National community housing regulation:
WHAT WILL IT MEAN FOR YOU?

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Although not thought by some to be the most exciting topic in social housing, national regulation will profoundly change the way we deliver housing. This article looks into the crystal ball to help guess what the future may hold.

The Long March

Many in the housing sector will have followed the tortuous path towards national regulation. As can be seen in the Timeline box, the process started in 2008 and is due to be completed at the end of 2014. A remarkably long journey for a concept that is neither pioneering nor revolutionary.

TIMELINE:

2005 Victoria introduce two-tier ‘contemporary’ community housing regulation.
2008 COAG agree national regulation good for ‘growth providers.’
2010 Commonwealth discussion paper proposes 5 different models. Consultation follows, with various stakeholders.
2011 Housing Ministers favour a National Framework with separate state-based regulators. Further consultation.
2012 NSW passes the ‘National Law’ to be adopted by other States. Consultation on detailed guidelines.
2013 State laws passed. Transition period starts July.
2014 National Regulation in place by December.

There have been several opportunities for the community housing sector to make their views known. However, there is little evidence they have been listened to, rather a compromise has been forged to achieve the minimum possible given State and Commonwealth tensions. Several housing providers I have spoken to feared expressing their concerns too forcefully, lest we ended up with no national regulation at all. Even now, politics may intervene – national regulation is still not fully guaranteed.

Devil in the detail

The general shape of national regulation is well known. Three tiers, solid governance structures, single registration etc. have been well advertised. However, it was only a couple of months ago that the detailed Guidelines came out. As was noted by one respondent, quoted in the summary of consultation feedback, the ‘devil would be in the detail’. How right they were.

It is worth someone in each community housing provider reading the hundreds of pages of Guidelines (short straws will be provided on request). A shown in the box, there are a few surprises. While many points seem reasonable, there is a considerable conformity expected across very diverse organisations operating in the sector.

For some work I have done for the Community Housing Coalition of SA, the likely problems with the Guidelines are:

- Too much regulation, and hence unnecessary burden, for quite low risk Tier 2 and 3 organisations.
- A likelihood that too many organisations will want to be Tier 1, making the structure unbalanced.
- Over detailed and at time bizarre annual reporting of a variety of performance indicators.
- A chance that national regulation will reduce bank lending as there could be conflict between performance ratios expected by banks and the regulator.

GUIDELINE HORRORS:

- Only Tier 1 providers can borrow to fund development projects.
- You are ‘large scale’ if you manage more than 350 tenancies, and have to be Tier 1.
- Tiers 1 and 2 need tenant satisfaction surveys every 2 years, and must score 75% – but organisations can set their own questions
- You must ‘maximise positive economic and social outcomes for tenants and the community through place renewal’
- The board must meet 6 times per year (audit committee 4 times)
- 90% of repairs must be completed in 24 hours
- Minimum 98% occupancy rate, and 14 day turn-round time for vacancies
- Minimum return on assets of 8%, interest cover of 3 times and maximum borrowing against assets of 40%

Into the future

Futurology is the rather uncertain science of predicting what will happen next. Bearing in mind it is seldom spot-on, here are a few thoughts on the impacts of national regulation:

The big change will be moving to a national sector, less to national providers

Residential property markets, whether social or commercial, tend to be quite localised. Handing over keys to tenants and mending roofs are not activities that can be conducted from a single head office. You need people on the ground. This is even truer where community housing is transferred the unenviable task of making problematic public housing estates mixed income, socially stable communities.

To date there has been more talk than action on forming national housing organisations. Admittedly Community Housing...
Limited span several continents, never mind states, though they are the exception. Many providers find it challenging to operate even across their own state, perhaps not surprising given the vast geographies in WA, Queensland, the Northern Territory and NSW.

From 2013-14 aspirant national housing providers will have a single regulator, yet multiple State funders. Tenancy laws and appeals procedures will differ across the country. Savings made by getting scale economies in your finance, HR and IT teams will be off-set by running a string of local branches up and down the country.

While a large number of truly national community housing organisations are unlikely, the market for service provision will become more unified. Bankers, consultants, IT providers and peak bodies will move to a national focus. This should mean better and more competitive services for housing providers. Not a bad achievement, though hardly revolutionary.

Regulation will not bring new housing – at least not straight away

Australia faces a crisis with affordable housing provision, not a crisis of failing community housing organisations. The rationale of national regulation has often been stated as trying to unlock "institutional investment" to fund new affordable housing. In the list of Government priorities, housing quality and tenant satisfaction rarely feature.

When we talk of ‘institutional investment’, we mean boring bank loans. Pure equity, non-Government backed bonds are unlikely in the short term. Australia barely has a market for institutional investment in up-scale residential lettings, never mind social housing. The limited growth of bank lending has been more due to the poor cashflows of housing providers, and the generally dire market for property lending, rather than bankers’ ignorance of the sector.

While I think lending to the sector will increase, over time, I think it will be a long and slow process unless Government funding changes. Currently there are no major Commonwealth or State schemes for capital funding new affordable housing construction. Regulation doesn’t build houses; it merely structures a vessel into which a mix of public and private finance can be poured.

I see the real benefit from national regulation being a growth in tenancy and asset transfers. Governments, particularly those run by the Coalition, are suspicious of handing public assets to organisations they have little control over. Regulation should ease these fears, enabling the larger housing groups to manage more tenancies and harvest Commonwealth Rent Assistance. This will improve cashflows, allow more borrowing, and lead eventually to new house building.

Big organisations will get bigger, though most small providers will survive

Strong regulation can - on paper - encourage the growth of vast and unaccountable housing groups, and squeeze out smaller community groups. At least that’s what some people think from the British experience. In practice, mergers have been limited to several larger groups, and many smaller providers have remained. After nearly 50 years of regulation in England, 1,300 of the 1,800 housing associations are small - managing fewer than 1,000 tenancies.

A further insight from Britain is that multi-jurisdiction housing associations are rare. For example, few operate in both England and Scotland. Consolidation has often been in the English regions, and we may see mergers within States more
than across State boundaries. Anyway, as one British housing association CEO told me a few years ago, ‘there is a view that mergers are passé, yesterday’s issue. Many of these groups are now re-working themselves. They found they’re too big, too cumbersome’.

The future for small and medium sized Australian providers will depend on their ability to cope with the compliance burden of regulation. There is hope here, if we look at NSW. Many of their Class 3 and 4 housing organisations are modest in scale, yet cope with a regulatory system not unlike the proposed national scheme.

Perhaps instead of wide-scale mergers, we are set for organisational innovation. Group structures, with a head office providing support but with operational autonomy retained by local groups, could be the way to go. The Common Equity model for housing co-operatives could be applied to more mainstream housing providers. These approaches may be better suited to our vast continent than the centralised models of Britain and Holland.

**Change will be modest in some States, though dramatic in others**

Victoria, NSW and the ACT already have a style of regulation not dissimilar to the proposed national approach. There are differences in detail, but not many. Housing providers in these jurisdictions should have a seamless transfer to the brave new world. Most systems, procedures, people and controls are already in place.

I predict the pressure from national regulation will be felt elsewhere across the country. There is no regulation, expect by funding contract, in the Northern Territory and Tasmania. In WA, SA and Queensland there is regulation of sorts, though a very different beast to that being proposed. A cynic may say that the biggest impact of national regulation will be make these jurisdictions adopt the regulatory model used on the East Coast.

Outside NSW and Victoria in particular there is a massive capacity gap. This is primarily within Governments who have little knowledge of running ‘modern’ regulation, especially regulation at arms’ length from departmental interference.

Capacity gaps in medium and large scale housing providers are arguably more modest, and easier to fill.

The danger for the jurisdictions ‘catching up’ is their housing providers will be squeezed out by either new entrants with existing resources (think of the Mission Australia approach), or by out-of-state entrants. By my reckoning, 16 of the largest 20 community housing groups are based in NSW and Victoria. Watch out in Perth, Adelaide and Brisbane!

**Federal tensions will limit how regulation works across the country**

Of all the ‘national’ models of regulation that could have been chosen, the proposed model is one of the weakest. There are some national guidelines, though I predict their interpretation will be shaped strongly by the mood of State regulators. As an example, although Victoria and NSW have more similar regulatory systems than they would care to admit, the way they work in practice has been shaped by the character of the Regulator.

Furthermore, most decisions that really matter to the growth of the sector will remain within the control of State Governments.

Policy settings and funding will not be nationalised. This will create a complex mosaic across the country, rather than a neatly ordered uniform pattern. The SA Government, for example, would be well within its powers to restrict all tenders for funding or stock transfer to SA Tier 1 organisations. Given the current imbalance in the size and power of organisations, the creation of a Maginot Line to keep out organisations from NSW and Victoria is not unlikely.

A federal structure has both benefits and drawbacks. However, when it comes to a move to national regulation, it seems bound to dilute the best intentions of Commonwealth Ministers. What it will do, however, is establish a national foundation. On this, future Governments may decide to build a rather more unified and coherent structure. Therefore the move to national regulation will start in 2013, though perhaps take decades to fully achieve.

**Final thoughts**

If these predictions for the future are scary, things get worse. Mao Zedong advocated a state of constant revolution. In a strange way, housing regulation is similar: we never reach a final point of stability and calm.

Looking at Britain and the Netherlands, two countries that have substantial community housing sectors, regulatory change has been constant. Regulators sometimes act relatively independently of Governments; at other times Ministers pull the strings. Regulation, self-regulation and de-regulation come into and out of style like fashions on a catwalk.

While change can be stressful, we should remember that the move to national regulation is just one step on a long journey. If Governments do not get the details right this time, they simply modify after a couple of years. Community housing groups are resourceful and entrepreneurial - ways can always be found to make regulation work best for the tenants and communities they serve.