



15 April 2014

CHA Response to the Housing Restructuring and Tenancy Matters (Community Housing Provider) Regulations 2014

The long-awaited regulations for Community Housing Providers were issued through an Order in Council dated 7 April that was published in the NZ Gazette on 10 April. The full text of the Order is at: <http://www.legislation.govt.nz/regulation/public/2014/0116/latest/DLM6013901.html?src=qs>.

We welcome this step forward in the Housing Reform process for the 14 April start date of access to Income Related Rent Subsidy. These regulations were first previewed in the *Regulatory Framework for Community Housing Providers* consultation document issued in December 2013. Community Housing Aotearoa provided comments on the draft regulations in our submission to MBIE on 5 February, 2014.

CHA has long advocated that a well-structured and properly implemented regulatory framework can provide confidence to all participants for on-going large scale investment in the sector. We are cautiously optimistic that the adopted regulations are intended to support this view. The Community Housing Regulatory Authority (CHRA) website (<http://www.shu.govt.nz/chra-home/>) should be reviewed together with the regulations for additional detail and guidance. The website provides a wealth of useful information including the CHRA Policies and Procedures, Performance Standards and Guidelines, Forms and Notices, and the Register of providers. Below is our summary of the areas of alignment as well as areas of on-going concern regarding the Regulations.

Areas of Concern:

The adopted regulations appear to have missed several opportunities that put at risk the overall effectiveness and success of the reforms:

- Definition of Community Housing Provider and tax implications - we find the definition of Community Housing Provider to be structurally flawed in that it does not confirm the organization operates on a not for dividend basis, essential to ensure that public investment is retained and recycled. We understood such a test was part of tax legislation, and unless the two are aligned there appears to be a disconnect, which places our members in uncertain territory.

- Status of Accreditation- where is the push for excellence? The regulatory framework provides the minimally acceptable level of performance for an organisation. The Accreditation framework is one of continual improvement toward excellence. Not granting equal standing to the existing market-based Accreditation system to assess organizational capacity against objective performance standards and confer approval for registration is a missed opportunity to achieve better results. The CHRA guidelines allow it to accept Accreditation on a case-by-case basis, which is good, but does not provide certainty.
- Level playing field - bring everyone inside the tent- including local authority stock. We continue to believe all participants must operate under a single regulatory framework for true competition to be fostered. The exclusion of these entities does not advance the goal of ensuring a level playing field. It is bad for tenants and community outcomes when regulations discriminate against particular providers.
- When will Category (Class) 2-Development and Asset management be turned on? Our view is that a piecemeal approach to regulation does not provide a solid framework to provide confidence to all participants. Designing a fit for purpose regulatory framework for a complex system of housing related activities cannot be done by viewing in isolation the many parts.

We believe these concerns need to be addressed immediately. By not acting upon them now the opportunity to provide certainty, reward excellence, promote fairness and adopt a holistic framework has been missed. More time and expense will be required to redress these omissions that would be better utilised addressing the serious housing challenges facing many families.

The Detail:

Below is a summary of the adopted regulations noting the areas of alignment with CHA's prior submissions and areas of on-going concern. This is not a comprehensive review of all aspects of regulation, but a highlight of the main topics on which we previously commented.

Section 3. The definition of a “community housing provider” in the Regulations remained the same as the consultation document. CHA remains concerned that this does not align with the definition of a Community Housing Entity as set out in Clause 29 of the Taxation (Annual Rates, Employee Allowances, and Remedial Matters) Bill. We believe that a requirement for reinvestment of all profits earned back into the organisation and a prohibition on individual pecuniary profit is necessary.

We note that the Regulations do not include a separate category for “smaller” Community Housing Providers that was consulted upon. This is consistent with our view and prior submittal.

Section 4(1). The Regulations are applicable to organisations that wish to be deemed as “Class 1: social landlord” for the purpose of being eligible for income-related rents subsidies. Our position has

been that “category” is more appropriate nomenclature. Our submission also requested that additional categories (e.g. asset manager, developer) be defined and consulted upon now, yet this has not been taken up. Our view is that a piecemeal approach to regulation does not provide a solid framework to provide confidence to all participants.

Section 4(2). An application for registration must be made electronically, consistent with our view. In addition, the authority retains the discretion to accept documents in writing. We believe this flexibility is an encouraging signal. While the Regulations are silent on the issue, they imply that applications will be accepted on an on-going basis, consistent with CHA’s view.

Section 5(b). The prohibition on local authorities, council-controlled entities or their subsidiaries (except those operating at arm’s length) being eligible remains in the final regulations. We continue to believe all participants must operate under a single regulatory framework for true competition to be fostered. The exclusion of these entities does not advance the goal of ensuring a level playing field. It is bad for tenants and community outcomes when regulations discriminate against particular providers.

Section 6. We believe the information required to be submitted in the application is necessary and sufficient for the purposes of determining initial eligibility.

Section 7. We continue to have concerns about the applicability of the Performance Standards to all aspects of an organisations operations, not just those related to the Income-Related Rent Subsidy. CHA members have expressed a concern that this burden of regulation is disproportionate to the benefit received from eligibility for IRRS under the current framework. There is no clear value proposition to a provider for entering into the regulatory framework, unless changes are made that enable all of a providers residents to become eligible for the IRRS.

Sections 8-11. We believe the Regulations related to the information contained in the Electronic Register is generally consistent with that in the consultation document and is reasonable.

Sections 12-15, 17. The process for receiving, investigating and responding to complaints was not provided in the consultation document. The Regulations set these out and appear reasonable. We note that our proposal for mediation as an intermediate step prior to resorting to the District Court was not incorporated into the Regulations. However, we are pleased to see that the CHRA has adopted mediation and arbitration within their Policies and Procedures to resolve disputes. This is a great approach as it is in keeping with CHRA’s operating principles and provides a quicker, solution focussed and less expensive option for resolving issues compared to the District Court.

Section 16. While not included in the original consultation document, we believe these tenant protection provisions are appropriate when a provider requests revocation of its registration.

Schedule – Performance standards for registered community housing providers.

The adopted Performance standards reflect many refinements consistent with our comments on the consultation document. Overall, these are relevant, reasonable and aligned with CHA's Best Practice Guide. In our submittal on the consultation document, we expressed concerns that some were too vague to evaluate or implied an evaluation of results and not an objective review of adopted policies and procedures. Many of these have either been removed or modified. Others remain (e.g. 3(a) requiring a "viable capital structure"; and 5(a) that requires "plans for asset acquisitions, disposals and reconfigurations", although its applicability to tenancy management services is unclear) which raise concerns about how the standards will be interpreted and enforced.

Other Issues

CHA notes that the Accreditation approach we suggested as a parallel path for registration was not taken up in the regulations. However, within its Performance Standards and Guidelines the Community Housing Regulatory Authority has adopted the ability to "*make an operational decision on a case-by-case basis to accept accreditation reports in full or in part as evidence to support of compliance with the Performance Standards.*" While not granting equal standing to Accreditation, this is a practical measure that we hope is followed routinely. This will enable CHRA to focus more time and resources on other areas of regulation, such as refining standards, monitoring outcomes and on-going compliance.