

WACOSS Submission to the Department of Housing and Works

A Legislative Framework for Community Housing: Proposed Amendments to the Housing Act 1980 and Request for Comments



wacoss

Western Australian
Council of Social Service Inc

*Ways to make
a difference*

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The Western Australian Council of Social Service (WACOSS)

WACOSS is the peak body of the community service sector across Western Australia. Since 1956, WACOSS has been developing and strengthening the non-government community services sector's capacity to assist all Western Australians. At the heart of its activities, lies the belief that the mark of a civilised community is the support and help it gives to those most in need.

WACOSS is part of a national network consisting of ACOSS and the State and Territory Councils of Social Service, who assist low income and disadvantaged people Australia wide.

We support more than 315 member agencies and individuals in the provision of social and community services to those Western Australians experiencing disadvantage. In this capacity WACOSS works with and represents a range of social service agencies including:

- Emergency relief agencies;
- Financial and relationship counselors;
- Neighbourhood centres;
- Community legal centres;
- Large church-based welfare organisations;
- Disability service organisations; and
- Housing and crisis accommodations services

WACOSS has a longstanding record of advocating the housing interests of low income West Australians. We have worked extensively with other housing peak bodies, such as the Community Housing Coalition of WA (CHCWA), Tenants' Advice Service WA (TASWA) and Shelter WA; our most recent advocacy efforts having focused on the Creating Room in the Boom (CRiB) campaign. This campaign advocated better housing outcomes for low income West Australians across the areas of social housing, tenants' rights, crisis accommodation and the needs of vulnerable groups¹. The work of the CRiB campaign will not be discussed in any detail in this submission, but for further information please visit www.wacOSScampaigns.org

¹ The CRiB campaign has identified four primary areas requiring immediate action:

- A significant shortage of social housing;
- Large numbers of people in housing affordability stress;
- Lack of tenants rights; and
- Funding shortage for homelessness services and staff

Executive Summary

WACOSS has a particular interest in ensuring that the community housing sector in Western Australia is sustainable and well-managed. The sector is well placed to respond with efficacy to community need, as well as with the complexities of Government programs and requirements. Not for profit housing organisations offer affordable options to low and middle earners, as well as often providing a range of non-shelter supports to their tenants. Many have excellent links to other community services, and have demonstrated effectiveness in negotiating tenancies with specialist providers such as aged care and mental health services².

WACOSS acknowledges the Department's preference to develop growth providers as the preferred vehicle for growth, and the preference, in essence, to do business with a smaller number of larger organisations³. Part of achieving this growth is about a commitment to develop and implement a regulatory framework with the intent of providing assurance to investors and taxpayers, and to tenants in terms of the quality of services provided⁴. It has been noted by the community housing industry that a "legislative approach will provide assurance for government that it has appropriate regulatory powers to ensure that its social, economic and other objectives are met whilst managing the risks inherent in community housing⁵". The challenge is to develop robust legislation that can be applied when needed, while building the capacity of organisations to manage their services in a way that reduces the burden of regulation⁶.

In broad terms, WACOSS supports the intent of the Department of Housing and Works (the Department) and a proposed legislative framework for community housing. It is vital that the process delivers improved housing outcomes for tenants.

Legislative proposals are supported to the extent that they "grow and strengthen the community housing sector... improve organisations' capacity to work in partnership with government and the private sector, and... have an increased focus on organisational performance and quality outcomes for tenants⁷".

This submission highlights a number of issues that require further clarification, and details WACOSS' concerns relating to some aspects of the proposed amendments. These relate generally to the impact on small community housing providers, the powers

² CHFA. (2008). P.28. *The National Affordable Housing Agreement: A Community Housing Perspective*.

³ Kadmos, C. (2008). *FOHCOL Research Project: Regulation, growth and organisation: what are the options?* p.7.

⁴ Bisset, H and Milligan, V. (2004). *Risk Management in Community Housing: Managing the challenges posed by growth in the provision of affordable housing*. Prepared for the National Community Housing Forum. p.70.

⁵ ARTD Consultants. (2007). *Proposal for a National Regulatory Framework for Affordable Housing*. Final Report. p.45.

⁶ *ibid*

⁷ Department of Housing and Works. (2008). *A Legislative Framework for Community Housing: Proposed Amendments to the Housing Act 1980 and Request for Comments*. p.3.

that may be bestowed upon regulators, and the flow-on effects on tenants as a result of these changes.

This submission is structured to answer the consultation questions where appropriate, and includes additional comments outside the scope of the questions. WACOSS thanks the Department for the opportunity to provide input to this process, and encourages ongoing and robust consultation with the sector throughout the developmental stages of the regulatory framework.

It is vital that throughout this process, the Department remains flexible and supportive of all providers facing a significant shift in the way they manage the regulatory aspects of their operations.

Consultation Questions

1. *Do you support the objects of the proposed legislative framework for community housing?*

In broad terms, WACOSS supports the objects of the proposed legislative framework. Regulatory frameworks, if legislated properly, have the power to build the capacity of the community housing sector and therefore ensure better outcomes for tenants. If implemented properly with a minimum amount of additional administrative burden, regulation will provide certainty and stability in the way providers do business, and will protect the rights of tenants.

2. *Do you agree that the legislative framework is an appropriate model to:*
 - *grow and strengthen the community housing sector;*
 - *facilitate provider capacity to work in partnership with government and the private sector;*
 - *improve organisational performance; and*
 - *improve quality outcomes for tenants?*

A legislative framework will go some way to ensuring that housing peaks and other providers have greater capacity to best serve the interests of tenants. WACOSS has an interest in how well peaks and other groups will be supported through this process, in terms of how this will affect outcomes for their clients.

Through an improved sense of clarity and stability, housing providers will have a greater capacity to form partnerships with government. However, this will also depend on how funding agreements and contracts are written and managed, and how reporting requirements and data feedback are monitored.

WACOSS seeks clarity on how the balance of protection through legislation versus contracts will be negotiated.

The success of housing providers to adapt to these changes will also be dependent on the quality of training that can be provided to them through various community sector peaks, namely the Community Housing Coalition of WA (CHCWA). WACOSS believes that CHCWA, through the Best Practice Unit, is well placed to guide these providers through the registration and compliance process. WACOSS acknowledges that additional funding has been granted to CHCWA and encourages the Department's continued support and adequate resourcing of this peak body.

The capacity of peak housing groups to assist their constituents throughout this process is of concern to WACOSS. We acknowledge the role of the Tenants Advice Service WA (TASWA) and Shelter WA in providing this support, and strongly advocate the Department's continued support of these peak bodies.

A legislative framework in the interests of facilitating growth of the community housing sector is favourable. However, if community housing organisations are to provide the

foundation for this growth, then changes in the sector must occur⁸. Providers who are recognised as growth providers must have the support of the Department to manage the increased complexity of functions they must undertake.

As a way of accurately measuring the financial cost of additional regulation to providers, WACOSS recommends that a comprehensive Regulatory Impact Assessment (RIA) study is carried out before new regulations are decided on. RIAs are frequently carried out as a precursor to the introduction of new or additional regulation in a range of industries.

RIAs can provide valuable information for regulators; enabling them to identify unnecessary or disproportionate regulatory measures, and streamline the process overall. Given the magnitude of the Department's social housing targets, WACOSS believes that there would be significant benefit in carrying out a RIA for the community housing sector.

While recognising the importance of adequately regulating the housing industry, it is widely acknowledged that a disproportionate regulatory burden on an organisation can stymie its growth and development. In this case, it may be reluctance on the part of providers to expand their housing stock for fear of the bureaucracy involved.

WACOSS would like to suggest that principles of best practice regulation be applied when embarking on a new framework for community housing. An example of these principles can be found in the *Proposal for a National Regulatory Framework for Affordable Housing*, prepared by ARTD Consultants in July 2007. Regulation should be:

- **Proportionate:** Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised;
- **Accountable:** Regulators must be able to justify decisions, and be subject to public scrutiny;
- **Consistent:** Government rules and standards must be joined up and implemented fairly;
- **Transparent:** Regulators should be open, and keep regulations simple and user friendly; and
- **Targeted:** Regulation should be focused on the problem, and minimise side effects.⁹

It is vital that regulation is outcomes focused and delivers the most comprehensive, fair and effective outcomes for tenants, while keeping the compliance and administrative burden at a minimum for providers.

⁸ Bisset, H and Milligan, V. (2004). *Risk Management in Community Housing: Managing the challenges posed by growth in the provision of affordable housing*. Prepared for the National Community Housing Forum

⁹ ARTD Consultants. (2007). *Proposal for a National Regulatory Framework for Affordable Housing*. Final Report. P.5.

3. *Does the regulation making power provide for a flexible, effective and efficient method of regulating operational and service standards for the various types of community housing provider and various forms of funding assistance?*

During consultation with community housing providers, it was generally acknowledged that the *National Community Housing Standards* framework was reasonably clear, consistent and concise, and was well supported by the sector. There was, however, concern that the document titled *WA Community Housing Growth Provider Regulatory Code* does not appear to be a regulatory code, or provide the legal functions of a code. This requires more clarification. Making sure the operational and service standards are clear, for growth providers or otherwise, will be a key element of ensuring regulation is a success.

Part of the State government's commitment to a regulatory framework is about providing greater assurance for investors and taxpayers, and to tenants in relation to the quality of services. The other is about ensuring that small housing providers have the capacity to respond to the changes¹⁰.

From a tenant perspective, it is vital to ensure appropriate protection for particular groups, in the diversity of stock and flexibility of tenant arrangements. As part of the CRiB campaign, WACOSS has identified particularly vulnerable groups to include; people with mental health and/or drug and alcohol issues, recently arrived humanitarian entrants, victims of family and domestic violence, women, people with a disability, and indigenous people.

Small housing providers are well placed to provide housing assistance to people with high and complex needs, in a way that large housing providers often may not be able to. Regulation for small housing providers must be flexible and acknowledge the unique assistance that can be provided by these organisations, and ensure the preservation of their cultural and logistical expertise.

WACOSS also understands that providers in the stipulated categories will be obliged to enter into new funding arrangements, or renegotiate existing ones. In addition, providers will be obliged to undertake monitoring, recording, and reporting duties as part of those funding agreements. This will inevitably lead to an increased regulatory burden on providers, and additional financial costs associated with accurate compliance to that regulation.

WACOSS would like to seek clarification as to whether the Department intends to factor in those costs as part of the overall funding received by the provider. We believe that it would be unfair, and possibly counter-productive, to oblige providers to absorb the costs within current funding agreements, given the additional pressure it would place on what are, in most cases, already stretched resources.

¹⁰ Ibid

To this end, WACOSS would also pose the question of how smaller housing providers may be encouraged, enabled and supported to move between categories of provider status. This is a matter in which we seek clarification.

5. *Does the maximum two year timeframe allow sufficient time for community housing providers to build the capacity to comply with the standards and requirements foreshadowed in subsidiary legislation?*

Consultation with community housing providers showed that, if adequately funded and resourced, a two year timeframe ought to be sufficient to achieve compliance. This support must come in the form of additional funding to ensure a commitment to staff within the community housing sector, and support at a Departmental level, to enable the sector to build its capacity. This would require variations to current funding arrangements within the two year timeframe, or incorporation into new funding agreements that expire within that time.

WACOSS has concerns as to whether organisations will be supported to achieve compliance within the designated timeframe. We do acknowledge the Department's proposal that existing State Community Housing Investment Program (SCHIP) providers will only be required to meet any additional requirements that are legislated, rather than being faced with an entirely new set of requirements upon registering.

We seek further clarification as to how smaller housing providers especially will be supported to ensure they remain compliant. As previously mentioned, WACOSS is aware of the additional funding granted to CHCWA to guide providers through the registration process, and we are of the view that CHCWA is best placed to provide this assistance.

We also have concerns about the increased administrative burden that may be placed on housing providers when engaging with the registration process. The community services sector has to negotiate and manage complex contractual arrangements with government funding bodies, often severely limiting capacity to carry out core business.

If reporting and data collection requirements change significantly, WACOSS would like to see this information effectively utilised and distributed by the Department. From a social policy perspective, access to this information can only strengthen the capacity of the sector to respond to community need.

The legislative framework associated with regulation ought to be drafted to address an identified problem or risk (for example, standards of service, protection of tenants), impose the minimum burden on those regulated, and have minimum negative impact on others¹¹.

¹¹ ARTD Consultants. (2007). Proposal for a National Regulatory Framework for Affordable Housing . Final Report. p.45.

7. *Do you support the proposals for the office of the registrar which aim to enable the registration and compliance functions to be performed independently from the Housing Authority?*

Effective regulation will play a central role in the provision of social and community housing in Western Australia as envisaged in the legislative framework.

WACOSS believes that, given the large number of providers that will be taking part in this process, serious consideration should be given to the possibility of creating an independent regulator.

Creating an independent regulator decreases the potential for partiality and political interference. Equally, independent regulators are usually the preferred option of the regulated entities. This lessens the potential for conflict with governmental stakeholders- not least by undermining accusations or perceptions of partiality or political interference.

8. *Are the proposed monitoring and information gathering powers given to the authorised officers, and the process for dealing with complaints appropriate?*

WACOSS considers the proposed powers are not appropriate as they allow for excessive and intrusive oversight. We support the regulation of complaints systems and methods for monitoring and reporting information relating to complaints, but the proposed approach needs rethinking.

Additional Issues and Concerns

Tenants' Rights

Currently, public housing tenants in Western Australia who are Centrelink recipients pay a maximum of 25% of their income on rent. WACOSS recommends that rent-setting in Western Australia is legislated to remain at the current maximum rate of 25% of income. This arrangement would be desirable across the spectrum of social housing in WA.

WACOSS understands the Western Australian legislative framework is heavily comparable to the Victorian model. The recently amended Victorian *Housing (Housing Agencies) Bill 2004* requires providers to be registered as either an Affordable Housing Association (Victoria's version of WA's growth provider), or as a Housing Provider¹². Victoria has two types of rental housing cooperatives – Rental Housing Co-operatives (RHCs), and Common Equity Rental Co-operatives (CERCs)¹³.

Rent-setting in Victoria is capped at 75% of market rent - a trend which is starting to be duplicated Australia-wide. If this becomes legislated in WA, it may mean that low-income tenants are being disadvantaged by paying more than 25% of their income towards rent. This would place them in housing stress and at risk of becoming homeless, or mean they were facing severe financial difficulty. The legislative framework should provide a capacity to regulate price setting through some sort of 'cap' mechanism.

The legislative framework should provide for regulation that protects tenants and ensures an appropriate mix of housing and tenancy arrangements. It is important that community housing delivers a diversity of housing stock appropriate to the complex needs of different tenant groups. Tenant arrangements must be flexible and provide security of tenure, so that those with complex needs are assured safe, appropriate and affordable housing.

Consistency must also be applied when considering tenants' rights. It would be useful for the Department to provide a clear hierarchy of legislation relating to tenants' rights, which will in turn inform legislation for regulation of community housing. It remains unclear at present which provisions are superior.

WACOSS also has concerns around the criteria being relaxed for large housing providers. Will applications be open to anybody or just Centrelink recipients? Will this allow providers to pick and choose who is a successful applicant, rather than assess their application in terms of who has the highest need? It is important to consider these decisions in the context of what else is available in the social housing mix.

¹² Kadmos, C. (2008). *FOHCOL Research Project: Regulation, growth and organisation: what are the options?* p.7.

¹³ Ibid

This poses the question once more of what will be contained in a legislative framework and what will be written into funding contracts.

Definitions and Language

WACOSS believes that the legislative framework suffers from a failure to adequately define certain key terms. This causes problems in terms of creating a common understanding of these key terms among stakeholders. Perhaps more importantly, however, differences of interpretation could occur if such terms appear in legislation without first being adequately defined.

Examples include “community housing / public housing” “leasehold properties” and “providers”. With reference to “leasehold properties” for example, it is unclear as to whether a unit of property is counted as one, irrespective of its size or the amount of people it houses. Is a five bedroom house housing seven people, for example, counted as one unit in the same way as a one bedroom apartment with one occupant?

A practical suggestion might be for the Department to devise a glossary of nomenclature for terms that are currently perceived as being ambiguous or ill-defined. These definitions should be derived through appropriate consultation with the sector. Adequately defining key terms will impact greatly on the scope of the legislation, in terms of who it protects and where key areas of responsibility fall. It is vital, therefore that the community housing sector has a clear and consistent glossary of understanding in all new regulation and legislation.

Risk Sharing

It is anticipated that public and community housing stock will increase significantly in the coming decade, and that much of Western Australia’s social housing will be provided by the non-government sector. This raises questions regarding how risk will be shared or shifted from government to non-government providers. For example, it is reasonable to assume that as part of this process, most providers will increase the number of leasehold properties they operate. In some cases, such as with Class 1 Growth Providers, the increase will be considerable. This expansion will sharpen the focus on the need to provide for an insurance coverage scheme in the event of damage to property. Key questions arise:

1. Will the provider be solely liable in the event of one of its properties being damaged or will there be shared responsibility with the Department?
2. If a private insurer is used, would the costs incurred be borne solely by individual providers?
3. Has the possibility of acquiring group insurance schemes for a number of providers been explored to take advantage of potential economies of scale?
4. Will providers be able to pass liability on to their partner organisations?
5. How will funding arrangements provide the necessary flexibility, adequacy and protection required by the provider carrying the risk?

Conclusion

This submission has highlighted some areas of general concern, for WACOSS and housing peak bodies, as well as community housing providers. We hope to continue to provide input as the regulation process progresses.

The regulatory framework agreed upon must strike the right balance. It must enable the community housing sector to respond to their clients with efficacy and flexibility, appropriate to the rights and needs of tenants, and ensure that providers are viable and well-run, without imposing excessive financial and administrative burdens on their operations.

WACOSS thanks the Department for the opportunity to provide this submission and encourages ongoing consultation with the sector to achieve better housing outcomes for all West Australians.