that there were pressures to merge created by the administrative requirements of regulation. There are mixed views on mergers and consolidation:

A well-run community organisation is small but responsive. But they can become too personal. You get your friends on the Board. Regulation revitalises some of these organisations. It forces people to do things and do things professionally and well and it requires up-skilling.²

Regulation helps in weeding out non-performers. It is clearly a bar and that is fantastic. I am glad to see there is some weeding out.

Among regulators, there were different views on what should be achieved through accreditation and regulatory monitoring.³ In NSW, the objective was to encourage organisations to become business-like. This meant being able to foresee risks themselves, without relying on government to micro-manage through contracts:

Regulation is about measuring performance outcomes and accreditation is about quality and service improvements, ensuring that you have the right systems and it should be industry-owned and should be industry-led and controlled. It will stand any organisation in good stead for regulatory performance to be accredited because it will give the foundations.

You shouldn't be sitting around waiting for your regulatory compliance assessment and that's when you learn that you have got some shortcomings or you have got some areas of weakness emerging in particular areas of your operation.

You should have through your accreditation system, a good system of continuous improvement where you pick it up as an organisation and deal with it rather than rely on a regulator to come and tell you how well you are doing or you are not doing.

That's the level of maturity for an organisation to be able to take on that self-critique and that self-responsibility. In fact I think it's a very interesting shift for our industry and a difficult one to sort of have been the agent of government, relying on government to say when to do what and how, to government removing a heavy hand from the industry to then be standing there alone. How do you then start making some of those decisions rather than relying on reporting back to a funder?

In Victoria, the regulator went further and was looking to persuade providers to take more risks, through increasing their borrowings. Again, this could not be imposed through the regulatory system but was encouraged through informal communication as part of the annual monitoring process:

² This provider employed accountants, lawyers, developers and financial planners.

³ Accreditation against National Community Housing Standards is a quality system available to providers in NSW and Tasmania, where it is voluntary, and in Queensland, where it is mandatory for some categories of providers. For a review of the national standards and accreditation system as a parallel form of regulation to specialist regulation, see Kennedy & Co. (2001).

Q: There are organisations that are growing anyway. They are happy to have the regulation. Are there others that need prodding to grow?

P: Yes. Some are growing as fast as they can and others from our perspective are not growing as much as they could, they might have a conservative Board. That is an area we get involved in but we cannot direct them ...

The whole speed of development in an organisation is not something that government can direct. That's where we are talking to them in the middle, trying to understand what is going on. We have tried to provide not an audit role but a third party view of their organisation and capacity, and wanting to have the conversation about why perhaps they aren't growing. There aren't that many we need to talk to ...

Therefore, it is more accurate to view regulation as being concerned with managing risks than minimising risks. This is because the growth of the not-for-profit sector depends on some degree of responsible risk-taking. Governments can put in place, as in Victoria, measures to protect investors and tenants in the event of financial failure.⁴ But they also require providers to expose themselves to risks in order to achieve the policy objective of increasing the supply of affordable housing.

2.3 Establishing confidence

The announcement in June 2010 by the recently elected Conservative/Liberal coalition government in Britain that they might abolish the TSA, quickly led to criticisms that banks would no longer have confidence in housing associations. It remains to be seen if changes in the regulatory framework in England will have much effect on the lending practices of financial institutions.

In Australia, it is often argued that a major purpose of regulation is to encourage banks to lend money to housing providers. Our interviewees provided mixed views on whether this was a realistic objective. One bank based in Victoria believed that regulation was helpful:

What regulation provides for us is a comfort level, especially when government is involved, and the government is already a stakeholder providing 75 per cent of the [funding in] projects. Without the regulator there would be no certainty. The last thing we want to do is foreclose on properties and have people in need of accommodation being turned down. What regulation provides is that certainty: that stock would be transferred to the community housing sector. No one wants to be on Today Tonight.

Providers also saw the regulator as providing comfort to lenders:

Does it provide the comfort? Yes, because sometimes what the banks are talking about is not the dollars and cents, whether it stacks up in terms of interest ratio and all that stuff. It's their reputation and that's what they don't understand with the sector. So as long as the regulatory system or the registration—all those things—go towards providing that comfort, yes.

There were also many interviewees who were sceptical about this aspect of regulation. In their view, banks made a purely commercial decision when loaning money to providers:

Q: Do people who lend to you know about the regulation?

⁴ The legislation gives the regulator powers to transfer the assets of failed companies to other providers.

P: I don't think they care about that. They just want to see we have the income coming in that will service the debt. My experience with banks is they say, 'Yeah we know you have regulators because they come and try to talk to us, and we send underlings to have cups of tea with them'. But they are far more interested in not foreclosing than they are in the fact there is a dubious non-guarantee, that there is a wink and a nod from government, if it all goes pear shaped. The banks say formally that's a lovely thing but they just want to know they have their asset, and it's protected, and into the future they will not suffer risk.

Q: Do you think the banks think, 'Oh well, these guys are registered so everything's okay?'

P: No. They wouldn't even know what registration was. That was not a question that was asked. They look at your balance sheet; they look at your track record. If they've known you over time, they look at how much money they're making out of you and what they can make out of you in the future. Whether you're going to be a risk and what the cash flow is ...

I mean that assumes they know the ins and outs of community housing. They don't. They provide finance to all sorts of businesses. We're just nothing to them basically in the scheme of things.

These experiences do not necessarily mean that regulation has no value as a long-term project that increases awareness of, and confidence in, the not-for-profit sector among banks and other investors. However, they do illustrate the realities experienced by providers, especially in the context of the world financial crisis, with obtaining from 'high street' banks the large loans needed to undertake large-scale development.

2.4 Protecting tenants

Every report and policy statement arguing the need for regulation mentions the need to protect tenants as a vulnerable group. The issues have been particularly clear in England, where millions of properties, owned and managed by local councils, have been transferred to housing associations (Pawson & Mullins 2010). While these tenants generally welcomed the higher level of service offered by their new landlords in maintaining and repairing properties, they were, understandably, concerned about the possibility of rent increases, or changes to their security of tenure. This explains why there has been such an emphasis on tenants' rights in the development of regulation in England.

During this study, we came across very few concerns about the quality of service provided to tenants. Providers assumed that they were providing a much higher level of service than State Housing Authorities. Nevertheless, they were also aware that this could be jeopardised by expansion. One interviewee described the skills required when collecting rent from low-income tenants:

We house poor people ... They have all kinds of problems. The tenancy manager will suddenly pick up that rents are not paid or the neighbours complain. And the normal response from a tenancy manager who is not on site is to send some heavy-handed letter or make a phone call rather than establishing a dialogue. In my experience, you need to go round and have a chat with someone and you find out what's going on there. The husband may have left or the wife is being beaten around or their children [are in trouble]. You do the things a good support agency will do, and if not you broker these.

And as the organisation grows and our costs increase, there is less money for this.

Regulators attempted to encourage tenant-focused services through requiring providers to conduct annual tenant satisfaction surveys or require tenants to be represented on Boards. However, these measures were viewed with some scepticism by providers:

They say our Board has no tenants' representation. We say tenants don't necessarily want to be on the Board. We do tenant satisfaction surveys every couple of years. We ask them about what they want in terms of involvement. Our view of the regulator's requirements is that we say it is an onerous task for a tenant who may not want to be on the Board.

I think that how the regulation protects tenants' rights is a good thing. But all that stuff about consumer input to housing associations and tenants' groups and all the rest of it, it's a patronising load of rubbish. You know some people want to do that sort of thing and some people don't. We don't want to pester people.

The registration stuff from memory, you know, called for feedback from your tenants. But the thing is that what you're getting with those tenant consultations is feedback from a very small number of compliant tenants.

NGOs representing tenants' interests went further and argued that the regulation did not address the real problems that could arise for tenants or the community at large through establishing a large not-for-profit sector. From their perspective, the key concern of government should be to ensure the quality of housing services and that the properties were actually affordable:

X recently advertised tenancies for those with high incomes. This is not addressing the affordable housing problem. Their properties are affordable to a second year doctor or a fourth year accountant. They are not even for the middle class, but for the upper middle class!

We often complain to housing associations why the new projects do not contain enough dwellings for low-income tenants. They say that they were forced to do this. They are all looking at the balance sheet not what is the right mix of housing outcomes. The regulator should be looking at this. What rents are set, the location of the stock, the mix of incomes. There is no monitoring of this. It is also pointless if they are doing building out on the city fringe. No one wants to go out there.

We had bad experiences with regulation in representing tenants. The regulator has enforceable guidelines but there were problems with properties constructed in a joint venture between a provider and the Office for Housing. We approached them on behalf of the tenants. We were told by the provider that they had a contract with the Office for Housing and so there was nothing they could do. There was no mechanism to deal with a dispute. The housing association charged rent on a model from the contract and could not control this.

From our viewpoint, the regulation does not give us enough information to influence outcomes or know what is going on. It should be a properly regulated sector allowing for policy decisions on the best way to use private capital. We do not want to see the needs of private capital drive the tenant mix and stock profile.

In the Positioning Paper, we discussed the problems that have arisen in the not-for-profit sector in the Netherlands. In this country, regulatory controls were relaxed to encourage expansion (Hupe & Meijs 2000). However, there were financial pressures on associations to increase rents. This is why the TSA in England, established on the recommendation of the Cave Report (2007), closely monitored outcomes. Although these problems only exist in embryonic form in Australia, we would suggest that they should be taken seriously by regulators. The purpose of protecting tenants should be conceived in broader terms than conducting tenants' surveys.

2.5 A realistic view of regulation

Although they shared the same understanding of purpose, providers tended to offer a more realistic view of regulation than one often finds in policy statements. Governments see regulation as an instrument that can achieve policy goals without too much difficulty. The regulators interviewed believed that regulation could reduce risks and create confidence among investors. By contrast, some providers doubted whether it was possible to achieve these objectives. We were told that the mechanisms to monitor performance are seldom strong enough to proactively identify problems. Advice and encouragement cannot force a conservative Board to take risks. Nor can it guarantee the service provided to tenants, or keep rents affordable, even in the tougher version employed for a time in England. Moreover, they believed that banks made decisions to loan to housing providers on commercial grounds; the expansion of the sector had little to do with regulation.

Some providers disputed whether regulation was responsible for professionalisation and raising standards. In their view, this would have happened, in any case, as the sector expanded. A few even doubted whether it was desirable to achieve this objective through regulation. They believed that regulators should not influence their commercial decisions, and it would be damaging if there were closer controls and direction. The interviewees did not mean that regulation has no value, because clearly accountability is important, and they accepted that there should be some monitoring, and that regulators should intervene to assist organisations in financial difficulties. However, they were suggesting that we should not expect too much of regulation as a policy instrument.

3 THE IMPACT OF REGULATION

In the previous chapter, we considered a number of objectives that inform the work of regulators in affordable housing. These were: making not-for-profit organisations publicly accountable; reducing the risks of business failure; establishing confidence in investors; and protecting tenants. A related, barely concealed objective in policy documents is for the regulatory system to encourage smaller organisations to merge. The creation of larger and more diversified businesses will ultimately help the sector to attract large-scale investors, such as super funds. Although there is a symbolic and confidence-building side to regulation, it is also intended to professionalise the sector, and in doing so increase the supply of affordable housing.

There has not so far been any systematic attempt to measure the impacts or outcomes of housing regulation, either in Australia or internationally. One reason for this is that there are no simple or unproblematic measures that one can use to assess whether regulation is effective. A recent report by the Victorian Auditor-General's Office (2010) argues that regulation should become tougher on the basis that providers are not responding to requests for information from the regulator. As will be clear from this chapter, this is certainly an issue that needs to be understood or explored. However, this kind of finding does not necessarily mean that regulation has only a limited impact. Non-compliance also does not lead to the conclusion that regulation should become tougher. Equally, it could be argued that the system in Victoria would be more effective if it made *fewer* demands as in other states. This could be described as a top-down approach to assessing the effectiveness of regulation, based on the assumption that it must be thorough. By contrast, the aim of this chapter is to appreciate why some organisations being regulated experience regulation as a burden, imposing unnecessary expense and 'red tape' on their commercial activities. Another way of putting this is that, along with positive or beneficial outcomes of regulation, there is always the unintended consequence of bureaucratisation.

We discussed this problem in general terms in Chapter 4 of the Positioning Paper. In this chapter, we will be exploring the issue in more depth, drawing particularly on interviews with those being regulated, but without siding with this viewpoint. As has been made clear in the introduction, we are not seeking to arrive at definitive conclusions on whether regulation is burdensome, since we appreciate that regulators and providers understand the problems differently. We would also accept that, even if regulation is not perfect, or liked by everyone, it may still be necessary in order to develop the not-for-profit sector. More positively, we would hope that documenting how the problems are perceived makes possible a more open dialogue between regulators and those organisations being regulated. It may even be possible to reduce some burdens experienced by providers without reducing the effectiveness of regulation.

The chapter will begin with some background information on how the regulatory systems operate in different states, which is necessary to understand the problems. It will then review the concerns of providers, for example that regulation imposes an administrative burden without adding much of value to their commercial activities. It will then consider the regulators' perspective, and their attempts to make regulation more meaningful. The chapter will conclude by re-considering the positive and negative impacts of regulation, and how they can be measured in a regulatory system.

3.1 The regulatory system

As discussed in the Positioning Paper, there are several ways in which not-for-profit providers are regulated by government agencies. The main type of regulation is through the conditions attached to grants or property transfers from the state. Providers often have to tender for these opportunities. This involves satisfying government agencies as to financial viability, and making commitments to what properties will be built, or the rents that will be charged. Providers also usually provide services that are subject to other regulatory standards imposed by different government bodies. One example is providing shelters or rooming housing for the homeless where various state-based standards and accreditation operate. Each of these areas of business is regulated, and in each case managers in the agency are required to submit applications and reports to external organisations and may be subject to inspection regimes. This can, itself, result in administrative burdens through over-lapping requirements (see Travers 2007). However, we are most interested in the specialist housing regulation established to oversee the development of the sector. Here also there is potential for significant duplication between the requirements of funding contracts, the national standards and accreditation system and regulation.

How this operates varies between states (see Chapter 4). In its most developed form, in Victoria, it requires those providers seeking to manage or develop affordable housing to undergo registration and then to provide information about key performance indicators annually, including sophisticated financial plans. The following summary by the regulator summarises the thinking, and the administrative work, involved:

We looked at how to monitor compliance with legislative requirements and established comprehensive annual reporting that encompassed performance against standards, compliance with other regulatory requirements and continuous improvement and business planning.

Then we decided that more information was needed. This includes evidence of: policies and procedures; the work processes that supported delivery of policies; measures to quantify performance (key performance measures); self-assessment of achievement against business plan; and revised annual plans.

We then established more detailed data collection. We decided that detailed annual financial reporting is insufficient. We needed prior information to establish trends and forward projections. So we developed our financial reporting tool.

The legislation allows for seeking additional information—so we have used this catch-all power in developing the regulation.

We are trying to reduce duplication by mapping other contractual reporting and internal reporting processes that the organisations are subject to. The two most onerous requirements are key performance measures and the financial performance report. This was originally a three-year projection for the whole organisation. For growth organisations this now includes longer-term reporting of capital grants, borrowings and maintenance risks. Now we ask for a 15-year projection for housing associations.

This summary illustrates how the regulatory system has developed. In Victoria, this has become a system in which providers submit a report each year, allowing the regulator to monitor their financial health.⁵ A manager in one association described

⁵ This system is explained on the regulator's website: <http://www.housingregistrar.vic.gov.au/>.

how this work had become part of their reporting activities, following the Board's annual general meeting:

Every bit of funding that comes through the organisation and every program that we deliver has got reporting and regulation attached to it. The regulatory system attached to being a registered housing association has the most complex regulation attached to it. Financial assessment is part of it.

There are different time frames to provide different types of information. We have to give performance indicators in August, and then a business plan after our AGM, along with the audited accounts and also a complete and complex financial modelling.

Therefore, one can see that the practical work involved in regulation involves the regulator deciding what information to collect, and then establishing the staff and resources to collect and analyse this. For providers regulation involves the work of getting registered (and in Queensland accredited) and submitting annual reports, including increasingly sophisticated financial plans.

3.2 The perception of a burden

According to the American sociologist Alvin Gouldner (1952), it is not possible to measure the burdens created by administrative or regulatory activities. This is because they are largely a subjective matter. If we accept the need for the regulation, we will see a certain amount of bureaucratic work as necessary. On the other hand, if we have ideological objections, any request to complete forms, or submit to state direction, will be seen as unacceptable. However, Gouldner also recognises that, even when there are no ideological objections, 'red tape' can be perceived as time-consuming, and a burden on the ordinary citizen. Many, although not all, the provider interviewees seemed to perceive housing regulation in this way.⁶ They saw it as: involving a great deal of work; as being ritualistic; and in some cases as imposing too great a control over their commercial activities.

Whether or not this was resented, being regulated required considerable administrative work. To begin with, providers had to apply to become registered or accredited:

It was a lot of work. I was working three days a week and two days were spent on that for six months. I think we lodged it at the end of 2007 and then in August 2008 we became registered. But before that we were getting our policies and procedures in place.

We were the first to go through the hoops to be registered. We had three people working on it for six months.

We had various staff working on it for a few months, not full-time obviously but a significant amount of time. We've got a project team and all of us got involved in one way or another to deliver certain documents or approve certain systems to make sure that it was—we were you know putting our best foot forward.

Once registered, the provider normally appointed a compliance officer, and allocated time for financial officers to prepare the annual report:

It took 76 hours, this is dedicated work, to get that financial template finished this year. That's being conservative. It took a lot more time than that. I just

⁶ We were expecting to find more concerns about administrative burdens in Victoria in which there are more regulatory requirements, and in smaller organisations.

went through my diary and added it all up. Because it is very time-consuming. It's not a day. It's days. You just juggle with everything else. At the moment we have allocated one person to do all the reporting we need to do. I am sure that not every organisation can do this.

We've built an organisation from 60 people in February 2009 going to 120 people in December 2009. That's massive growth and we need that to deliver everything. Interestingly only seven of the staff are in building and development. All the rest is quality management and risk management. These are the people you need to stop the organisation imploding under growth pressures.

Some organisations took this in their stride, whereas others viewed this as burdensome. The most serious complaint from one relatively small provider was that the amount of work spent preparing the annual financial report from the regulator prevented the financial officer from pursuing his other tasks: in other words, that the demands of regulation damaged the organisation:

Q: What about opportunity costs?

P: I would have got our budget done on time and got our Board reporting done better than it is. These were things that we wanted to do. I asked someone else and they said there were lots of things we could do to improve our systems if we weren't working on their systems.

Against that, many organisations in NSW viewed registration as a relatively painless process:

P: So I think it was six weeks of preparation for us for registration to provide all the information that we needed to.

Q: Were there any surprises along the way in terms of what was expected?

P: No. We found it reasonably painless, the process. We'd just come out of an accreditation the previous year.

Others seemed to view the burden as part of working in a commercial environment:

Q: Do you resent spending salaries on regulation?

P: I tend to see it as part of the business. Growing the business depends on satisfying the funders and regulators as much as the clients. After all, you can either see regulation or any of this as an extra burden or you can see it as a framework for doing your business.

Perhaps the most interesting insight we obtained into the nature of this administrative work came from interviewing a compliance officer in Victoria. Her full-time post involved collecting information within the company, and then presenting this to the regulator through a computer system called Regis. The following account gives a good idea of the day-to-day work involved in packaging information so that it was accepted by the computer system. In addition, when the system was introduced, she had been asked to collect the information sent in the previous three years and re-enter it on the computer system:

Usually we just email them but now they have the Regis system so I have to upload everything onto their system. When Regis first came available, their data base, they actually wanted us retrospectively to put on our previous data. This was incredible in terms of resources. I had to hire a temp for six months to go and put all this data on ... I suppose this was something that was a burden [laugh] but now you just do it.

There is a positive way of viewing this kind of response. It suggests that new demands and requirements are originally seen as burdensome. However, over time organisations become used to the requirement, and this becomes part of their normal work.

3.3 Ritualism

The main criticism of regulation that has been advanced by ordinary people struggling with forms and procedures, and academic commentators speaking on behalf of professionals resisting managerial controls (e.g. O'Neill 2002), is that it can quickly become ritualistic. Michael Power (1997), in his writings on the audit society, has made this case, drawing on the ideas of earlier American organisational theorists. He has suggested that auditing becomes 'de-coupled' from the productive activities of the organisation being audited. The work involved in preparing for audits is resented because it is not seen as meaningful.

One way this problem arises is because meaningful information within an organisation has to be translated into a different and simplified form of relevance for the purpose of assessment. This lies at the heart of objections of professionals whose work is measured by quality assurers. The same problem can be seen in the following account by a compliance officer who constantly has difficulties completing the annual report on key indicators. This is not because the company does not satisfy the indicator, but because the actual position is more complex than can be stated on the form:

P: So if I can show you our annual report to the regulator. It has the KPM [key performance measures] data. Here is the final report we put in. It starts here with our name all that sort of stuff. It asks for KPMs.

Q: So it asks here the number of times the Board met in quorate for the last 12 months.

P: Twelve times. But in true fact the Board met 16 times. But they go, 'OK we only want quorum meetings', they do not want special meetings.

Q: You tick the box and then you go on.

P: Then they want supporting data. What is a Board quorum? In our constitution, it is three, but a number of extra Board meetings are held. Well I would say the number of times the Board met in quorate was actually six, and it should be up in there, but they are saying no, so it is not very clear.

Q: I see you've complied 100 per cent, having been required to have had 12 meetings. But then you've put in an explanation.

P: Well yes, I think it needs some sort of explanation. Looking down, you see we have a finance reference group.

Q: And active Board members.

P: Yes they want to know the percentage who have come in. So you have to calculate everything. But we had one member who never came but participated through email. He was an active member.

Another provider made a similar point about staff turnover as a performance measure:

I think regulation is very important and it is good that we're accountable. But I am not sure that the accountability is meaningful, some of it is not terribly meaningful for us and I am not sure what they make of it. They are interested in staff turnover. Now when you have an organisation of 10 people and two

people leave the figure looks pretty bad. So you look at it and think 'My God'. But when you look behind the data and the reasons, it is OK. So the simple straight forward data often doesn't tell the true story. You have the capacity to put the quality information in and you really need to do that.

One could argue that this kind of detailed reporting work, year by year, is important in allowing the regulator to know exactly how the provider has satisfied the key performance indicator of holding Board meetings or maintaining a good working environment. However, it also suggests that the process of auditing has been decoupled from the actual activities of the organisation, and what it considers important in terms of performance. Completing the form, or writing policies to satisfy the regulator, becomes a ritualistic activity that has little or no value to the organisation.

None of the interviewees made this point explicitly. However, many providers were concerned that they received no feedback, and as a consequence learnt nothing from regulation. Here are some examples:

The reporting is extremely resource-intensive, time-consuming and it changes constantly. The Office of the Registrar, the regulator, is constantly adding requirements to it seeking more information, different sections of the department are asking for different information so sometimes you are just reporting and reporting for the sake of reporting. And it's not clear what happens at the other end with all this collected data.

Q: I sometimes wonder whether the regulator has the capacity to analyse all the information.

P: Well they don't. They would freely admit I think that they don't ever analyse it apart from if there are very glaring things that maybe jump out at people. Some of the amalgamated information for comparative data that they give us is useful but not that useful.

So I think they could—they had a process some years ago called best practice, probably best practice investigations or some process whereby more of the onus was on the organisation coming in and just assessing your business as it was and looking at improvement processes. I found that much more useful than what's basically become a paper exercise to tick a box.

The other thing is we dutifully send the report and then the months go by and we wonder where has it gone, into the ether somewhere? This all happens in August and finally they might come back in March of next year with a report. And there's nothing really there aside from tick tick tick to say how you might measure up against a comparable organisation.

One issue that had been discussed in Victoria was whether it was possible to benchmark providers, so they could see their performance in relation to comparable organisations. The difficulty here was that both the regulator and providers accepted that the sector was too diverse for a benchmark to be meaningful:

A challenge for the Office of Registrar is that they have not been able to set any benchmarks. We have nine or ten housing associations and 30 providers but we are so varied, it is difficult to have a benchmark. I don't know if X per cent [of re-lettings] is good or within the sector it is above average performance or below. That's what we asked the registrar. Why are you collecting all this information, when nothing comes back to us that is meaningful about how we are performing?

Q: Do you think benchmarking is useful?

P: What are you comparing? There are hardly any organisations like each other. There are big ones, small ones, organisations with a whole suite of services. It is very hard to measure apples and oranges.

In the absence of meaningful feedback, the administrative work involved in reporting can easily seem ritualistic or even, in the case of financial reporting, fantastical. The regulatory system in Victoria required financial planning for a long period. This is, perhaps, the only way to ensure that organisations were not taking on too much risk. However, the providers tended to view this as meaningless, since businesses cannot predict the future and must take some risks.

We had a strategic plan after the merger. However, we had so many unknowns and question marks, it was difficult to plan. Even though the strategic plan is for three years, it needs review after 12 months since all the variables can change. So it is a very difficult environment to plan, but on the other side you have to predict performance [for the regulator] for the next 25 years.

We created an asset management plan. It is actually a forward business plan. It assumes how much stock we gain and get rid of. Where you have to make assumptions about the stock we gain, we had to make assumptions about how much stock we would gain through transfers. But the regulator said you can't do that, because stock transfers are not part of the government policy program. We also said that we assumed some forward builds in there even though there is no commitment from government to continue funding. They wanted us to remove this as well. The only thing we could do is take out the organisational chart and say well we'll cut out this part here and strip out that part there. Then we are just dealing with a total organisational fantasy.

Even though they complained about the ritualism involved in regulation, it seems likely that providers would have been more concerned if they had to follow outside directives about the management of their organisations or when developing projects. They are, of course, constrained by the conditions built into contracts, including the amount of finance they need to raise in addition to government grants. Some were fearful that the regulator would seek to control or limit their activities in this way:

Q: Could there be a position where there is too much regulation?

P: You would hope it never comes to that. I think the system at the moment is becoming a problem. There are more people involved by or employed now by the regulator than there are in housing associations. I think there are issues. The point where it becomes too much is when a housing association begins to lose its autonomy and regulation becomes more than adhering to what are the seven or eight different requirements, governance and the management and tenancy management, property management, financial viability, whatever they all are. Once they start getting involved in writing business plans and setting aims and goals, and taking over from us what is our role which is fulfilling our vision for the organisation, that's when we start saying regulation would become harmful.

Providers in Victoria were concerned, for example, about meetings in which it had been suggested that there should be tenants' representatives on Boards. In Queensland, the State Housing Authority was criticised for attempting to micro-manage the activities of providers, albeit primarily through contracts and the accreditation system:

Everything we do is under scrutiny. Just about everything we do is subject to reporting back from the detail of how we've allocated a property to how we've managed a complaint to our acquittal reports how we've spent the funding we've received right down to maintenance—why we've spent the money on a particular property. There does seem to be so much duplication of effort—like being audited for every activity. Like the scrutiny over how we allocated a new property (in X). Every single allocation we made had to go back to the Department to make sure they were happy with it. They turned down three allocation decisions we had made. I've never known an organisation to be under this level of scrutiny. It breaks down relationships and creates so much work and duplication of effort. Ever since I've been here it seems to have got worse.

This is not a criticism of regulation in Queensland, but of the contractual mechanisms through which government controls their activities. However, it raises the issue of how providers would react if regulators took a more interventionist role.

3.4 The regulator's perspective

Given the largely negative views reported in this chapter, it seems worth re-stating the purposes of regulation, as discussed in the previous chapter. These include making housing providers accountable, managing financial risks and improving performance, and protecting tenants. In pursuing these goals, regulators are not seeking to create an administrative burden or ritualistic procedures. Our impression was that they sincerely wished to reduce problems created by duplicate regulation. This was particularly the case in NSW in which the regulatory system had been designed to reduce possible burdens:

Now, I don't know how I would like to build that culture from a regulatory perspective within our industry. I'm not sure how that will go, but I think that transparency and disclosure is fundamental to the effective operation of the industry from a regulatory perspective.

Lodge once, use multiple times in terms of data would be my preference. Having absolute clarity around what data we are looking for so that it gets used and not simply collected. It is something that I am really interested in as well.

However, this commitment to a light touch approach did not mean that every provider in NSW was happy with the way regulation was developing. One organisation complained that there was still considerable duplication:

Well, I think there's way too much. I think they're way over the mark. It's like there's no [coordination]. Each bit of the picture is a thing on its own, so we report to our funding bodies on particular projects or through particular structures that they've got by funding agreements or whatever. Then we go through accreditation and then we get registered as well. It really, when you add it all together, for the size of the business, I just think it's a huge amount of overkill.

Regulators recognised that the processes around registration and annual monitoring could be more meaningful. The difficulty they faced, in the early stages of establishing a regulatory system, was lack of resources. They were not equipped to analyse data, provide detailed feedback, or publish league tables as happens in England. They were also conscious that, if they gave negative feedback, there might be a backlash. One regulator told us that many providers wanted to be recognised as being excellent. It was not always possible to give meaningful feedback. Regulators were also not

equipped to act as business consultants, although it seems likely that informal advice is given if some problem is identified in the annual report. It is possible that this has reduced the risk of business failure.

Perhaps the strongest message we obtained from regulators, as well as many providers, was that regulation was beneficial. It made providers reflect on their objectives and procedures, and forced them to professionalise (although this was happening anyway as the sector developed). All the regulators believed that providers were not sufficiently conscious about risks. Some believed that a casual attitude toward providing data, or following up on reports, could indicate some deeper problem in how they managed their affairs. In Victoria, an additional concern seemed to be that providers were not taking enough risks, in the sense of being sufficiently entrepreneurial.

3.5 Understanding and measuring impacts

It should be apparent from this chapter that conceptualising the impact of regulation is no easy task. Just as regulation has multiple, and sometimes conflicting purposes, so there are different kinds of impacts. In this concluding section, we consider the positive impact of reducing risk through adopting professional financial practices, and the negative impact of 'red tape' and administrative work as a burden. Is it possible to measure these impacts, and reach conclusions on whether a regulatory system is working effectively?

3.5.1 Positive impacts

The purpose of much regulation, influenced by the New Public Management, is to assess and improve performance in public sector agencies (Travers 2007). However, there is a problem in taking the league tables that are produced at face value. This is because the organisations are assessed through performance indicators designed and administered by the regulator. There was some doubt expressed by our interviewees that the measures actually reflected their real performance or problems.

Moreover, in the case of housing associations, one has to ask whether improvement in business practices is necessarily caused by the regulatory system. It could happen anyway as the sector develops and organisations become professionalised. This is demonstrated by the strong support by providers, especially in NSW and Queensland, for the national standards and accreditation system introduced prior to new regulatory regimes. This system is essentially a voluntary (except more recently in Queensland) quality improvement system that has been credited with driving significant business improvement.

Nevertheless, even though it cannot be precisely measured, it seems likely that the regulatory system also has some effect on improving standards. Many interviewees saw value in the process of registration, such as the requirement to have the right policies and take on professional staff. These positive outcomes can, in our view, be easily demonstrated, and perhaps are sufficient justification for regulation in this field, in addition to making the sector publicly accountable and contributing to confidence in the financial institutions that lend money for affordable housing projects.

3.5.2 Negative outcomes

Regulatory agencies seem less aware, than perhaps they should be, of the administrative burdens created by regulation, and the perception of ritualism. The problem has also received only limited attention in the academic field of regulation studies in recent years. Government agencies and regulation theorists seem reluctant to accept that regulation can be both burdensome and ineffective. In the case of

housing regulation, some providers do not see the considerable administrative work as meaningful or worthwhile, even though they have the resources to complete the requirements of accreditation and annual reporting.

There seem to be two ways of addressing this problem. The first is to reduce the demands on organisations, resulting in what some might describe as a tick box approach that requires limited work. The problem here would be whether the regulation could be presented as credible or rigorous to different stakeholders, including banks and departments of housing. Another approach would be to attempt to make regulation more meaningful, by increasing the quality of feedback, and perhaps assessing each organisation against national benchmarks. We would not see this as a new recommendation, since regulators are already aware of these problems. However, as regulation develops, it seems important to recognise and take action against the perceptions of ritualism documented in this chapter.

3.6 Reducing regulatory risks

A common way to understand the potential problems reviewed in the last two chapters is that these are risks that arise from regulation (see also Chapter 4, Travers et al. 2010). The risks, identified by interviewees include both over-regulation, such as imposing unnecessary administrative burdens, and under-regulation, such as not sufficiently protecting the interests of tenants. The policy maker who wants to know if regulation meets its purpose, or is effective in achieving its objectives, faces two difficulties. First, impacts, whether negative or positive, are difficult to measure. Second, stakeholders have different views on the nature of risk. Providers generally see their activities as involving fewer risks than regulators, which is one reason why many experience regulation as burdensome.

We would argue that a sophisticated response to these problems requires acknowledging from the outset that there are different stakeholder perspectives. The aim, in our view, should be to find organisational solutions that acknowledge the differing imperatives. An example that we can already point to is that both private capital and governments have a common interest in preventing business failure and managing the consequences where problems occur. It should also be possible to balance the protection of tenants and the interests of investors and providers. In relation to this chapter, it should be possible to devise ways of reporting that draw on existing quality tools used within organisations rather than imposing an additional reporting system. Perhaps this suggests that the concept of risk avoidance has only limited value for those seeking to balance interests in a 'regulatory space'. Instead, there should be more emphasis on establishing a dialogue between stakeholder perspectives, and managing risks in ways that achieve a balance between conflicting interests.

4 THE DEVELOPMENT OF REGULATION

Previous chapters have considered the purpose of regulation, and the impact on providers. In each case, our interviews with regulators, providers and other stakeholders convey a more complex picture than is often acknowledged in policy reports. There are different, and sometimes conflicting, purposes of regulation. As we suggested in the Positioning Paper, these difficulties arise because regulation is a political phenomenon: there are different groups seeking to advance their own interests in what Hancher and Moran (1989) term 'the regulatory space'. The political character of regulation becomes even more apparent when one considers how it has developed in Australia, current debates about the proposed regulatory framework, and the issue of whether the regulator should be independent from State Housing Authorities.

4.1 The development of regulation

With the exception of South Australia, which passed comprehensive legislation in 1991, and registration of Aboriginal housing providers which commenced in NSW in 1998, community housing regulation was predominantly contractual through funding agreements until the early 2000s. This reflected the historic role of the sector in Australia, which was mostly limited to managing tenancies on behalf of state and territory housing authorities.

Queensland and Victoria led the new trend to specialised regulation. A new Housing Act in Queensland in 2003 provided for the registration of all funded providers and the making of regulations (Milligan et al. 2009). Development of regulation in Victoria followed a 2002 election pledge to increase the funding of not-for-profit organisations to improve affordable housing supply. The Victorian Minister for Housing stated regulation would 'provide the necessary protections for investment of taxpayer funds, social housing tenant conditions and confidence for investment by the private sector' (Victorian Hansard 2004). This trend to increase specialised regulation of not-for-profit housing organisations broadly mirrored developments in international jurisdictions, especially the United Kingdom and parts of Western Europe that accompanied an expanded role for this sector in financing and developing housing (Travers et al. 2010).

The current state of regulation across Australian jurisdictions is shown in Table 2. Included is a comparison of the position of the regulatory function within government, which is discussed in more depth in Section 4.3.

Despite similar timing in introducing new regulatory systems, Australian jurisdictions have developed significantly different approaches. This reflects the complexity of factors that have helped to shape the final government decisions that have been made. These factors include: the structure of, and historical relationships with, the community housing sector; differences in government policy and priorities; bureaucratic processes and legislative protocols; and existing housing laws and political dynamics. Some of the main differences that have resulted are:

- *Scope.* NSW, Queensland and WA have registered (or propose to register) a much larger number and broader range of organisations (e.g. aged-care providers, homelessness service agencies and Indigenous housing organisations). In Victoria, where the sector had previously been restructured, there has been greater focus initially on registering a limited number of larger-scale providers. NSW has begun to consider the possible integration of Indigenous housing providers within one regulatory system.

- *Powers.* Victoria and the ACT have given the registrar more comprehensive intervention powers than in other jurisdictions, such as appointment of directors, appointment of administrators, winding-up or merging organisations, and directing the transfer of assets. In Victoria, having strong powers to protect the state's interests was justified in the context of significant government investment in the sector that accompanied regulatory reform.
- *Tiering.* Jurisdictions have between two and four regulatory tiers, each based around risk assessments and linked to expected levels of information submission and compliance.
- *Reporting lines.* Specialist community housing registrars have been appointed in Victoria, NSW and the ACT, but not in the other jurisdictions. In the ACT, the registrar reports within the administrative arm of government, in NSW and Victoria to the Housing Minister.
- *Accreditation.* Queensland's system is different from other jurisdictions in that provider accreditation is a requirement of registration (Milligan et al. 2009). In other states and territories accreditation is optional.
- *Independence.* See Section 4.3.

These differences between jurisdictions can be illustrated by contrasting the two largest states in June 2010. Victoria has a two-tier system covering 9 housing associations and 31 housing providers (Victorian Housing Registrar 2010). Housing associations own, develop and manage housing and are expected to leverage government funding and assets that are being channelled to them to achieve growth targets. Housing providers primarily manage housing tenancies and related services, although they may also own and develop some housing and control property management. NSW has a four-tier system covering a much wider range of organisations that are differentiated by property numbers (having greater than 400; 200–400; less than 200, less than 30) and by function (whether conducting housing development, property management, tenancy management). Of the estimated final total of some 400 NSW organisations, 65 have so far registered: 3 in class one, 14 in class two, 6 in class three and 42 in class four (Registrar of Community Housing NSW 2010c). The lower number of registered organisations in Victoria partly reflects previous restructuring of their not-for-profit housing sector.

We found different views among our interviewees as to which system was best. The Victorian Office of the Registrar was proud of the fact that regulation had been established through legislation and there were powers to intervene in the case of business failure. Some interviewees in NSW felt that the Victorian system seemed heavy-handed, and there was too great a focus on large commercially oriented providers, at the expense of smaller, community-based organisations. There is also the problem that smaller states and territories are faced with an unpalatable choice. They either have to establish a registrar (which is expensive) or accept regulation by another jurisdiction, which has political costs and poses practical difficulties given different historic conditions and local priorities.

The differences in jurisdictional approaches to regulation help to highlight what some of the impediments to developing and maintaining a nationally consistent system will be, as we discuss in more depth in Section 4.2.

Table 2: Australian regulation by jurisdiction

	<i>Summary of developments and recent changes</i>	<i>Features compared</i>	<i>Position of regulator in government</i>
NSW	Administrative system 2004–2008. Legislation 2007. Registrar appointed 2008. Four-tier system. Registration open to a wide range of providers and required for funding from Housing NSW.	Regulatory code The registrar has limited intervention powers compared to Victoria.	Registrar is appointed by and reports directly to the Minister for Housing and has full operational responsibility for regulatory functions. Appointed registrar has moved to increase independence from housing policy and funding through physically separate premises and formal protocols.
VIC	Legislation 2005 Registrar appointed 2006. Two-tier system. Entry limited to providers with existing housing	Performance standards Strong powers to intervene in the case of provider failure Victorian assets carefully ring-fenced.	Registrar appointed by the Governor-in-Council and reports to the Minister for Housing. Office of the Registrar co-located with wider department Current registrar has dual responsibilities for housing policy and regulation Lack of separation between policy and regulation criticised by Auditor-General (VAGO 2010)
QLD	2003 regulations established a two-tier system across a wide range of service providers. Amended in 2007 to align operational policies of providers with those of public housing. Procedures are under review in 2010.	Prescribed requirements Intervention powers greater than in NSW, less than Victoria and ACT.	No separate registrar. Regulatory functions undertaken by public servants appointed by the host department through normal public sector procedures. No robust separation of regulatory functions.
SA	Legislation 1991. Additional administrative procedures 2008 to regulate through contract-preferred growth providers. A mix of statutory and contract regulations applies to these providers. Intention to review in the light of national developments indicated.	Mandated requirements Historic controls (e.g. debentured assets) highly prescriptive and not aligned with current developments in other jurisdictions.	Independent community housing funding and regulatory agency (South Australian Cooperative and Community Housing Agency) abolished in 2008 and registry functions reabsorbed into mainstream housing agency. No separate registrar. No robust separation of regulatory functions.

WA	Administrative procedures introduced in 2007 with four tiers. New legislation under discussion in 2010 with proposed three tiers and new role of registrar.	Prescribed requirements	No separate registrar. Administrative function within mainstream housing agency
ACT	Legislative amendments 2008. Registrar appointed 2009 within the Territory's housing department to administer a two-tier system.	Standards	Registrar is a delegate of the Commissioner for Housing operating within the mainstream housing agency.
TAS	No direct regulation, with control exercised through government contract. Changes under consideration.		N/A
NT	No direct regulation, with control exercised through government contract.		N/A

Source: Milligan et al. (2009), Travers et al. (2010), Australian Government (2010), Gilmour and Pawson (2010).

4.1.1 Sector developments accompanying regulation

Given the context in which specialised housing regulation has been developed in Australia as a foundation for growth of the community housing sector, it is also relevant to consider linkages between the development of regulation and the expansion and development of the sector.

Among the states examined in this study, the introduction of a regulatory model and allocation of additional public funding to housing associations has been most closely integrated in Victoria so far. Between 2005 and 2009, the first eight registered housing associations (growth providers) in Victoria were all recipients of significant allocations of public funds and additional stock transfers to enable them to develop their own housing and to build capacity around this function (Travers et al. 2010). Subsequently, the Victorian Government also allocated funds under the NBJP to this tier of providers, which, along with opportunities they have pursued under NRAS, has helped them to continue to expand and in particular to consolidate their housing development function. This strategy has also achieved beneficial leverage for the state government's investment, with providers raising 25 per cent of funding for additional dwellings, mostly from private borrowings (VAGO 2010).

In NSW and Queensland the relationship between regulation and growth and development of registered providers has been less predictable. While NSW has made strong commitments to growing its not-for-profit sector (Housing NSW 2007), many providers do not have clarity about their growth path. Unlike in Victoria, larger providers were not given the opportunity to develop housing under the NBJP, although they will ultimately manage most of the housing that was procured directly by the NSW Government.

The situation in Queensland lies in the middle with the government allocating state funds and NBJP funds to a variety of larger and smaller not-for-profit providers but on a fragmented basis that appears to have sought to exploit leverage opportunities across the sector. Preferred providers for management transfers have been selected without direct reference to the regulatory framework. Providers in Queensland were unclear about how the government saw the relationship between regulation and the allocation of funding for growth and stock transfers.

In Tasmania, an expression-of-interest process outside any particular regulatory framework was used to select providers. A partnership/joint venture has been formed between a local organisation and a provider operating in other states. This may become the preferred 'local' provider.

Overall, while the regulatory framework is intended to give confidence to government about organisational risk management in relation to complex functions, such as housing financing, property development and asset management, opportunities for organisations to build their capacity around these particular functions have not necessarily followed.

4.2 Proposals for national regulation

While we have been pursuing this study, the most debated issue concerning regulation has been the desirability and form of a national approach. The Positioning Paper describes the evolution of this debate up to the end of 2009 (Travers et al. 2010).

Goals of achieving greater consistency between state-based systems and improving efficiency by reducing costs and duplication, particularly for providers operating in more than one jurisdiction, had led to an agreement between states in March 2008 to

develop a ‘national regulatory framework for affordable housing’ (Travers et al. 2010). This would have harmonised regulation of growth providers across Australia, although regulation would continue to be a state and territory responsibility. Several common principles developed through this process—such as the use of a multi-tiered structure, common evidence guidelines and appointment of a registrar—helped influence states who were introducing new regulatory systems (see ARTD 2009).

The Commonwealth’s renewed policy leadership on housing after 2007 and decisions to reform social housing and to boost the role of the not-for-profit sector, led to a 2009 proposal by the Commonwealth Housing Minister for a national regulatory regime to ensure the sector's capacity to operate at greater scale and across jurisdictions (Plibersek 2009). A consultation process on this proposal, including a series of options for achieving a national system, began in April 2010 with the release of a discussion paper by the Commonwealth and concluded in June 2010.⁷ Although existing state and territory-based approaches were seen by the Commonwealth to be ‘fundamentally sound’, in order to ‘achieve a new class of affordable housing providers attractive to new investment, regulation needs to operate at the national level to support a national market’ (Australian Government 2010, p.20).

The five proposed options for national regulation were described in the consultation document in general terms, with few details about how they might operate in practice—an issue raised as a problem by a number of the respondents. Table 3 provides a summary of advantages and disadvantages of each option based on comments made in the discussion paper.

Table 3: National regulation proposals

	<i>Description</i>	<i>Advantages</i>	<i>Disadvantages</i>
1	Commonwealth accredits all providers on governance, finance etc. States/territories regulate asset management, tenants’ rights etc.	Universal accreditation to give confidence to investors.	Complex split between Commonwealth and states/territories.
2	Commonwealth regulates a new class of large, national associations. States/territories regulate all other medium and smaller providers.	Quick to implement and clear for outside investors.	Two-tier industry structure with a complex transition.
3	Commonwealth regulates all Australian not-for-profit housing providers.	Complete consistency. Clarity for investors.	Complex, slow and likely to be opposed by states/territories.
4	Harmonised regulation across all states/territories and mutual recognition across borders.	Capacity already exists at state and territory levels.	Will be slow and complex to achieve harmonisation.
5	One state’s regulator acts as the ‘host’ and performs the role of the Commonwealth in options 1 or 3.	Builds on existing state capacity.	Likely to be opposed by states/territories not acting as the ‘host’.

Source: Australian Government (2010, pp.24–29).

The options proposed range from complete Commonwealth takeover (option 3) through a more complex split-level system (options 1 or 2) to the previous plan for harmonisation and mutual recognition achieved through state and territory co-operation (option 4). Whatever the merits of the particular options, option 3 is the purest form of national approach, although perhaps least likely to be implemented due

⁷ The whole consultation process lasted, effectively, 2 years. This indicates the difficulties involved in reaching an agreement between states and Commonwealth government in many areas of public policy.

to the complexity of Commonwealth/state relations. In addition, the Commonwealth faces the problem of establishing internal capacity to run a national regulatory system.

4.2.1 Consultation feedback

At the time of writing this report, the Commonwealth had not produced a response to the consultation process, although many of the submissions had been made public. These submissions give a flavour of contemporary issues in regulation, although the response rate was uneven by organisation type and jurisdiction.

- Two larger, growth provider respondents who operate or who may operate in future across different jurisdictions supported option 2 (Housing Choices Australia 2010; Mission Australia 2010).
- Larger growth providers who do not have cross-border activity or ambitions differ in their outlook. St George Community Housing in NSW favoured a state-based approach, possibly through option 4, to 'ensure that smaller providers have adequate engagement with the regulator in their local area' (St George Community Housing Ltd 2010, p.14). Foundation Housing (WA) supported option 3 as 'national regulation should not be restricted only to those organisations operating across state boundaries' (Foundation Housing 2010, p.4). By contrast, Brisbane Housing Company (2010) support growth provider regulation by the Commonwealth—option 2.
- Smaller, locally based providers such as Frederick Ozanam (2010) and Mareeba (2010) support a centralised national system—option 3. Similarly Wintringham Housing (2010, p.4) suggested 'national regulation should apply to all not-for-profit housing providers, not just "super providers"'.
"
- Most finance sector respondents favoured option 3, a single regulatory system run by the Commonwealth (ABA 2010; Westpac 2010). The ABA noted 'the chance for divergences across jurisdictions creates unnecessary legal and regulatory complexity, administrative burden and compliance cost' (ABA 2010, p.4).
- Several sector stakeholders supported a single regulatory structure, opposing option 2 which would see Commonwealth regulation of national providers only (ABA 2010; CHFA 2010; CHFV 2010).
- The AHI and CHFA proposed following the 'cross domain' regulatory approach where regulation covers not-for-profit organisations, public housing and private organisations in receipt of government funding for affordable housing (AHI 2010; CHFA 2010). This would help to deal with issues about the need for a clear separation between the roles of regulator, funder and provider and could be used to overcome the regulatory layering of both organisational regulation and contract compliance.
- The only state regulator to respond publicly to the consultation process favoured gradual harmonisation between jurisdictions, not a new regulatory structure run by the Commonwealth (Registrar of Community Housing NSW 2010b).

4.2.2 Comments from providers

Large providers interviewed for this study were positive about national regulation, and frustrated (if not surprised) that there was no agreement between the states and Commonwealth government. They expected to be operating interstate:

I don't see it in the next year or even two years but I certainly see—our constitution allows us to be anywhere in Australia. I think there may come a time when the organisation will feel that the skills that it has are such that there'll be a jurisdiction somewhere that's in need of those skills. So yes, I do

think there will be, you know, anything to do with renewal, community renewal, in its broadest perspective is probably something that we will want to pursue interstate.

Smaller providers had less interest in the national debate. What mattered to them was that any system was as streamlined and cost-effective as possible and that the regulator understood local issues affecting their services. They were worried that it might result in new administrative burdens:

I've heard the different scenarios with the national regulation. I'm comfortable with this two-tier system but I just hope that the national regulation system, if it comes in, will actually produce a benefit worthy of the time and effort and energy that goes into it. There should be a concord that says that if they're registered here then they're registered. There should be no more hoops to jump when they cross this border and that would be an outcome worthy of a national regulation system.

Some providers gave credence to perceived prestige from being nationally registered:

I think if we're serious about being a national player then national registration is probably something that would set us apart. It demonstrates to another body that you're capable of achieving this, and I think someone like FaHCSIA would probably, if you've gone through that extra hoop, have demonstrated to them that you're capable of bigger and better things.

This 'prestige' argument was acknowledged by a support organisation interviewee, although used to oppose national regulation of only larger, growth providers:

It's a question of whether you actually want to take the cream and just regulate the cream which I think would be silly ... sometimes I think the Commonwealth are just concerned with large growth associations. But community housing is provided by a number of organisations at all levels, the Lions clubs, Mercury clubs, a lot of organisations are involved who are part of the picture of providing for the housing opportunities to people in need.

Two interviewees from a government department considered mutual recognition a more appropriate shorter-term approach given the current scale of the community housing sector:

So a provider identifies a regulator that acts as a regulator for them on a national basis. I really don't see enough evidence of scale around this issue to warrant establishing new legislation ... there's no evidence that's been put in front of us that says it's this kind of scale of numbers. The numbers just don't justify it.

The thing is it's a completely ridiculous overreaction to an issue. It's not that 10 or 15 years down the track you mightn't want to do something that's more centralised.

This point is significant: regulatory systems must be appropriate to the scale and maturity of a country's not-for-profit housing sector. Australia's sector is growing rapidly, but is still considerably smaller than that of Britain or the Netherlands. Overseas learning can assist developing new regulatory models, although Australian compliance requirements for housing providers may need to be less onerous than (say) those in England.

Another issue bearing on the future structure of Australian regulation that emerged from our interviews concerned perceptions of the quality of the current state-based regulatory procedures. Providers across jurisdictions have differing experiences of the

regulatory process and its effectiveness. One interviewee considered their state had a flawed system which placed their organisation at risk:

A less well informed, badly conflicted system as we have at present should not have the [regulatory] powers it does, especially where they are set up in a way that could have them being activated almost accidentally.

This interviewee favoured a move to national regulation as a least-worst option compared to remaining with the state regulator.

4.2.3 Convergence on regulation

In parallel to (but independent of) the Commonwealth's call for national regulation, state regulators have begun the process of moving toward at least a limited harmonisation of regulatory practice.

As a registrar from one of the three jurisdictions with a newly legislated model noted:

We have fully aligned financial performance reporting across our three jurisdictions because we have worked really hard to bring that about and to share everything that we are doing in terms of assessment methodologies and practice ... I am not one to sit around and wait for somebody else to make that happen for us. We can't be behind the industry and that's where we would end up if we didn't share, as regulators, our experience and our approaches and create harmony, particularly for those organisations that are going to be operating across state borders. It's not to anticipate or to leap frog ahead of the Housing Minister's decision making.

In another development that followed initial information-sharing sessions between community housing registrars from NSW, Victoria and the ACT in 2009, a National Regulatory Practice Forum was held in February 2010. Regulators from NSW, SA, Tasmania, WA, Victoria, the ACT and Queensland came together with representatives from the Australian Government Department FaHCSIA, to participate in the first forum. This shared expertise and experiences in regulating community housing providers with the aim of encouraging greater consistency. Regular meetings of the Forum are proposed (Registrar of Community Housing NSW 2010a).

4.3 Regulatory independence

There is continuing contestation, nationally and internationally, on the degree of independence of not-for-profit housing regulators. Three dimensions of this debate are noted in the literature:

→ *Separation of the regulator from the operational control of government.*

Regulatory functions could be performed by public officials in the government ministry responsible for housing, or by an arm's length body reporting direct to parliament. Greater separation from government minimises the risk of political interference, and may give greater comfort to external stakeholders such as tenants, taxpayers and providers of private finance (Bundred 2006).

→ *Separation of the regulation and funding of community housing.*

The alternatives are to co-locate these two functions in the same government department (or arm's length body), or establish separate reporting structures. Co-location may blur the regulator's economic role to protect taxpayer's investment, and social role to secure the interests of tenants. Furthermore, co-location may limit government's ability to attract private sector organisations to

compete with not-for-profit providers over affordable housing funding (Cave 2007).

→ *Separation of community and public housing control/regulation.*

Public and not-for-profit organisations managing social housing could be controlled on a consistent basis via a single authority, or administered separately. The benefit of co-location is that tenants' needs can be consistently addressed across different landlord types, and there is a less competitive environment between public and not-for-profit providers. As one large community housing provider commented: 'the problem we have here is the state governments are our competitors. They don't have a vested interest in promoting us and many are fearful of promoting us'.

Many of the debates on regulatory independence in Australia reflect UK experience. England's Housing Corporation, the sector regulator from 1964 to 2008, operated at arm's length from government, although it combined regulation and funding. Scotland has followed England by establishing an autonomous regulator. Wales is considering a similar move but in Northern Ireland regulatory functions remain within the housing executive of government (Gilmour & Pawson 2010).

However, the separation of regulation and funding in the UK is fluid. Implementing the Cave Review's (2007) findings, England ended the co-location of these two functions in 2008 by establishing two new arm's length organisations—the Tenant Services Authority (TSA: the regulator) and the Homes and Communities Agency (HCA: the funder). In a 2010 review that led to the abolition of the TSA and the transfer of regulation of social housing to the HCA, it has been proposed that independence be achieved by having a committee legally separated from the HCA's investment functions (CLG 2010). The Housing Minister has since announced a new Regulation Committee to be formed with members appointed by the Secretary of State (Shapps 2010).

Although the Cave Review (2007) led to a greater separation of English housing association funding and regulation, it also resulted in more closely integrated tenant services across the social housing sector. In 2008 the TSA became responsible for regulating public housing, not-for-profit providers and arm's length management organisations (ALMOs) in a single entity. In Australia overall control of community housing remains the responsibility of agencies that deliver public housing, although the Commonwealth is signalling an interest in the structure of the delivery system, such as by directing new investment to not-for-profit providers.

British approaches to regulatory independence reflect their more mature not-for-profit housing sector. As an interviewee who has worked in the sector in both Britain and Australia noted, the combination of regulation and funding in a single body—the Housing Corporation – was one reason why the sector had been able to expand:

My experience of the early growth phase in the UK between 1974 and 1989 (15 years!) persuades me that the combining of these roles [regulation and funding] was essential and effective. Here in Australia we are still tinkering on a small scale and we can look forward to worrying about the problems that come with large-scale operation when that starts to happen.

The differing approaches to regulatory independence in Australia are shown in Table 2. All jurisdictions currently operate regulation and funding of community housing from within their mainstream government housing agencies and there are no independent organisations administering community housing. However, three jurisdictions (NSW, Victoria & ACT) have created a statutory position of Community Housing Registrar.

NSW has developed its operational practice so that regulation and funding is most clearly separated. NSW stands alone in having a dedicated registrar appointed by and reporting to the Housing Minister rather than to public officials.

In Victoria, the registrar and the Office of the Registrar does not operate at arm's length from the housing administration. The registrar is a senior officer physically located in and reporting to the Director of Housing, who recommends grants to housing associations. The model of combining funding and regulation mirrors England's former Housing Corporation. As a Victorian state employee noted 'our model was ... very much focused on the UK model. We don't apologise for that' (quoted in Gilmour 2009, p.35). The transmission of regulatory ideas from England to Australia was both policy-driven and personal. Victoria's first Director of the Office of the Registrar previously worked for the Housing Corporation.

This lack of regulatory independence in Victoria has recently been criticised by that state's Auditor-General (VAGO 2010). Providers were quick to identify the possible conflict of interest:

The regulator is based in the Office for Housing. It ought to be quite separate. If it is separate, it can also become the regulator for the Office for Housing. When nation-building funding comes down and the federal document says, 'Out of this money give 1.5 million to the housing associations and 1 million to the Office for Housing to refurbish stock', and they just say, 'Well, no we can't have that. We'll take 2 million'. That would not happen if there was an independent registrar managing that.

The Victorian Auditor-General's report may also influence other jurisdictions who are currently reviewing their approaches to regulating not-for-profit housing providers. It is possible that the NSW model, involving an arm's length relationship to the mainstream housing agency, will become more common than Victoria's integrated approach. Other potential changes discussed in this report also have the potential to address this issue. A national system run by a separate statutory agency dedicated to regulation would overcome the perceived lack of independence from public housing providers and enshrine the separation of policy and funding from regulation. There would be a level playing field for government and non-government providers.

5 THE FUTURE OF REGULATION

In April 2010, the Minister for Housing, Tanya Plibersek, introduced a discussion paper on regulation by welcoming ‘a robust public debate that can contribute more effectively to growth in affordable housing supply and that delivers high quality services to tenants’. In our Positioning Paper (Travers et al. 2010) and this report, we have reviewed academic literature and conducted empirical research that explores stakeholder perspectives on regulation and should assist in explaining why it has been so difficult to reach agreement on a national regulatory framework. In this concluding section, we summarise the main arguments that are relevant to policy makers. The first is that regulation involves balancing the interests of different stakeholders, and that it is difficult getting the balance right. We have also reported broad support for regulation alongside concerns by providers, including that regulation can result in unintended administrative burdens and can be ritualistic. There are no easy solutions to these problems. We also consider the more academic debate as to whether regulation is effective at shaping society, and what else needs to happen for there to be an expansion in affordable housing. We conclude with some hopes for greater investment, and the further development of the sector, once a national regulatory framework is established.

5.1 The stakeholder model

The national consultation paper on regulation, like many policy documents, presented regulation as having clear benefits for all stakeholders:

For not-for-profit providers to play a bigger role we need a regulatory system that gives us all confidence. Tenants need secure and stable housing. Investors need confidence that they can partner with a viable and well-managed sector. Housing providers themselves need simple regulations which give them the opportunity to expand across state and territory borders and to enter into solid commercial relationships (Australian Government 2010, p.ii).

There is an optimistic tone to this passage, and the paper as a whole. Everyone will benefit from regulation, and it is possible to achieve the different goals without difficulty. In fact, as we demonstrated through the international case studies in the Positioning Paper, there is an underlying tension between the interests of providers, tenants, investors and government. In some countries this has resulted in unanticipated changes in the regulatory framework and even, in the case of the Netherlands, political conflict. Matters are even more complex than this because government in its broadest sense has different objectives and interests from State Housing Authorities. These agencies are naturally reluctant to transfer stock to not-for-profits or to subject their own management of tenants to an independent body.

More fundamentally, there is a conflict between the interests of private capital to maximise returns, and government in increasing the supply of affordable housing. This does not exclude the possibility of shared interests. An example is that both government and lenders want to avoid the political or reputational risks associated with tenants losing their housing, if a housing provider fails. In this case there is a shared interest in the regulator having strong powers to intervene by forcing a merger or transferring housing to an alternative provider.

Understandably, governments and regulators present themselves as above these potential conflicts: as acting for the whole community. However, we would recommend that more public debate, led by regulators, is needed to pre-empt and manage the

inevitable tensions. One interviewee suggested that regulators should have a public role, in addition to their administrative work:

I see a really strong regulator as being one of the pillars of the affordable housing system because they can speak [with] confidence and knowledge ... and advocate for the sector.

Even this study, conducted at an embryonic stage of the development of regulation in Australia, has revealed some quite disturbing concerns from NGOs representing tenants. Even if providers think they are doing their best, and acting for the public interest, they are perceived by some tenant advocates to be siding with private capital. In England and the Netherlands, the regulator has taken on the difficult public role of protecting tenants, and making commercial decisions accountable.

The stakeholder model seems a valuable tool for understanding and acknowledging these potential problems. It also highlights the value and importance of opportunities for stakeholders to debate issues and have their perspectives considered as the regulatory system evolves over time.

5.2 The instruments of regulation

In the course of this study, we have identified several dimensions of regulation that represent potential pitfalls and require ongoing vigilance. A recurring theme is that regulation is dynamic and needs to adapt to changing external conditions and as the not-for-profit housing sector in Australia grows and matures.

The administrative burden created by regulation is a potential problem identified in this report. Reading the interview transcripts, it is apparent that the problem is not simply the work involved in getting registered or participating in annual reviews. It may have more to do with over-lapping regulation: from numerous contracts, other government schemes, and accreditation with standards bodies. This problem is often acknowledged by government agencies. One proposal for a regulatory framework (ARTD 2007, p.35) noted that:

The experience of administering and complying with regulatory systems across a whole range of sectors is that the day-to-day experience of regulating is often quite different from the original intention. Regulation is often more intrusive and more costly than originally assumed and generates less benefits than expected.

It is usually suggested that following the principles of 'good regulation', such as proportionality and transparency, will solve these problems (Banks 2001; Productivity Commission 2010). However, this report has demonstrated that there are still concerns about regulatory burden, even though the regulators have tried to follow these principles in designing their systems.

A related concern is that the regulation becomes disconnected from the 'real' business of providers, where reporting by providers and oversight by regulators becomes ritualistic. One practical suggestion we made in Chapter 3 is that regulation will be more acceptable if it is meaningful. Opportunities for future enhancements that address issues of burden and ritualism have emerged from the study and include: more selective reporting requirements; greater use of inspections rather than only relying on desktop analysis; timely feedback on regulatory reviews; and enhanced public reporting, including against benchmarks. However, this creates a problem in Australia because the regulatory system for not-for-profit housing is relatively under-resourced. We would suggest that, as the system develops, it might help to establish mechanisms to encourage feedback, including through anonymous surveys of

providers, in order to identify and address emerging concerns about regulatory burden. Unfortunately, as demonstrated in England, the problem of bureaucratisation tends to grow over time, and positions become entrenched. We were struck both by the sincerity of regulators concerned that there might be financial failures, and providers who believed that regulation was an irritation or annoyance that had to be managed within a business plan. There is an opportunity to reduce the burdens in Australia, both through streamlining the regulatory requirements of different agencies, and acknowledging the potential problems.

Another concern expressed by some providers is that regulators may intrude into areas that are rightly the domain of management and Boards by seeking to control or limit activities of the organisation. Providers related such concerns to the close relationship in most jurisdictions between the funding and regulatory functions. This is likely to be an ongoing tension where organisations assert their autonomy and regulators attempt to influence organisations, either informally through guidance or directly through interventionist powers. The wider issue of regulatory independence is a widespread concern, as is the call for regulation to cover both community and public housing providers. These are matters that require further consideration in the context of deliberations about national regulation and growth of the not-for-profit sector.

5.3 The effectiveness of regulation

As discussed in the introduction, this study has also sought to make a contribution to the academic literature on regulation. It has gone further than many studies about affordable housing in looking at how different stakeholders understand regulation using qualitative methods (see also McDermot 2010; Mullins 2006). However, this report is based on interviews, and we could go further through spending time in particular organisations. However, it would be difficult to conduct ethnographic research about potentially sensitive issues, such as the dealings of regulators with organisations they see as having behaved improperly or are at risk of business failure. This may explain why there has been little in-depth research about regulators or organisations facing inspections (for discussion, see Travers 2007).

While there was widespread support for regulation across all stakeholders, there were differing views about what it has achieved to date. As previously reported here, some respondents believe that regulation has contributed to investment by governments, provides comfort to some lenders and has improved providers' business practices.

Many interviewees suggested that regulation had, in practice, only a limited role in developing the sector. This comes across in the following account of how one large provider had professionalised:

We have to enter in contracts with builders and architects. You need a proper framework to work within and you need risk management policies ... You have to assure the banks you have cash flow and make 25 year projections, and show you're viable. We are doing this all the time ... We have our own consultants who look at the business plan. They check that we have the capacity to repay debt ... We also check how well we manage our tenants ... Regulation is helpful because it tells us what to do.

This organisation saw regulation as helpful in providing guidance on how to establish sound business procedures. But one gets the impression that this would have happened anyway, as a natural consequence of growth made possible by large government grants.

Similarly, many interviewees did not believe that regulation assisted them in obtaining loans or that annual surveys had much to do with providing a good level of service to tenants:

So you can have the standards and the regulations—all those things but that culture of bullying is something that you can't change through regulation ... It's about the culture and aims of the organisation.

People are positioning themselves to become growth providers ... But what service are they going to provide? Regulation can achieve nothing on its own. You cannot force them to offer a good service but have to find the right person who wants to do this.

In the Positioning Paper, we took a realistic view of regulation, suggesting that this cannot by itself result in an expansion of affordable housing. To be fair to governments, regulation is normally presented as a condition for economic and social change, rather than as an instrument that can itself produce desirable outcomes. The main conditions for an expansion of affordable housing are public and private investment, and organisational change within providers. We would argue that, even if it has no other purpose, the issue of accountability is central. We would not expect government departments to transfer money and assets to not-for-profit organisations without having some degree of control or oversight over their activities.

We would also argue that, as regulation develops in Australia, there is a need for regular monitoring and periodic evaluation that can inform adaptation as the sector matures and the environment changes. In our view, there is a need to identify and track the tensions between stakeholder interests as they develop over time. The main challenge for regulators will not be preventing risk, but in managing the inevitable tensions, and achieving organisational solutions. Our own preference for evaluation would be for a regular independent review, possibly mandated through legislation. In addition, there is a need for regular reviews conducted by regulators themselves, which provide an opportunity to reflect on progress, and share their ideas with the affordable housing community. It may also be beneficial if one method of review could be a more in-depth, and perhaps deliberately exploratory case study using ethnographic methods. This is because any study based on a survey or interviews can only look at the surface of organisational life. Understanding how regulators and providers understand risk as this arises in particular organisational contexts or housing developments, could usefully be investigated through these review processes.

5.4 Beyond regulation

While we have been working on this report, there has been consultation and discussion on a national regulatory framework. Some kind of framework seems inevitable, given that large providers already operate in different states and that several state regulators are working to promote consistency. However, most stakeholders recognise that much needs to happen before a national system becomes possible. As many interviewees commented, in the last few years there has been considerable and unexpected growth. This did not result from stock transfers from State Housing Authorities that have allowed not-for-profits to leverage funding from the private sector. There have been relatively few of these. Nor has it resulted from a strategic plan designed to address the housing shortage, aside from the successful NRAS. Instead, the bulk of the expansion was made possible through the large sums allocated to the housing and building sectors during 2008–09 in an economic stimulus package designed to offset the impacts of the global financial crisis. There is no indication that more money can be found for developing the sector in the next parliament, and as a result growth is likely to be modest in the immediate future,

unless stock transfers are escalated and other reforms made (Milligan & Pawson 2010).

Our conclusion in the Positioning Paper was that regulation is not a panacea or magic bullet that can result in the expansion of affordable housing. However, we would argue that it is an important condition. Regulation makes it possible for housing providers to use public funds and assets to leverage investment while remaining accountable. During the recent election campaign, there was considerable talk of issues such as population growth, infrastructure and sustainability. Affordable housing was barely mentioned, but as the Commonwealth and state governments grapple with these problems, it will become a more prominent issue, demanding a strategic response. One challenge for the sector lies in increasing public awareness about this area of government policy, since it affects everyone. We would hope that, as the sector develops, regulators will have a growing role in building support for greater investment, in addition to maintaining and improving standards.

REFERENCES

- ABA (2010) Letter to FaHCSIA dated 18 June 2010: Australian Bankers' Association (ABA). Available on request from FaHCSIA (unpublished).
- AHI (2010) Submission: Australian Government discussion paper on regulation and growth of the not-for-profit housing sector: Available on request from FaHCSIA (unpublished).
- AIHW (2010) *Community housing 2008–09: Commonwealth State Housing Agreement national data report*. Canberra: Australian Institute of Health and Welfare (AIHW).
- ARTD (2007) *Proposal for a national regulatory framework for affordable housing: Final report*. Sydney: ARTD Consultants.
- ARTD (2009) *National regulatory system for community housing providers: re-scoping the approach*. Sydney: ARTD Consultants.
- Australian Government (2010) *Regulation and growth of the not-for-profit housing sector: Discussion paper*. Canberra: Australian Government.
- Baldwin, R., Scott, C. and Hood, C. (1998) *Reader on regulation*. Oxford: Oxford University Press.
- Banks, G. (2001) *Challenges for Australia in Regulatory Reform*. Melbourne: Productivity Commission.
- Brisbane Housing Company (2010) Submission to FaHCSIA on regulation and growth of the not-for-profit housing sector: Available on request from FaHCSIA (unpublished).
- Bundred, S. (2006) 'The future of regulation in the public sector.' *Public Money & Management* 26(3): 181–188.
- Cave, M. (2007) *Every tenant matters: A review of social housing regulation*. London: Department for Communities and Local Government (CLG).
- CHFA (2010) Industry positioning paper: an appropriate regulatory framework for the not-for-profit housing sector: Community Housing Federation of Australia (CHFA). Available on request from FaHCSIA (unpublished).
- CHFV (2010) Submission to FaHCSIA on regulation and growth of the not-for-profit housing sector: Community Housing Federation of Victoria (CHFV). Available on request from FaHCSIA (unpublished).
- CLG (2010) *Review of social housing regulation*, Department for Communities and Local Government. Available at: <http://www.communities.gov.uk/publications/housing/socialhousingregulation> (accessed 29 October 2010)
- Davies, H., Nutley, S. and Smith, P. (2000) *What works? Evidence-based policy and practice in public services*. Bristol: Policy Press.
- Foundation Housing (2010) Response to the Australian Government discussion paper: Regulation and growth of the not-for-profit housing sector discussion paper: Available on request from FaHCSIA (unpublished).
- Frederick Ozanam (2010) Regulation and growth of the not-for-profit housing sector submission: Available on request from FaHCSIA (unpublished).
- Gilmour, T. (2009) *Network power: An international study of strengthening housing association capacity*. Available from the website of AHURI: www.ahuri.edu.au.

- Gilmour, T. and Pawson, H. (2010) *Taming complexity: De-coding changing approaches to housing association regulation in the UK and Australia*. Paper presented at the European Network for Housing Researchers Conference, Istanbul, July 2010.
- Gouldner, A. (1952). 'Red tape as a social problem' in Merton, R., Gray, A. et al. (Eds.) *Reader in bureaucracy*. New York: The Free Press.
- Hancher, L. and Moran, M. (1989). 'Organising regulatory space' in Hancher, L. and Moran, M. (Eds.) *Capitalism, Culture and Economic Regulation*. Oxford: Cavendish, pp.271–300.
- Hawkins, K. (2002) *Law as a last resort: Prosecution in a regulatory agency*. Oxford: Oxford University Press.
- Housing Choices Australia (2010) Regulation and growth of the not-for-profit housing sector – FaHCSIA discussion paper – submission by Housing Choices Australia: Available on request from FaHCSIA (unpublished).
- Housing Ministers Council (2009) *Implementing the National Housing Reforms. A progress report to the Council of Australian Governments from Commonwealth, State and Territory Housing Ministers*, November. Available at http://www.coag.gov.au/coag_meeting_outcomes/2009-12-07/docs/implementing_national_housing_reforms.doc www.housing.vic.gov.au/publications/reports (accessed 22 February 2010)
- Housing NSW (2007) *Planning for the Future: New directions for community housing in New South Wales 2007/08–2012/13*. Ashfield: Housing NSW.
- Hupe, P. and Meijs, L. (2000). 'A hybrid domain: the field of social housing' in Hupe, P., Meijs, L. et al. (Eds.) *Hybrid governance: The impact of the nonprofit sector in The Netherlands* Rotterdam: Erasmus University, pp.63–102.
- Jacobs, K., Atkinson, R., Colic-Peisker, V., Berry, M. and Dalton, T. (2010) *What future for public housing: A critical analysis*. Melbourne: AHURI.
- Jacobs, K., Kemeny, J. and Manzi, T., (Eds.) (2004) *Social constructionism in housing research*. Aldershot: Ashgate.
- Kennedy & Co. (2001) *A regulatory framework for community housing in Australia: Volumes 1 and 2*. National Community Housing Forum, Sydney: Kennedy & Co.
- Lawson, J. and Milligan, V. (2007) *International trends in housing and policy responses*. Melbourne: AHURI.
- Macdonald, S. (2010) *Shapps to scrap Tenant Services Authority*. Inside Housing. Available at www.insidehousing.co.uk (Accessed 18 June 2010).
- Malpass, P. (2000) *Housing associations and housing policy. A historical perspective*. Basingstoke: Macmillan.
- Mareeba (2010) Regulation and growth of the not-for-profit housing sector discussion paper: Mareeba Community Housing Inc. Available on request from FaHCSIA (unpublished).
- McDermont, M. (2010) *Governing independence and expertise. The business of housing associations*. Oxford: Hart Publishing.
- Milligan, V., Gurrán, N., Lawson, J., Phibbs, P. and Phillips, R. (2009) *Innovation in affordable housing in Australia: Bringing policy and practice for not-for-profit housing organisations together*. Melbourne: AHURI.

- Milligan, V. and Pawson, H. (2010) *Transforming social housing in Australia: Challenges and options*. Paper presented at the European Network for Housing Researchers Conference, Istanbul, July 2010.
- Milligan, V., Phibbs, P., Fagan, K. and Gurrán, N. (2004) *A practical framework for expanding affordable housing services in Australia: Learning from experience*. Melbourne: AHURI.
- Mission Australia (2010) Letter to FaHCSIA dated 4 June 2010: Available on request from FaHCSIA (unpublished).
- Morgan, B. and Yeung, K. (2007) *An introduction to law and regulation: Texts and materials*. Cambridge: Cambridge University Press.
- Mullins, D. (1997) 'From regulatory capture to regulated competition: An interest group analysis of the regulation of housing associations in England'. *Housing Studies* 12(3): 301–320.
- Mullins, D. (2006) 'Competing institutional logics? Local accountability and scale and efficiency in an expanding non-profit housing sector.' *Public Policy and Administration* 21(3): 6–24.
- O'Neill, O. (2002) *A question of trust: The BBC Reith lectures 2002*. Cambridge: Cambridge University Press.
- Pawson, H. and Mullins, D. (2010) *After council housing: Britain's new social landlords*. Basingstoke: Palgrave Macmillan.
- Plibersek, T. (2009) *Key note address*: National Housing Conference, Melbourne. Available from www.formerministers.fahcsia.gov.au/plibersek/speeches/2009/Pages/national_housing_conference_26nov09.aspx
- Power, M. (1997) *The audit society: Rituals of verification*. Oxford: Oxford University Press.
- Productivity Commission (2010) *Contribution of the not-for-profit sector*. Melbourne: Productivity Commission.
- Registrar of Community Housing NSW (2010a) *First national regulatory practice forum*: Available from www.rch.nsw.gov.au (accessed 8 September 2010).
- Registrar of Community Housing NSW (2010b) *Submission: regulation and growth of the not-for-profit housing sector*: Available from www.rch.nsw.gov.au (accessed 1 September 2010).
- Registrar of Community Housing NSW (2010c) *Website of the NSW Registrar of Community Housing*: Available from www.rch.nsw.gov.au (accessed 1 September 2010).
- Rheingold, K. and Johnson, C. (2003) 'The rise and fall of Eastside Community Investments Inc. The life of an extraordinary community development corporation'. *Journal of urban Affairs* 25(5): 527–549.
- SGS Economics & Planning (2009) *A vision and plan for social housing in Australia*. Melbourne: SGS Economics & Planning.
- Shapps, G. (2010) *Localism will drive up standards in social housing*, News Release, 18 October: Available at <http://www.communities.gov.uk/news/newsroom/1743510> (accessed 29 October 2010)
- St George Community Housing Ltd (2010) Letter to FaHCSIA dated 4 June 2010: Available on request from FaHCSIA (unpublished).

- Strauss, A. (1991) *Creating sociological awareness*. New Brunswick: Transaction.
- Travers, M. (2007) *The New Bureaucracy: Quality Assurance and its Critics*. Bristol: The Policy Press.
- Travers, M., Phillips, R., Milligan, V. and Gilmour, T. (2010) *Regulatory frameworks and their utility for the not-for-profit housing sector*. Positioning paper. Melbourne: AHURI.
- VAGO (2010) *Access to social housing*. Melbourne: Victorian Auditor-General (VAGO).
- Victorian Hansard (2004) *Speech by Ms Pike, Minister for Health, moving second reading of Housing (Housing Agencies) Bill, 18th November 2004*, pp.1732–3. Melbourne: Victorian Hansard, Legislative Assembly.
- Victorian Housing Registrar (2010) *Website of the Victorian Housing Registrar*: Available at www.housingregistrar.vic.gov.au (accessed 14 June 2010)
- Weber, M. (1991). 'Bureaucracy' in Gerth, H. and Wright Mills, C. (Eds.) *From Max Weber*. London: Routledge. pp.196–244.
- Westpac (2010) Letter to FaHCSIA dated 4 June 2010: Available on request from FaHCSIA (unpublished).
- Wintringham Housing (2010) Regulation and growth of the not-for-profit housing sector discussion paper. Wintringham Housing submission: Available on request from FaHCSIA (unpublished).
- Yates J. and Milligan, V. (2007) *Housing Affordability: A 21st Century Problem, Final Report 109, National Research Venture 'Housing Affordability for Lower Income Australians'* (NRV3), Melbourne: AHURI.

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