

REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON SOCIAL ISSUES

INQUIRY INTO COMMUNITY HOUSING

At Sydney on Monday 11 November 2002

The Committee met at 10.00 a.m.

PRESENT

The Hon. Jan Burnswoods (Chair)

The Hon. Dr Arthur Chesterfield-Evans

The Hon. James Samios

The Hon. Ian West

ANDREW CAPPIE-WOOD, Director-General, New South Wales Department of Housing, and

LYNNE READY, Acting Executive Director, Office of Community Housing, New South Wales Department of Housing, sworn and examined, and

CAROL MILLS, Executive Director, Housing Systems, New South Wales Department of Housing, affirmed and examined:

CHAIR: During this period of hearings the Committee is trying to focus only on the regulatory framework. That is the issue on which we have based our questions today, which might appear to be only a narrow and partial look at the community housing sector. Could you give us some sort of summary or overview of the current regulatory framework?

Mr CAPPIE-WOOD: The community housing sector is in transition from what originally started out as a small community managed sector that was established to provide crisis and short-term housing. That sector, which is now in the process of becoming a professional sector, is one that is growing in size and in professionalism. We are seeing, therefore, a transition in our regulatory approach and our performance systems that have to be able to support that changing environment. The current regulatory framework, which is overseen within the Department of Housing by the Office of Community Housing, has a range of tools and is in the process of developing a more comprehensive framework.

As the sector has been growing specific tools have been progressively improved in line with risk management practices. Those tools are a mixture of requirements for compliance and measurement of performance indicators against some benchmarks. The office is currently undertaking work to integrate that range of tools into a comprehensive performance management framework. The tools that we have at the moment include: funding contract providers—a funding agreement with providers—a registration system for community housing providers; and a requirement for the provision of annual audited statements for analysis by the Department of Housing. Providers have been encouraged to provide that in line with the national accounting framework.

There are head leases for capital stock for a period of five years as a means of ensuring compliance in the review period; a collection of policy guidelines, for example, community housing rent policy and complaints policies that support the operation of the community housing sector; a quarterly reporting for providers to ensure that they report against recurrent funds received; and an audit program using auditors contracted by the Department of Housing. There are management reviews—a wider review of financial corporate governance and asset management practices in organisations—and specific inquiries about particular organisations, where appropriate. If there are allegations of inappropriate activities we will investigate those accordingly.

There is also the Housing Appeals Committee, which is not compulsory. The availability of the Housing Appeals Committee to tenants and applicants is being worked on at the moment. The Office of Community Housing focuses on areas of greatest risk to ensure that it is looking not just at a one-size-fits-all regulatory framework; rather one that is matched to the capabilities and skills of organisations. We also provide funding to the federation and to Association to Resource Co-operative Housing [ARCH] to provide support training and projects for improvement in the sector. We also fund churches community housing to undertake development within the church housing sector. There is accreditation as well as a trial of best value inspections for community housing.

The best value inspections look at the quality of service received from the tenant's perspective and they provide practical and commonsense input into how that might be achieved. Whilst that range of tools ensures that we are able to move into more comprehensive areas later, it would be fair to say that there are elements of that regulatory and performance framework that we would like to see replicated across the housing sector—in other words, into public as well as community housing. Given that we have the same client base—the same people in need—and that housing is being managed either by direct management of public housing or community management, there are elements of benchmarking performance and general regulation that we would like to see extended beyond merely just the community housing sector.

The public housing sector management side and its team service contracts could be a useful jumping-off platform to see how we can get some sort of alignment between the two areas and ensure that we have appropriate benchmarking and the overarching framework covering both elements of a management system. So we are also looking at comparative performance indicators and ensuring that the links for monitoring data for agreed service standards are integrated. That is a quick overview of the range of tools that we have before us.

CHAIR: In framing the questions that we sent to you earlier we commented on the fact that you noted in your submission that the lack of an effective regulatory framework for community housing had restricted the capacity of the department to deal effectively with poor performance or serious breaches. We noted some of the things that you just mentioned and the way in which you use them. Given that you just listed quite a range of tools, perhaps the first question should be: What is missing from your regulatory framework? What is needed to enable you to deal effectively with poor performance or breaches?

Ms READY: I will come back later to some of the more specific elements of a regulatory framework. I thought I would talk first about some of the difficulties that we have had using the current framework to address performance issues in the sector to give you an idea why there are some shortcomings. As you are aware, one of the main tools that we use is the funding agreement. The funding agreement applies only to housing providers who receive recurrent funding, that is, leasing subsidies. So providers who number in the hundreds and who have small amounts of capital stock are not covered by this agreement. That is one of the things that is problematic at the moment.

The funding agreement, which appears to quite broad-ranging, covers a lot of issues that might come up and gives us some resolution of them. But it is difficult to do that when you get a chance to put it into practice. You also need the power to implement some of the things that are necessary. I will just give an example of some of the issues that have arisen and the difficulties that we have had, using current tools, to solve the problems. Some of the difficulties for housing providers arise around issues of conflicts of interest and whether organisations have the skills to recognise where there are conflicts of interest, and then whether they have the willingness to address those conflicts of interest. Let me give you an example of a housing association that allocated a property to its own housing manager.

When the department became aware of this and the association was challenged about the issue, the answer was that the actual wage paid to the housing manager was at the eligibility level, but cars and other aspects of salary packaging were not included. So the association did not have to include those aspects in arriving at a decision on the person's eligibility. Clearly, we felt uncomfortable about that. We felt that there was a consideration other than what was strictly illegible and what was not—that is, the moral and ethical decision-making around that issue. We felt so uncomfortable with that situation that we referred it to ICAC for its direction and advice on our view that this was not a tenable situation, as opposed to the view of the housing association, which was still maintaining that the decision it took was correct. So we had no tools to effect an outcome on that issue. That is one example.

Another example of a conflict of interest involved a fraud committed by the manager of a housing association. The role of the board at the time this matter came before us and the police was unclear, so we were not clear what board members knew about this situation. The board members were asked to step down while this matter was investigated, and refused to do that. We did not have the power to compel the board members to step down. That was a difficult situation, because again we had no real effective power to do anything about it.

Another instance of conflict of interest involved a co-operative. The co-operative paid the company owned by one of the members living in the co-operative to undertake building work—without the benefit of tenders and in the absence of any maintenance program. While the co-operative said it would not do that again, did that give the Office the go-ahead to end five-year leases that it currently has in place with the co-operative? Our advice was that, no, that would not be legal justification to terminate leases. So we had a difficulty in our leasing arrangements with co-operatives—which are, in fact, the only agreement we have with the co-operatives, because none of those have recurrent funding. So we do not have a funding contract in place.

CHAIR: I guess the major part of question 2 deals with cases in which you do have a funding agreement, so you should be able to give the Committee some examples of the way in which they can be used to deal with breaches that occur.

Ms READY: Here I have focused on examples of shortcomings, because that is our impetus for trying to improve our set of tools for monitoring and working on performance issues in the sectors. Our current contract does not set time frames for resolution of issues, so we find that we might conduct a review, a reasonable period is given for resolution of those issues, and those issues do not get resolved. Time frames drag on, and it appears no action has been taken. We simply do not have any time frames in the funding contracts that would allow us to resolve some issues. Often we are in the position of having to take follow-up audits and reviews to establish whether the commitments made by organisations to improvement have been put in place.

Ms MILLS: One issue for us is that the funding agreement is our only real contract with the providers. The providers, being independently incorporated entities, are administered by means outside the control of the Department of Housing. So that is one of the issues for us. You might give us some guidance on whether you want us to talk about instances where the expectations and standards of adherence to the funding agreement may not be met, but the organisation may still meet the broader requirements of the Australian Securities and Investments Commission [ASIC] or the Registrar of Co-operatives. Again, at the moment there is no system in place for resolving those two, sometimes quite different, viewpoints about the performance of an organisation.

We have a number of instances where the small scale of our housing providers means that, even if they are covered by ASIC, for example, they are not of a scale such that that organisation would want to be conduct an investigation into. Similarly with the Registrar of Co-operatives. Although we have been building a stronger relationship over a number of years, some of our primary objectives are quite different. Organisations that we have found to be very poor performing have met the basic requirements of the Registrar of Co-operatives in terms of annual reports and would not be deregistered by the Registrar of Co-operatives, but those organisations are not ones in which we would have confidence. Again, we have to go round of the process, rather than through it, to get a resolution of the issue.

Firstly, we would be using the funding agreement as a tool to curtail the period over which we give funds—so that, if we have a problem, we obviously can restrict the funding agreement payments to a monthly basis or to a performance basis—and, ultimately, we have the ability to turn those funds off altogether. But, as Lynne said, in many instances that is an extremely protracted process, and it becomes an adversarial process of a type that we would like to prevent. If we had a clearer registration system, the roles and obligations of the parties—the funder and the regulator and the provider—would be much clearer. We imagine that the circumstances in which we have sometimes 18-month or two-year negotiations with boards may be much simplified in a clearer relationship of regulation of providers, as the principal source of funds for most of them remains the government at this point of time.

CHAIR: Lynne, did you have more to say on this question?

Ms READY: Perhaps I could give a couple of other examples to highlight what Carol is saying. In this past year an organisation has folded called DART, the Darlinghurst Area Rental Tenancy. DART was an organisation that was struggling significantly. Basically, it was unable to overcome issues about how to improve its performance. A difficulty arose because DART had leases with the tenants. DART was the legal entity that held those leases and was recognised before the Residential Tribunal at that time. Unless DART had agreed to wind up and appoint an administrator, there was little that the Office could do about that situation. DART clearly was not able to function any further. There was quite a breakdown in its systems.

To its credit, the DART board eventually saw that that was the situation and agreed to go into voluntary wind-up. Our consultations with the Registry of Co-operatives about that issue indicated that DART was actually meeting its conditions for reporting to the Registry of Co-operatives, so there was no basis on which DART could be deregistered as a co-operative, and therefore the department had no legal basis on which to remove the leases from DART. That was a situation where there were two sets of reporting requirements, where one overarched the other, making it very difficult to take

action. DART had a good outcome, I might say, in that eventually the federation and an auditor appointed by the Office—or the DART board in conjunction with the Office—worked together to wind up DART and to move those tenancies to other housing providers.

That was a very effective and beneficial process. But it took us a while to get to that position. We would probably still be in the middle of a mess if the DART board was not able to recognise the situation it was in. We have had a similar situation with another housing association, which has also agreed to wind up. So we are in the situation of having to use persuasion and develop relationships so that we can do that. But I do not think that is the full basis that we require to take action on occasions.

The Hon. JAMES SAMIOS: Lynne, regarding the difficulty with the current professional tools you have, you referred to an instance of a house being made available to the manager of one of the co-operatives and the matter going before the ICAC. What happened in the end with the ICAC?

Ms READY: ICAC is still reviewing the information, so we have no outcome from that at the moment.

The Hon. JAMES SAMIOS: You made reference also to co-operatives and to the standard required by the Registrar of Co-operatives not being as high as you would like.

Ms READY: No, it is not.

The Hon. JAMES SAMIOS: Have representations been made at government level?

Ms READY: We have met with the Registrar of Co-operatives. We recognise the difficulties between the two. Whether we have been able to effect any changes, I am not sure. The Registry of Co-operatives has a role in supporting and developing co-operatives, not so much in their regulation. So we have different basic interests, and it is difficult to bring those together—although we have moved to working in a co-operative way with the registry in sharing information and so on where appropriate. We are trying to overcome that through our relationship with the registry.

The Hon. JAMES SAMIOS: So there is a continuing dialogue?

Ms READY: That is right.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: How significant is this problem? There are few people getting houses for their supervisor or manager; they are a tiny percentage of the housing market. They are acting in different ways, and you are wanting to control them. How many cases do you have of people doing things you do not think are right, and how different is their auditing? I can see that it is strategically different, but would you pick up any misfeasance in your department quickly and readily as compared with another system?

Ms READY: I should state that there are not major problems in the sector around those sorts of issues. That was just an example of the inadequacy of the tool when one of those issues arose. Most organisations that operate in the community housing sector operate exceedingly well in terms of their management systems and the outcomes that they achieve, as do the boards of management and their understanding and management of organisations.

Do not go away with the idea that I am here to say that the sector does not function. It does, but when situations arise—and they do reasonably regularly—where people are dissatisfied with an organisation, they will make a complaint to us because they know we provide the funding for the organisation. They might make a complaint to their local member or someone from Parliament in the same way. We have a duty to look into each of those situations where a complaint is made, although we have developed a complaint policy that pushes that responsibility upon organisations to investigate their own complaints and where there is no satisfactory outcome for us to become involved.

We have tried to put in place a system whereby the sector manages their own complaints but at the same time, our system of audits and the information that we receive mean we have to act if we see an irregularity. Our approach is to work with the organisations around a plan to improve

performance or to improve whatever it was that brought the issue about. That is always our first approach and that works successfully in most cases that come up before us—90 per cent.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: How significant are the frauds, if any, that you want to investigate? Do you want to control them? In *Yes Minister* one of the groups was not providing figures to the department and it turned out to be far and away the most efficient sector, but the department wanted the figures. How significant are frauds, if any, in this sector? Are we talking about the odd incident?

Ms READY: The odd incident. What is significant is what power do we have when that incident arises.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The other question is should you be the regulatory body?

Mr CAPPIE-WOOD: If we look at the scale of the issues about regulation, we have a scarce resource. The Government has asked the community sector to manage that scarce resource. The application of that scarce resource to the Government's housing outcomes becomes a key issue. What are the leverage points to make sure that they align that scarce resource to those outcomes and that it is achieved and is done in the most effective and efficient way possible. You have touched on one very small component element of that, but we want to have a capacity in the system that grows in its relative complexity as the size and professionalism of the sector grows as well.

As I pointed out earlier, many of the small groups started out with just voluntary boards yet the size of the sector now would perhaps question whether more skill-based boards should become an issue. Certainly, the amount of money that we are putting into Federation and other areas to help skill up the sector becomes a key issue as well. There may be skill gaps around what are the roles and responsibilities of board members and how board members identify, know and can judge performance of their organisation against outcomes that the Government would like to see.

To that extent skills are a key critical issue, by the board as well as management of these organisations—some of them are small and some are growing quite fast—to be able to say can they keep up with the expectations not only of the general community and the tenants but also the Government, who on behalf of taxpayers, in making sure that the application of those scarce resources is done in a measured and transparent way. To that extent the tools are multifaceted because they go to all elements of management by boards, the management of housing associations and the like, to be able to perform those tasks adequately.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: We have received evidence from the sector. Their line is that they manage the human relationships better and thus are getting a better yield for the amount of house per dollar than the housing sector is because they are less clumsy and less bureaucratic. Obviously, they argue that that is because they are more efficient, but the department then says they should be regulated. If they have efficiencies, are you going to just tie them up?

Mr CAPPIE-WOOD: I suggest that what you are looking at is effectiveness. Efficiency is perhaps a different question. Some of the efficiencies are a different class of concern.

Ms MILLS: A couple of times you asked whether we wanted to control them and the answer is no, but as a government agency and as the funder, we want to ensure that appropriate securities are in place to protect both the government investment and the community outcomes. One of the challenges for us, again picking your point that it is a small sector and that is true, is that in non-government terms it has the largest asset of any non-government sector in Australia. We have over \$1 billion of assets now invested in the community housing sector. In addition to that, we have an annual recurrent leasing program of in excess of \$35 million.

The bulk of those programs are now administered by a small number of organisations. Around 80 per cent of our programs are administered by around 20 per cent of providers. We are talking about a relative risk not an all-encompassing, one-size-fits-all system. We have found over the last six years, as we have grown organisations and taken an approach to increasingly working with the sector in developing things like our new performance framework and improving our reporting, to not

just being compliance and audit but to actually be performance and outcome oriented. Those aspects of our development have worked very well with the sector over the last few years and our new performance and reporting system that is being piloted at the moment is being done in strong consultation with the sector, including even secondees from the sector coming to work in the Department of Housing in its development.

We are most anxious to ensure that the level of guarantee that we can give to the Government and the community is in accord with the level of risk. That is where we see a gap in the regulatory framework. There are very few actions we can take other than by a most circuitous route where there may be situations rising where the Government is concerned about the efficiency, effectiveness, misappropriation or some other elements of the business that the investment is not being effectively managed. It is a risk management approach, recognising their independent organisations and also recognising that they are administering very large annual, recurrent and capital investments of government.

CHAIR: We will get into some of these issues in more detail. It is our understanding that there is no disagreement from within the sector or anywhere else that legislation and an effective regulatory framework are required. We are looking at what regulatory framework would be established, not whether there will be one. We are trying to achieve a regulatory framework within the context of the size of the sector. Question No. 3 relates to the system for registering community housing associations, which comes under the residential tenancies legislation, which is administered by the Department of Fair Trading. That is another complexity because there are pieces of the regulatory framework that live in different departments. Is the registration system appropriate? Does it work?

Ms MILLS: It is appropriate to have a registration system. If we do get to the details of what a regulatory system should look like, registration is one of the core components of the legislative process. You are quite right in saying that it is in a different Act. Again, it was introduced into that Act to enable the community housing sector to have access to the opportunities and environment of administration under the Residential Tenancies Act that is also available to public housing. Its introduction was almost a de facto recognition of the sector having a similar role and needing similar tools in order to perform that role.

A couple of elements are worth mentioning. It is not compulsory, although the vast majority of our funded organisations will belong to it. It was developed with the objective of having two tiers and again a recognition from the beginning that we do not expect across our whole framework the same-size-fits-all approach. There was to be a class one and a class two registration. To date we have only implemented class two. We have been working on what is the appropriate layering of that over the last 18 months. A lot of work around the performance management framework has led us to a view that we probably need more tiers rather than just the two.

CHAIR: Can you explain the difference between them, and how they work?

Ms MILLS: Class two organisations have the ability to access certain basic rights under the Residential Tenancies Act in the way in which they are able to provide services and have a relationship with the tenants. To meet class two standards people have to comply with the department's minimum insurance standards and with the department's housing rent policy. They must participate in our annual data collection process, which is an obligation to us under our national funding agreement. They must report using the national accounting framework, and that framework was developed in the late 1990s as a national community housing framework, so it is actually based around the nature of the business. They also must provide audited, annual financial statements. They must comply with their terms of agreement and head leases and they must comply with their own relevant legislation, the Companies Act or the Co-operatives Act. If they are receiving recurrent funding for us to lease properties, they must comply with our program guidelines and if they are a co-operative, they must comply with the specific co-operative guidelines.

If they provide all those things they access class two. The objective in introducing the concept around a different tier, class one, is around a mix of things; firstly, the ability to contract out services, which is an issue that Lynne may want to flesh out briefly. Coming back to the level of risk associated with the business, again, our view is that registration ultimately would be something that

would sit in a legislative framework, if we had it, and although identified organisations, under the Residential Tenancies Act, would still seek to be identified, it would be much clearer in terms of the purpose of their multi-tier registrations and the way in which they would be able to be provided.

We have had some resistance currently because it is voluntary and some organisations have chosen not to meet the reporting requirements to do that. There is no system presently for suspension from a registration. One of the limitations is that they can be registered by meeting these basic requirements and can access the benefits of the Residential Tenancies Act but there is no real penalty if they no longer comply. There is not enough distinction—again looking at what is the difference between class one and class two. In developing the amendments to the Act the concept was that people could access different benefits by being a different registered organisation. They are not presently defined sufficiently to provide an incentive or even a mechanism for us to do that, so again the work in the performance framework suggested that we need a stronger tiered process than we presently have on the table.

Ms READY: That is right. We have not really defined class two well enough. Generally, organisations that became accredited were quasi-considered class two. We took that approach. Accreditation is an assurance of quality of services but for organisations to achieve class two, we were looking for them to start moving into other ventures as well or they were looking to achieve class two to move into other ventures, which would be management of affordable housing, perhaps for local government, or fee-for-service work for other non-government organisations, or even other government organisations.

Class two was seen as a springboard to an assurance of a quality service so that other sectors besides our community housing sector and the Department of Housing might look towards organisations to fulfil obligations or carry out duties for them. We have not fully described or enacted class two. Before we got around to doing it, we are really of the mind now that we need a tiered system of registration that provides for a whole range of organisations. I will talk more about that in the performance management framework, if you like.

CHAIR: As I said, we have leaped ahead and you have already covered some of our questions. You have made the risks fairly clear and we have just got onto the notion of regulatory tiering. Perhaps we should move onto the key question as to whether the regulatory conditions for the different types of social housing should differ and, if you think they do, obviously we want to investigate the sorts of models that, for instance, churches community housing might have as compared to co-operatives or community housing associations like the ones we have visited.

Ms READY: Two issues are being crossed there. One issue is the class of registration, and I can go through that. The other is the amount of reporting and monitoring that is required at different levels of organisation. We are linking the two together. Depending on what class of registration you come in at, therefore there is a linked amount of reporting required. That is the connection between the two. We are still working on the multitier approach. We have a discussion document, a description of what the system might look like, but we are still open to suggestions from the sector, from interested parties, and from the inquiry about what you think this new system should ultimately look like. But I will just go through what we are envisaging at the moment.

We are looking at class 1 registration as the top class. So we are going from class 1 down to 2C and then we will have two other categories. One would be organisations that have a high degree of confidence. We would envisage they would be able to enter into complex financing and contractual arrangements and to provide innovative community housing solutions. They would be our professional large housing organisations. Class 2A would be organisations that we recognise as professionally managed and suitable partners for most types of complex financing and contractual arrangements. It might be an organisation that is moving towards class 1, has quite a degree of skill at the moment, but still needs to do some work on that.

Class 2B would be organisations that the department recognises as suitable partners for straightforward financing and contractual arrangements. There could be organisations that seek to go to that registration level and stay there. That is the sort of service they want to provide. They do not want to grow into the more complex types of organisation. Class 2C would be our more basic sorts of organisation. We might need to offer more support to them to manage some of their financing and

contractual arrangements. Then we would have, importantly, the new classes in that we would have a class for suspension, so you could suspend organisations from registration where the department recognises that that organisation needs intensive support or where they are putting into practice plans about improving performance.

We would have also a class of temporary registration so that newly formed organisations have somewhere to start. We might have a new housing initiative from an organisation that previously was not in that business but which has decided it would like to move into it. For example, some of the large church-based organisations who currently manage large aged services but are interested in community housing and this might be where they might receive some temporary registration for them to begin services that could be monitored for a year and then they could move up to another class of registration. So it gives us the full gambit of where we could place organisations. Linked with that would be how much reporting was required from the department.

CHAIR: With those classes, and particularly the suspension and temporary ones, what sort of level of consultation will go on to ensure what class an organisation is placed in? For instance, you mentioned 2C, some organisations might make the choice to say at that basic level.

Ms READY: Class 2C is where you need a bit of assistance. I would hope they would all go to just the class above that. Obviously the placing of organisations into classes where we set up the registration system has to be one of consultation. I suppose it is similar to the approach we take now. In the past two years we have been able to gather more information about how organisations perform. We have introduced data collection and comparative data that gives us an opportunity to make comparisons between organisations that have not always been available. As more funds have gone into the sector we have needed to get more information from the sector. Our comparative data reports are the tools we use at the moment to give feedback to organisations about the performance. There should not be an organisation out there at the moment that has not got some access to information about how their performance stacks up against like peers and against the sector in general. That is helpful. We are working with organisations to jointly determine how they are standing, how their performance is standing, and that will put us in better stead when we start to look at the allocation of the class of registration when we bring that system into place.

CHAIR: Our question focused on different types of social housing as well.

Ms READY: Yes.

CHAIR: In your system of classes where would a co-operative go? Would it go in any one of them? Where would the major church-run ones go, for instance? Could they go in any one of the five or six categories you have identified or would you have separate systems for different types?

Ms MILLS: We would see it more about the service people are performing rather than the overall organisational structure. If you think about the layers that Lynne has described, at class 1, or the highest layout, we would be looking at organisations to be registered to give confidence that they would be able to enter into complex financial partnerships, perhaps with the private sector, perhaps with other non-government organisations, perhaps with trusts or other vested interests from individuals. All the way through we are looking at organisations with the capacity to self-select what their business is about, what their priorities are. To us, the organisational structure they have is less relevant than their purpose as a housing manager.

For example, with an emphasis on churches our position would be—whether it would be a church or local government or non-government organisation or some other form of charity—if they choose to have a portion of their business focused on housing provision, they should be registered with us and that portion of their business should be self-identified and have separate reporting and accounting requirements related to that business. If they are entirely reliant on government funding, as the vast majority of our current housing providers are in the smaller scale, again there is an issue about the appropriateness of where they sit in the scale that they can self-select.

If they choose to grow or receive additional resources from government, however, as with all programs, some milestones would be set that would be reflected in the registration system. So, we see it less as an issue of either church or local government but about what kind of housing business they

want to be in. We would be concerned to make sure that we create in our registration system an enabling thing, not categories of where you have come from but categories of what you want to be.

CHAIR: Would co-operatives be treated slightly differently or would they be, in theory at least, able to end up in any of classes?

Ms MILLS: One of the challenges for us in the registration system is to think into the future as well as to think about the present. If you described our current co-operative system, it is very small scale, with the majority of them having 10 or fewer properties, the likelihood of them wanting to or being able to enter into complex financial arrangements would be very limited. But, if you had a crystal ball and looked into the future and said you wanted the regulation and registration systems to be enabling, you could look to places like Canada, where co-operatives are huge and would be regulated in the same way as any other large organisation. Again, I think it is about the purpose of the entity rather than how they are defined presently.

CHAIR: Lynne, did you want to say more? You said there was the class and then the different levels of reporting?

Ms READY: I covered that in the performance management framework.

The Hon. JAMES SAMIOS: You have made reference to the temporary registration of churches, church bodies.

Ms READY: Not necessarily; that was just an example.

The Hon. JAMES SAMIOS: Including church bodies.

Ms READY: Yes.

The Hon. JAMES SAMIOS: Is that for hostels as well or is it just housing? It is not for nursing homes, is it?

Ms READY: No. Nursing homes and hospitals lie outside the funding programs of the Department of Housing at this time. Although—there is always an anomaly when you make that statement—we have taken over a program previously from Home Care, which was the hostel and care program. So we do have some hostels that are part of the program but it is not a growth program. We are maintaining those that are there but there are no funds to grow that program.

The Hon. JAMES SAMIOS: From your experience, many churches are involved in nursing homes as well as community housing, I take it?

Ms READY: Yes.

The Hon. JAMES SAMIOS: Is there an emphasis on providing assistance for nursing homes and hostels through this legislation, bearing in mind that the Catholic Church has been involved with Scalabrini villages; Montefiore is a Jewish home, and St Basil's is a Greek Orthodox home—a whole plethora of nursing homes and hostels?

Ms MILLS: One of the core issues about how you define it as housing as opposed to a nursing home or part of the health-care system is one that we always grapple with in trying to put a definition that is enabling but not restrictive. We would see the housing system we are talking about here as being about independent living and not being primarily about health-care services. Again, it would be true to say that our boundaries get blurred as government policy is about ageing and more home care services and other things being provided in somebody's home. What we provide really is a home rather than a hospital or health facility.

The Hon. JAMES SAMIOS: I know there is a strategy across the board with a lot of the church structures to put people first into hostels and as they get older they move into the nursing home next door and it is so much easier and they are in an environment they understand. As a preamble to the hostels there would be some logic in having community housing near the hostels?

Ms READY: There is, and they are some of the programs we have done in partnership with church organisations. We are quite happy to put our independent-type living units into complexes where there has been a hostel and then a nursing home, and we have done so.

CHAIR: In that sense the facility that you fund is more likely a retirement village part of the three-tier system?

Ms READY: We do fund units in retirement villages as well, specifically for people on low incomes who perhaps would not have the capacity to buy into that retirement village under the normal processes. That is also our program.

CHAIR: Can you tell us if there is any area of regulation that we should deal with specifically before we get onto our questions about the vexed issue of transfer of title to non-government providers or community housing associations?

Mr CAPPIE-WOOD: Would it be possible to just look at the nature of the draft legislation that was previously considered in this regard, to look at the component elements of what we saw as a legislative regulatory framework as opposed to performance?

Ms MILLS: As you will be aware, in the middle of last year the Department of Housing needed to modify the Housing Act to accommodate a number of changes that were required to be implemented by 1 July last year around home fund restructure and some other issues. We took the opportunity at that time to look at the issue of formally recognising and regulating community housing through that legislation. Because of an external timetable there was a short period to examine it and a whole range of issues resulted in it not going past the draft stage. Twelve months down the track there are some further refinements throughout performance management.

Motion by the Hon. Ian West agreed to:

That the Committee adjourn for one minute to remember the sacrifice of those men and women who have died or suffered in wars and conflicts and all those who have served during the past 100 years.

Ms MILLS: I will outline briefly the kinds of categories that we would like to see in registration. For example, 12 months ago we were still speaking about class 1 and class 2 but our work since then suggests that we might want more layers. In broad terms, we feel it is important that there is a registration system within the regulation and the legislation and that within that there be classes of registration, specifics about the duration of that registration—that is absent presently—and the ability to revoke, suspend or temporarily change that registration. It is important that there be a review or appeals process within the system to allow providers to test decisions. That would probably occur through the administrative appeals review tribunal. But that is something for consultation.

We propose that the physical register of registered organisations would lie with the Land and Housing Corporation, which is the title holder of the existing Department of Housing and community housing leased properties. We would also spell out in the legislation that there would be assistance for providers. This comes back to one of the core challenges that we have confronted in growing the sector. There has been a very supportive element to the work of the Office of Community Housing, both directly and also in its role of funding resource bodies. There is recognition that there must be assistance to help develop the sector further, sometimes to help individual organisations with their development and, very specifically, to help with financial viability. That assistance is for things such as the ongoing leasing program. Without the financial subsidy provided by government that program would not be possible. That kind of role should be recognised in the legislation.

Another area where we see a gap in our abilities at present is the recovery of funds into funded organisations. The draft legislation proposed conferring a specific ability on the corporation to pull back funds that were unspent either in compliance with a funding agreement or because a provider was not adhering to the funding agreement or other umbrella contracts. That should be to do with not necessarily poor performance but literally underspend in a program. There should be the ability to recoup funds. That would also incorporate a situation where someone did not comply. If you take the example of the organisations, which Lynne spoke about earlier, that it was mutually agreed to wind up, we presently have no real power to take back any unspent funds or surpluses that might have

accrued and are in an organisation's account. It was proposed that those things be accounted for in the legislation.

We also spelt out in the draft what kind of agreement would operate between the community provider and the regulation body. This relates basically to replacing what is presently a funding agreement relationship with most of our providers with a proper contract that spells out, in a more contractual way, the mutual roles, responsibilities and objectives of the programs being funded, the purpose of the funding and so on. Those agreements would then form the basis of the performance management system and accountability. They would vary according to the class of registration and according to the kind of assistance being provided to the organisation. As Lynne said earlier, at present we have only leases for properties with all organisations and funding agreements with those that receive recurrent funding. This would incorporate both of those things rather than keeping them separate, with gaps on our system.

It was recommended that those agreements be binding—a contractual obligation on behalf of providers. It was also suggested in the legislation that the corporation would set basic policies around things such as the setting of rents and rent policy. Coming back to the core role of the system being to provide affordable housing, there was a view that we needed to be able to define and administer something that sent a level of affordability. It was also proposed that there would be standards and targets for outcomes to be met. They would obviously become part of the agreement but would vary from time to time according to the class of registration.

We presently have no system within the whole community sector of dealing with rental rebate fraud so it was proposed that that should be accommodated. We should also be able to set processes and procedures with regard to the surpluses that might be accrued by community providers. At present there is no capacity for doing that. A surplus is a contentious issue as to whether it derives from effective management or from the original investment, which was a government investment. Our view is that it derives from both of those things and that you need a shared risk and shared incentive for good performance, which may entail some splitting of surpluses or capacity for mutually agreeing the purpose of a surplus.

At present some organisations sit on very significant sums—many hundreds of thousands of dollars; there is a \$1 million surplus in one case. It is not clear to us what the organisations plan to do with that funding and there is no capacity for us to influence what they do with those funds. We believe that is an important element, particularly if the system grows—if it were \$1 million and became \$10 million at a time when resources for low-cost and affordable housing were limited. We feel that the ability to gather a surplus from the investment of government should be recognised formally in the system and there should be controls on how that might be used.

We also proposed basic requirements regarding record keeping and reporting—again, fairly standard—and that they should be spelt out. There should also be another what we believe would be an improvement to the current system: the ability of the corporation to intervene if an organisation was performing poorly or if there were concerns about misappropriation or something else. The type of intervention we suggested in the draft related to the appointment of a person either to work in that organisation or to work with that board. We have a history over the past few years of appointing administrators to organisations that were not performing well. In most instances that has delivered a successful outcome for the housing association or co-operative, but at present it is done only at the request of the board.

There have been instances when the Office of Community Housing, as the current administrator, had significant concerns and believed that an administrator should be appointed but had no capacity to enforce it. It was left to the discretion of the board whether that would happen—regardless of whether the board then sought funding for that role from the office. We think that is important. We also think it is important to spell out in what circumstances that would occur and what the role of that intervention might be.

Lynne gave the earlier example of the closure of the organisation in the inner city. We have clearly had no legal capacity to take back existing leases from organisations that continue operating under the registrar of co-ops even if we no longer had confidence in them and no longer funded them. We believe it is important to spell out the ability of the corporation to pull back leases and to

reallocate those leases in circumstances where that is warranted. They are the main elements: improved performance, improved regulation around funding and clarity of relationships—a more contractual and professional relationship rather than a sort of surrogate funding agreement.

CHAIR: I wonder where the department is up to, particularly regarding material from last year. Could the Committee have any documents that we do not have already?

Ms MILLS: Absolutely. I will check whether there are any gaps.

CHAIR: Thank you. I think the Committee does not have all the details before it. I have two questions arising from the list that you have given. The first relates to the capacity to change. If you move to a system of contracts with organisations and have the capacity to decide at the end of a contractual period that a different organisation should be given control of, or leases on, certain properties is it envisaged that there might be a change after, say, five years of who runs things?

Ms MILLS: We will discuss the five-year issue. I think Andrew will pick up on that point later. The present arrangement is that leases are for five years. That is largely for historical reasons and largely as a result of the original intent of community housing providers to have shorter term housing: there was a view that that kind of flexibility might be highly desirable to the system. As we have moved progressively towards larger organisations, one of the issues raised regularly is how we provide certainty to those organisations. We are very conscious of that issue.

The notion of reallocating funds or taking things away would seem to depend upon performance—that is the primary reason—but we would also have to have some system of recognising that limited resources may be needed more urgently elsewhere. In public housing we must confront issues such as location shifts by population groups—particularly from west of the divide to the coast. We make significant decisions on an annual basis about sales of properties or reallocation of new resources to areas that were not high need previously but have emerged as high need. Somehow in the system we must be able to retain an approach that ensures not so much whether the organisation is there but that housing resources are allocated well and that they can be modified in time. We may need to discuss that issue further.

CHAIR: Unless I missed it in the headings that you listed, I do not think you mentioned the allocation policy—as in who gets housing. Is that because you continue to assume that it is basically one list for the whole social housing sector?

Ms MILLS: No. Perhaps I passed over it but I meant to mention eligibility, which would include both rent affordability and who might be targeted for assistance. We would want to see not something prescriptive that said "You must house this income group" but enabling legislation that allowed you, through regulations or annual performance contracts, to modify it as eligibility criteria change—both income levels and perhaps household types.

The Hon. JAMES SAMIOS: Coming back to the five-year leases, I suppose it is fair to say that it is a short-term arrangement—I think you used that description—because if there is somebody who you are not satisfied with ultimately you do not renew the five-year lease and he is left standing with the property. So it is a sanction that is effective, up to a point.

Ms MILLS: Yes.

The Hon. JAMES SAMIOS: The other question relates to surpluses, which could run into millions. Presumably under the constitution of the association surpluses can only be used for the purpose of the homes, is that right?

Ms MILLS: It can be used whatever is within the definition of the independent organisation. So in theory, yes.

The Hon. JAMES SAMIOS: You would not advance money if it was for—

Ms MILLS: No, that is right, but this is a surplus that might accrue over a number of years. I give the example again of perhaps an organisation that we have been concerned that they have

actually accrued the surplus by lack of spending rather than good performance and perhaps returning a dividend. We have no ability presently to take those funds back. If it is an organisation that has built a significant surplus over a number of years from an operating dividend, again we might want to reward that, but one of the other things we want to do is match where the need is. So if we have a situation where it was in a location or targeted to a population group that was perhaps not as high priority we would like to see some system of that being supported. Again, all of the properties that we presently allocate to community housing actually have a debt attached to them. If they are transferred across from the public housing system, the Commonwealth-State Housing agreement, up until the end of the 1980s, was not a grant-based program; it was a loan program.

I think one of the other fundamentals we have in thinking long term and trying to make this about what might a future hold, if we were to continue to transfer properties across to the community housing sector as an alternative manager to public housing then we would again need the ability to recoup the debt that is owed on those properties. We could not have a situation where that was not being repaid and yet a surplus was being gathered. So there are a number of criteria which we think would need to be spelt out in terms of the obligations of the sector to support the viability of the system.

CHAIR: We better move onto the issue of title. I am conscious that theoretically we have only 10 minutes left. We may be able to go a little bit over time.

Mr CAPPIE-WOOD: Okay. Before that, can I just mention that we were going to try to present the performance framework, so I am not sure how we will go for time.

CHAIR: We have a little morning tea break at the end so we can crib some of that. Can you lead on title first?

Mr CAPPIE-WOOD: Yes. What part of titling would you like me to address, given that it is a vexed issue?

CHAIR: The overall question we have asked is: What is the department's view on the appropriateness of transferring title to non-government bodies or providers? Our second question relates to the evidence we have heard as to whether or not an in-between step is transferring title to some non-government body on behalf of all community housing providers. As you are obviously aware, there are a lot of people in the community housing sector who believe that title should be transferred.

Mr CAPPIE-WOOD: Yes, and for a variety of reasons, and they are not all the same. It could be broadly split into three broad arguments for transfer of title—one from the co-operatives, because that was the original concept of an equity transfer; the second was to secure the properties as a means of borrowing; and the third was particularly in relationship to partnerships, and this is particularly the case with churches as a question of how you change the titling arrangements there and recognise amortisation. Each of those has different responses to them. Perhaps the broadest one which was the question about transferring titles as a means of borrowing, effectively if we have the current rent policies as they stand no-one can afford to borrow anything.

In fact, I think people should be taking debt off the housing system because there is just not enough money to sustain borrowings. However, if the community housing sector, which does have the capacity to attract Commonwealth rent assistance, which the public housing sector is not entitled to do at the moment, there is the capacity to take that additional rental stream and to effectively see that as being able to build up a surplus in terms of being able to support some form of borrowings, and the properties were seen as a means of securing the borrowings. When you take it all away, I suppose that was the underpinning opportunity. We are all looking for, if you like, the magic solution about how you grow the social housing sector, both community and public housing, without additional at least State outlays.

In this particular circumstance the capacity to look at means of capturing Commonwealth rent assistance or even other issues about changes to rent models that might see a component of mixed incomes coming in there as well, still affordable but an element of mixed income—in other words, could you grow sufficient additional dollars in the nature of the rent policies to be able to support

growth? Certainly, it is something that all State housing authorities around Australia are currently looking at. There is no model on the table from the community housing sector to prove this hypothesis. It is something which we are looking at currently at the moment in terms of the nature and structure of how we could look at a specialist non-government housing organisations to be able to achieve this holy grail.

But it is fair enough to say that until such time as there is a regulatory framework matched to a model that is shown to be able to support some growth—and it is not huge growth; there is not suddenly an amazing amount of money there—you would have to say that transfer of title is not first priority. The first priority would be a regulatory system that gives confidence into not only the tenant base, government, but the community generally. From that, is there a funding model for social housing, including community housing, which might enable growth? If so, how is that growth secured by borrowings? Is the borrowings best by transferring title or are there other options? I think that goes to your second question: Is there an intermediary issue?

At the end of the day, unless you have a very secure regulatory model, if things go unintendedly bad, how does government secure its investment? That is what it comes down to: How does government secure its investment, which is effectively in the properties, and the properties are outside the control of government? That becomes an interesting issue. If you hand over titles individually, that is a problem. If you hold it over collectively, what is the capacity to ensure the Government's housing outcomes and prior investments are not lost. That is something that would clearly have to be structured into any consideration there, if that was being able to secure the property as a means of increasing borrowings to grow.

On the question of the churches' amortisation, we have certainly had some discussions with them and want to explore that further. The current titling, which is common titling between two parties in the partnership where the churches might come with land or money and we might put land and money into it as well so there is literally a partnership for housing outcomes, how does each party secure its investment? The churches feel somewhat reluctant to have the current joint titling arrangements and would prefer an amortisation. If that is a recognition of investment in terms of being able to cover the depreciation on built assets, I think that can be built into the operating nature and provisioning for that rather than necessarily diminishing government's investment in those partnerships, which can go up to 80 per cent but if that is amortised over time that diminishes over that period of time as well. I think there is capacity to change titling arrangements to overcome the churches' reluctance around partnerships and that could be by other forms of titling, a non-recourse mortgage and other forms of joint titling other than what they necessarily have objections to at the moment.

Co-operatives in terms of transferring title as an equity arrangement, I think I would prefer to see—and it is a personal view—and explore where that might lead to. If they see the opportunity to be able to provide surpluses then that might be an acquisition issue rather than necessarily title transfer. But there is the capacity to explore a range of these three approaches. The most interesting and exciting one for us is to explore other funding models and where that might lead to and the capacity for the social housing system as a whole to look at means of being able to sustain sufficient income through Commonwealth rent assistance or even elements of mixed income to be able to say there is a capacity to be able to grow this housing system, because all other forms of funding are shrinking and that concerns us greatly given that demand is not diminishing. Titling is obviously an interesting issue in that but titling is only an element towards securing the additional funding and there may well be opportunities within that to explore further.

CHAIR: I think you said at one stage that a change with title would depend on the strength of the regulatory system that was in place, or obviously there would be strong implications. Would it be necessary for a completely different sort of regulatory system if changes were to be made in respect to title?

Mr CAPPIE-WOOD: I think we would have to go to envisaging what would be the circumstances if title had transferred and the Government's risks were then being exposed in terms of prior investment in housing outcomes. If there is just a contractual base is that necessarily sufficient to be able to say if parties—I am extending here a bit—then chose to ignore government's contract but they still held title to what was prior government properties, does government have any lien on those

properties? That might be a titling arrangement or something of that nature where if all things fail how does government secure its housing outcomes and its prior investment? It just goes to that. It is not that the transfer of title is completely out of the question; it is about how does government secure its outcomes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: You talked about amortisation and said that the Government might put in 80 per cent and that would go down with time. Does that effectively mean that the Government puts in the deposit and the capital gain goes to the corporation? That is the way I read it. It would be pretty good if somebody wanted to get into land speculation.

Mr CAPPIE-WOOD: The nature of it would be that a partnership, a particular church group, might come forward and say they would have land or capital—traditionally it has been land that they might have surplus—that they would like to put into an affordable housing partnership with the department. If the total cost of that development was \$1 million in nice round terms and the land was \$300,000 or there is a 30 per cent investment in that, et cetera, there is a question about being able to amortise the department's capital injection over time by the churches such that effectively the total value of that investment would transfer through amortisation through to the churches over a period of time. Clearly there is an issue there about how government secures its long-term investment for housing outcomes.

It may well be that that \$1 million has produced 20 to 30 properties, therefore government theoretically, if it was a 70 per cent injection, would have 70 per cent allocation rights to the houses that were produced. That would diminish over time through amortisation. Clearly, there is an issue about the churches not wanting to have joint title but to have title solely to themselves. How does government secure its housing outcomes and its capacity to ensure that it is not losing its long-term investment in these areas over a period of time? There are ways around this that would be able to secure government's long-term outcomes and still meet the capacity for churches to enter into partnerships because it is a good source of joint working. There is a capacity to work through joint outcomes.

The Hon. JAMES SAMIOS: In relation to your borrowing capacity, surely the moving of title seems to be about the simplest method. Would you be able to control that by lodging caveats?

Mr CAPPIE-WOOD: Caveats, forms of mortgage and other aspects of that nature, but at the moment there is not a proved model to support that. We are all looking into that but there is no proved model to show what is the form of rent structuring? What is the form of borrowing to be able to support that? What are the risks associated with borrowings? What is the Government's risk sharing within that? What are the means by which government would be able to secure those assets? If, for instance, a group would have title but a mortgage on that and they want to go to the local mortgage lender and say that they can secure the borrowings by these properties, will that titling, be it caveat or otherwise, be secure enough for government or for the lender? We have to look into all of those things. There is some very fertile ground to look into that. It is work in progress rather than just saying "No." If you ask me, "Are we ready to start transferring title tomorrow?" The answer is "Absolutely not" because there are a number of precursors to get right.

CHAIR: What about framework?

Ms READY: We will send the committee some documents which will fill you in. I have some overheads and I will point out some main points. Over the past 12 months the office, in a joint project between the department and the sector, has drawn up a steering committee drawn across the sector. We have seconded staff from the federation to work with us on this project. The aim was to clarify the requirements into the future for measuring and reporting about performance and how to facilitate improvements in performance. We have a set of proposals about how we are going to do that which is generally agreed to by the sector because it has been a part of the development of those proposals.

Clearly we have to come to the final decisions about it, and there are further consultations to be held. This work has been vital towards developing within the sector and the department an understanding of what we are looking for, what we want to know about the sector, how are we going to make judgments about performance and what we are going to do about it. It clarifies a lot of the

difficulties that we have previously had when we have gone out to attempt to address performance issues and also for organisations and for the boards of organisations to be able to make their own judgments about performance as well, and to compare that performance across the sector. It is framework that pulls together some of the tools we already use but in a more comprehensive way so it clearly shows how they all fit together.

We want to look at performance in terms of the outcomes for clients, the outcomes for people out there that are housed, the outcomes for government for the money that we have spent, and the outcomes for providers in meeting their own goals and directions. We think that by bringing this performance management framework together and using the information that comes from such a framework, the strategic directions of the whole sector can be clearer and organisations can look towards those objectives and know about their capacity to meet the objectives. The framework is from a situation where we had a lot of lack of clarity about the role of the Office of Community Housing [OCH] within the Department of Housing, about the role of organisations to one where we have significant clarity and agreement about how things will operate and is a major step forward.

The fact that it is being worked on together is really the most positive aspect about it as well. The performance management framework will focus on outcomes, that is what we want to know. What actually happens out there for people and how good or poorly serviced is it? That will be the focus. We will also be able to have some flexibility around innovation and funding. The framework aims to make everything transparent so that a certain set of circumstances will lead to a certain decision. It is not that it depends on the particular officer or board and their interpretation of what is going on in organisations. Once we have a comparable set of data and understandings about how that data is used then action becomes more simplified. People understand where action will take place and they understand also where performance needs to improve. It is a tool to use to not only recognise those performances that are going well but also to talk to organisations that are not performing well.

Part of the framework is the tiering of registration, that is, where we bring in the framework, and also the tiering in terms of reporting levels. We will have what we consider as three levels of reporting. The first level is basic reporting which will comprise annual data collection, data against a small number of key performance indicators and focussed on service delivery outcomes. This will typically be the sort of information that we are going to require from small co-operatives or perhaps church-based providers. Some of the reporting that organisations currently feel is onerous might go away but they will be replaced by something that we will feel is meaningful for the level of risk and the level of resources that we have in that organisation.

The second level is standard reporting which involves the annual data collection and data that provides information of at least one key performance indicator across a range of outcomes. We want to know about more performance indicators, and an increased emphasis on indicators of corporate governance and viability for the organisation generally. This might be for providers who do not currently receive funding but might wish to pursue that or might wish to pursue growth in what they are doing. The final level is a comprehensive monitoring and reporting system for the larger providers that manage the multi-program funding with complex financial arrangements and those that receive recurrent funding, that is, the leasing subsidies. It will involve quarterly data collection, reporting on all key performance indicators across outcomes, information generated against business processes such as accreditation or best value inspection. We want to know more about where we have more risk and we want to remove some of the onerous reporting for organisations where there is limited risk, but still be able to know how well they are performing.

CHAIR: Is that pilot under way now?

Ms READY: Yes, it is. The pilot is across the ten organisations. We actually had more organisations that wanted to do the pilot than we had places to offer, so we thought that was a positive sign. Many organisations were interested in being involved in the pilot. The pilot is operating from July to December 2002 so we will begin analysing information from that early next year. We hope to have the performance management framework fully in place by the end of 2003. There will be information for the Committee to read that will put all of that into perspective.

Document tabled on motion by the Hon. Dr Arthur Chesterfield-Evans.

Ms MILLS: Earlier a comment was made about documents that we might make available to actually to put it into context. In addition to those there have been a number of documents that have appeared since we first put in our submission in January/February around regulation from the Community Housing forum, the federation and others. There has also been some work on titling done by the Churches Community Housing. As part of actually explaining the framework material that we will provide, it is important also to provide some contextualised responses to those documents as well so that that assists the panel to see where the performance framework fits in. There is a question about who is the regulator? This inquiry is specifically about CSHA community funded community housing, and we clearly have a view on that, but we are also trying to create an environment where this could work for a non-CSHA funded environment, if that were the model we were heading toward. I think we would like to take the opportunity to clarify that a little after the hearing.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: When you say "contextualised", does that mean specific? This is sort of management worthiness, if you like, but where do the actual dollars go? What model and what sort of contracts are you looking at? It is all managerial and theoretical at the moment. In practical terms what do you ask?

Ms MILLS: That can be provided through the pilots because the pilots have been chosen to pick the different layers of the framework and the kind of information that is being asked of the people in the pilot would give you that advice.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Are these contracts?

Ms MILLS: They will lead to contracts. During the pilot phase it is an agreement to conduct a pilot around the framework. Part of our reform is if these frameworks are successful in the pilot and endorsed they become part of the regulatory framework that takes us away from the reliance on a fairly unsophisticated funding agreement toward a much more specified joint contractual obligation relationships through this framework.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Presumably if you lack the regulatory framework from the Government, you will simply say, "You will get this money, provided you do this, this and this and meet these benchmarks"? Do you want to put that from a framework in which the sanction you had was to take away the money to a framework set by Parliament and regulation into which you both subscribe?

Ms MILLS: Yes.

CHAIR: We do wish to acquire those documents. What is the status of negotiations with the Commonwealth over the next housing agreement?

Mr CAPPIE-WOOD: Just very briefly, a verbal offer has been provided to the State and Territory Housing Ministers late last month. We are now waiting the formal transmission of an offer. That letter should be arriving fairly shortly. We will have to look into that. Unfortunately, we are seeing a reduction in funding. There will be \$100 million less in the Commonwealth/State Housing Agreement next year as a result of a reduction in GST compensation. The offer is for moving it from four to five years which is an advantage and there is some indexation in there, almost still with the 1 per cent productivity saving. We are still limping along, and that is why the exploration of other forms of making the housing system not only sustainable but potentially able to grow is one of the major issues before us. That opportunity may well rest in the community housing sector, hence having a regulatory framework that gives us framework and a platform with which we can move forward, you would have to say, is one of our primary objectives because from that many things can flow.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: In the disability sector the Commonwealth agreements were fairly vague which led to immense difficulties with the Social and Community Services [SACS] award when the undertaking to meet rising prices was linked to a funding agreement which did not bear the relation to the rise in creating the SACS award, and there was a big fuss. It was put to the committee that the Commonwealth/State agreements are very vague and philosophical. What you say does not fire my confidence in any way. Is there likely to be a more rigid formula which relates to realistic parameters coming out of this or are you not hopeful?

Mr CAPPIE-WOOD: There is still intended to be a multilateral agreement which is unlikely to specify the level of detail to which you referred. There will be a multilateral agreement that is signed off by all States and Territories and the Commonwealth and there will be a bilateral agreement between each State and the Commonwealth. Those agreements will be specific in relation to the housing outcomes for each State or Territory. We will then try to clarify any outstanding issues relating to the application of housing outcomes. The nature of the funding offer is yet to be fully specified. The Commonwealth Government has indicated that there are some things it would like to see changed, but it has not yet specified what those things are.

Between now and February-March we want all States and Territories to have signed the multilateral Commonwealth-State Housing Agreement which will be implemented at the beginning of the next financial year. So we can at least use the last three months planning for the future. Between now and the February-March period a fair degree of time and effort will be put into it. All States and Territories will work with the Commonwealth Government to reduce any uncertainties. It does not guarantee anything, but at least it will reduce those uncertainties.

(The witnesses withdrew)

ADAM FARRAR, Executive Director, National Community Housing Forum, Suite 626, No. 3, Smail Street, Ultimo, affirmed and examined:

CHAIR: In what capacity are you appearing before the Committee?

Mr FARRAR: As Executive Director.

CHAIR: Did you receive a summons issued under my hand to appear before the Committee?

Mr FARRAR: I did.

CHAIR: Are you aware of the Committee's terms of reference?

Mr FARRAR: I am.

CHAIR: The Committee has received your submission. Do you wish it to be included as part of your sworn evidence?

Mr FARRAR: Yes.

CHAIR: Did you receive the questions that we thought would at least provide us with a guide this morning?

Mr FARRAR: Yes.

CHAIR: Would you tell us about the National Community Housing Forum?

Mr FARRAR: I suspect that, at the time we made our submission, the two reports that are attached to one of our projects on regulation had not been published. I have brought copies of those today.

CHAIR: The Committee will include those reports as part of your submission. Would you like to tell the Committee about the role of the National Community Housing Forum?

Mr FARRAR: Certainly. The National Community Housing Forum, as the name suggests, is a national agency. It is core funded by the Commonwealth Department of Family and Community Services but it has a membership which includes the government administrators of community housing in each State and Territory, the peak industry bodies for providers in each State and Territory and a range of other relevant stakeholders, for example, the Aboriginal and Torres Strait Islander Commission, the Australian Local Government Association and the churches community housing network.

If I could put it broadly, its role is to try to assist in the most efficient development of community housing in Australia by overcoming some of the duplication that exists in any Federal system by creating opportunities for shared activities, particularly research and development between jurisdictions and between providers and other stakeholders and to spread, as far as possible, information, particularly about emerging issues, so there is a clear understanding amongst all stakeholders about what those issues are. We do that in a couple of ways. We run a series of national seminars. The most recent of those, for example, is one that was conducted in partnership with the Australian Housing and Urban Research Institute [AHURI], hosted by the National Australia Bank. That forum was on private financing of social housing.

So there has been a range of those sorts of expert seminars. We also have a stakeholder seminars policy advisory committee which has a representative mix of all the players in the community housing sector. We also play a role in trying to ensure that the kind of research and development that is undertaken in the housing system is undertaken with at least a view to community housing as well as other parts of the system. We provide advice to AHURI, for example, on research priorities but we are also an associate of AHURI through the Sydney University Research Centre. So when there is an opportunity we actually undertake research.

I guess a good example of that would be the current research project that we are undertaking as an AHURI-funded project, which is on the stakeholder requirements of an enabling regulatory framework for community housing in Australia. I might say a bit about that later because it might be of some relevance. We also try to provide information to make sure that the evidence base is robust. In that capacity we are an observer on the National Data Development Committee, which is part of the housing Ministers advisory council set of committees. We have observer status to ensure that community housing is represented on that.

We also provide secretariat services to a number of national bodies. For example, the Commonwealth-State community housing officers have a network, and we provide secretariat services to those. We do that also for the local government housing network. We initiated, and now provide, secretariat services to, the National Accreditation Council and the National Awards for Best Practice. That is the sort of flavour of the organisation.

CHAIR: As you know, the Committee is currently concentrating very much on the regulatory framework in New South Wales and steps towards developing a full regulatory framework. So we are very interested in talking to you about your picture across the nation. So our next question is focussed, firstly, on the broad principles that you believe need to underlie an effective regulatory framework; then, following on from that I hope, regulatory systems in other State or jurisdictions that you believe are effective, and what makes them effective. Firstly, could you address the principles that we need to have behind an effective regulatory framework?

Mr FARRAR: I would like to think the answer to this was short and snappy, but I will give a little bit of background to what I am about to say. Part of the research project which I have given you the reports from—which was a project jointly funded by community housing administrators of the five eastern States—involved looking at some of the literature around best practice and general trends in regulation; that is, not just regulation in the social housing or community housing, but regulation in general. So some of what I am about to say is drawn from that and some is drawn from work on international surveys that we have been doing as part of our current research project.

The first broad principle which I think is informing almost all work around performance management, whether it is regulation or just other performance management systems, is a trend to try to ensure that any arrangements that are put in place strike an effective balance between accountability on the one hand and ensuring that you enable innovation; that is, that regulatory systems do not constrain innovation and flexibility in the industry that they are regulating. That balance, I think, is really crucial. It is particularly important for community housing because its value as an alternative provider is its flexibility and its capacity to innovate. The history of the social housing system over the past 10 or 20 years has been that a lot of the innovation that came through the non-government sector has been taken up in public housing as well. So, if one constrained the innovation, one would lose the value in effect.

The second, pretty crucial, one is transparency. That covers quite a range of elements. But one of the most important is that any regulatory framework is only effective if it is very explicit about its objectives—both its objectives in terms of what it is trying to regulate, but also its broader policy objectives. Unless there is some clarity about what the system as a whole that is being regulated is trying to achieve, and how regulation enables that, then the regulation runs the real risk of being disproportionate and closing off innovation, therefore not meeting the objectives that one wants to achieve from the whole system. I think we have seen some examples of that in the history of regulation in Australia. Good practice might well be the regulatory arrangements that were introduced in the United Kingdom, mainly as part of a major policy shift to transfer responsibility largely from local authorities to housing associations, but also to raise private finance. So specifying the objectives is a crucial part of transparency.

The other parts of transparency are making sure that all of the players in the system understand, and have ownership of, the regulatory objectives and the mechanisms. That involves ensuring that there is robust consultation, joint ownership of the objectives, and some really clear processes to make sure that those who are regulated understand what they are being required to undertake. So I think transparency is very crucial, particularly regarding the point about objectives.

A third, really crucial point is accountability. That is accountability, obviously, of the industry being regulated. That is the point of a regulatory framework. But it is mutual accountability. Explicitly, that means being able to ensure, for example, that there are adequate appeal mechanisms so that the regulator is accountable for its regulatory decisions. I guess, more broadly than that, I could reflect a little on some of the work I have just been doing. Some of the stakeholders that we spoke to in a recent work included central agencies in a couple of jurisdictions—not New South Wales, I would have to say, because it is impossible to get an appointment. But a couple of other jurisdictions expressed a general caution about regulatory systems becoming overblown—a tendency to develop and expand, and continue to expand. So, accountability means making sure that the regulatory system itself is reviewed and that its purposes are kept in focus.

The next, really crucial element is proportionality. That in effect means you regulate in proportion to the risks. That has been a major shift away from black-letter regulation to outcomes-focused regulation that really looks at what you are trying to achieve, what are the risks, and does not regulate beyond what is required to manage those risks. That includes doing quite clear cost-benefit analyses, because there could be a risk that the cost of regulating is greater than the potential cost associated with the risks themselves. So it is very important that there is proportionality in any regulatory system.

Consistency is a really important element of any regulatory arrangements; that is, to make sure that it is consistent with existing regulatory practices, unless you have a very clear desire to change that and it is quite transparent; and that it is consistent with other legislative or regulatory arrangements that might impact on the industry being regulated. In New South Wales a classic example would be making sure that one takes account of some of the inconsistent regulatory requirements, such as the current stock and agents legislation, and also making sure that it is consistent with other regulatory requirements, such as the Residential Tenancies Act, company law and so on.

It also must be enforced consistently, and that means that mechanisms for enforcement have to be able to ensure that they deliver their regulatory role in a consistent and transparent way. Some of these principles, which in the literature tend to overlap, are the fact that it is a targeted system, which means it is aimed at the risk but also that it is able to make sure that as those risks evolve, you are able to review the system and make sure it maintains effective targeting, and that one moves as far as possible towards a co-regulatory approach. Again, this was raised by some of the centralised agencies as well as the literature itself. By that I mean a trend that says in some cases that it might be desirable to get real ownership and flexibility, to have an industry that self-regulates, but I think we all recognise that self-regulation has very real limits and does not provide sufficient assurance to government or to any of the other stakeholders that have a real interest, and often not to the industry itself.

However, to the extent that one can negotiate in the process of developing regulation, the appropriate roles and responsibilities between the industry and government so that you develop a co-regulatory approach, then you are more likely to have real ownership, real flexibility and avoid disproportionate regulation. Two good examples are that the industries might, for example, have codes of practice which are part of their self-regulation that might well complement or be used as some of the evidence that goes into the government end of regulation. Another really good example might be around some of the measures that one uses in terms of intervention when, through regulatory arrangements such as the performance management framework, you have identified a risk and a need to take some action with an organisation. That action might be more effectively taken by industry peak bodies, for example. If this is negotiated and understood in advance, you have a more effective ownership and a more effective regulatory framework.

Another point I should mention, which is not quite so clearly captured in the literature on the principles of regulation; instead, it has come from recent research we have done in talking to a range of stakeholders, including providers themselves, is about establishing a regulatory arrangement that understands and respects the nature of the industry being regulated, in particular in community housing, the independent responsibilities of the organisations themselves. They are separately incorporated entities. They have their own responsibilities, their own governance requirements and they do the job they do because of their own mission. I use the language of "mission" because

although it is a bit theological, it comes from some of their church-based agencies and it captures the idea itself.

We have seen a concern expressed quite widely of a shift to treating a lot of non-government agencies, but community housing organisations as an example, as franchises of government—that is, "We develop the product. You simply deliver the product." That works to an extent but it has very real limitations. It does not create innovation. Ultimately, it is not sustainable because organisations under pressure have no reason to keep on doing the business. Unless they are doing it because of their own mission, then they simply will not continue to work. In the case of regulation, that is vital because inevitably regulation places burdens on any organisation. The greater those burdens the greater the risk that the organisations will simply pack it in, unless they have some ownership of their business and can see that it serves their purposes as well as government's purposes.

There are three places where that is really important. One is the broad philosophical area, which is a bit hard to pin down. The other two are concrete cases in that the regulatory arrangements, particularly performance management, need to assist organisations to manage their business and boards to meet their responsibilities. If you have regulatory arrangements that are program based and the organisation does a wider business than those bits that are funded by this or that program, then all the reporting requirements will be fragmented and it will not help them manage their business, meet the responsibilities and make sure it is vital.

It is crucial that the approach that is taken starts by saying, "We are looking at the whole of the organisation and what boards can use effectively to be better at their planning." The second aspect is around the viability of organisations. They have a responsibility to ensure that their organisations are viable. I will give one good example, which comes up in every jurisdiction and much of the literature, that is, around surpluses. Surpluses are an essential part of prudent management. If a business does not have sufficient surpluses to manage itself through peaks and troughs in its business, it is being imprudent and at risk of falling over. That would be bad governance and bad for viability.

If the regulatory requirements place undue controls over those surpluses and claw them back in the first instance, it will simply undercut effective organisations rather than improving their viability. The United Kingdom community housing association regulator, which has very rigorous ratios that they assess the risk of all their organisations against—and one is the size of their surpluses—gives a tick for having effective surpluses that will ensure viability of the organisation. In some States, and that includes New South Wales, there has been an interest in government in making sure that those surpluses are used for appropriate ends, but being perhaps overzealous in the way that they do that and undercutting viability. It is a long list of principles that I have expanded on a bit too far.

CHAIR: No, it is very useful in measuring what we have heard from other people, including the department and the Office of Community Housing. You would probably say that effective regulatory systems elsewhere are effective because they meet all or most of those principles. Can you give us indications of systems—and you mentioned the United Kingdom—that you believe are effective and relate those back to the principles you have mentioned?

Mr FARRAR: I would be happy to do that, particular in the case of the United Kingdom.

CHAIR: Or perhaps Australian examples.

Mr FARRAR: Perhaps even New South Wales. For the rest of Australia, it is difficult to answer the question as it is posed because I do not think we have any effective regulatory arrangements. However, it is interesting that some housing associations from Victoria have said that they find a lot of comfort in being regulated under company law, but I throw that in as an example.

CHAIR: We were looking more for Australian examples. We have a question later about South Australia in a slightly different context.

Mr FARRAR: I could point to a couple of things that are potentially valuable but you need the whole package. An effective framework that works together is the most important determinant of whether it is effective or not. Legislation is an important element and to that extent South Australia

has been fortunate in having community housing legislation. It is limited though, and this is an important lesson—and the same limitations have arisen in Canada in some of its recent regulatory changes—in that it defines the scope of the regulation in legislation as being limited to the funding arrangements through the authority that is both the funder and the regulator.

That means that it does not cover the full range of business. A lot of organisations increasingly are attracting funding through the South Australian Housing Trust but also through other kinds of businesses, and they are finding it particularly frustrating that they are reporting against only a part of their business. It means that the kinds of reporting systems, from the information technology systems up to governance reporting, are fragmented. It affects some of the infrastructure that has been put in place, for example, it has a body that pools funding for asset management but it only applies to that bit of the business that is funded and so it is not useful.

Legislation provided a really important enabling framework and identified some of the purposes of community housing in South Australia, but it was too narrow because it was limited to the funding streams. It was a strength but also something that one would want to guard against. There have been attempts in most jurisdictions recently to try to improve their reporting because it has been the experience that most reporting has been basically unused and unusable. Organisations put in reports, in some cases quite complex, administrators have no idea what to make of them, so they do not make anything of them. They are not used as guidance for identifying risks, so they are just a waste of time for everybody. That is something that I say with the authority of the administrators themselves, partly because they are part of our organisation but also because we explicitly explored that issue in some recent research.

My understanding is that best practice in Australia is clearly the performance management framework that is being piloted in New South Wales because that has now attempted to move from getting bits of paper in, to clearly identifying what are the risks, so that you can say, "The viability or the performance of this organisation is beginning to show some problems. How can we step in and manage those problems effectively?" If I could skip briefly to the United Kingdom. The thing that has made the United Kingdom a success—and one of the crucial measures of its success is its ability to support and enable private investment—is that since the Housing and Local Government Act in 1988-99, in the United Kingdom over £20 billion has been lent into the housing association sector from zero—from nothing to £20 billion over a period of about 13 years.

That is partly because the finance sector was prepared to enter the market and create a market because it was confident in the regulatory arrangements that applied to the system. The test of that is that not a single deal—and by deal I am talking about a mortgage—has fallen over in that 13 years. Organisations have run into problems and they have been assisted or restructured, but not one deal, financing deal has fallen over. It is the capacity to ensure that kind of outcome that you get from something like the performance management framework. Best practice is already here—well, almost here.

The Hon. IAN WEST: I am trying to come to grips with some of the terminology used, some of the rather nebulous words within the performance management framework project that is currently being piloted. I am trying to put into place your comments earlier regarding, on one side of the coin the issue of transparency and accountability and the policy objectives of regulations, and on the other side of the coin the words whose definitions are being used in this context that I do not fully understand—innovation and flexibility. Innovation and flexibility are in themselves noble concepts, I would imagine, depending on who you are talking to. I am trying to understand within the concept of the performance management framework project how much discussion is being exchanged between yourselves and the people involved in formulating the regulations on what it is that you define as innovation and viability and flexibility. That may assist us to come to grips with some understanding of what you would see as co-regulatory self-regulation.

Mr FARRAR: Okay. I guess, just one proviso. Our organisation has not been at all involved in the State-based work on that performance management framework so I am looking at it, if you like, from the point of view of research and looking at it nationally. Others will be up to talk about the precise negotiations that went into developing that. In principle, in innovation and flexibility, community housing organisations everywhere, but I guess particularly in New South Wales, are doing two things. They are trying to develop new aspects of their business. If I can give you two quite concrete examples. Increasingly organisations are acting as managing agents for other organisations

that have some housing but do not have the expertise. So, they are diversifying their businesses into being managing agents rather than just doing the straightforward management of public housing-type tenancies. That means that some organisations, say, in the disability area or the SAP area, now have access to professional housing management. So it helps that system and it also helps the financial structure of the community housing organisations.

A second would be getting into what we hope will be an increasing business. That is affordable housing, housing for households with slightly higher incomes but who are still locked out of access to home ownership. A really good example would be the problem we are having in New South Wales now, and in Sydney in particular, around key workers. Relatively low income workers in transport, police, nursing and teaching simply cannot live in Sydney because they cannot afford to and it is disrupting our whole economy. We need to find ways of housing them. Community housing organisations may be the right kinds of housing managers to deliver housing to that new client group. That is a second type of innovation.

The third really important area of innovation that comes out of the problems we have with the CSHA, that is the lack of funding, and we are not going to see any growth in CSHA funding in the supply of housing for many years, if at all, so we have to look at new forms of investment, private investment, to support the growth of social and affordable housing. Taking on that new kind of business, that is housing that is financed in part through debt or some other kind of private investment, is part of that innovation.

If you are going to do those new kinds of business, that creates new risks. Because all of those have some kind of public subsidy, it is crucial that government and the organisation and the community can have some assurance about those risks. The performance management framework provides, in a very transparent way, a way of identifying when risks to the organisational viability are arising, and it is because you have that framework that the organisations are able with confidence, and government is able with confidence, to explore those new businesses. So, transparency and a focus on the viability are preconditions for taking on new businesses, being innovative and being flexible. As long as the regulation is not in some sense so heavy-handed or so narrow that it stops the organisations managing well.

CHAIR: Is it possible for you to run through the most important issues facing community housing in New South Wales? Obviously we are aware of the fact that we do not have a full thought-out regulatory framework so we do not mean things as obvious as that, but things you might feel are issues here that have been resolved somewhere else. What would your list be of the most important issues?

Mr FARRAR: I am afraid the first is back at that high-level. What we do not have is a policy. I would have to say there is a lot of expectation of this Committee that such policy objectives will emerge that will guide what happens. But where we have seen a significant change in the way that social housing is delivered in other countries—the United States, Canada, United Kingdom, the Netherlands, wherever—it has been because there has been an explicit policy decision that says we know why, we want to shift the balance of provision from public providers to non-government providers. We know what outcomes we want to achieve and we have made an explicit decision to do it and to do it in a sustained and substantial way. That is what has been missing right across Australia. Over the past 20 years there has been quite significant growth but in the scheme of things it is a trickle. It is 0.4 per cent of all housing, which is not a big plan. So that policy framework is probably one of the biggest ways of getting explicit government decisions around the policy objectives for community housing and is fundamental.

The second is resources. It is absolutely clear that the CSHA, even with the slightly more generous offer from the Commonwealth, is not going to allow public housing in any State to be viable. Basically, we have targeted so tightly that the income streams from tenants are not enough to fund the operations of the organisations. As a result, all we are doing is eating into the capital. The CSHA is trying to fund what we have not funded through our core business. So, having adequate resources is crucial. We could have a policy decision that says the best way to do social housing is by expanding community housing, but unless there are some funding streams it will not be possible. That means looking at ways of accessing private investment.

It seems to me that every jurisdiction in most countries these days has taken—if I can say this with due respect—an ideological position that says government will not borrow to provide investment in housing. The reason I say it is ideological is that those assets are on the balance sheet so there is no problem about borrowing, from a financial point of view or from the point of view of fiscal responsibility, but around the world governments are reluctant to increase their borrowing so the opportunity to borrow off budget using non-government organisations provides a compelling case. But we need to put in place some pretty clear framework to make that happen. It will not just happen because we want it to. Providing the finance structure is important..

If we are to do that, the third thing is to make sure how that the organisation or financial structures support viability. At the moment, the way we structure organisations is pretty untransparent, pretty unclear and there are always risks to their capacity to continue to manage viably. One of the key issues is the way we have targeted tightly—and we have to because of the shortness of supply—not only those most in need but also those with least capacity to pay so we have undercut the income streams without being transparent about subsidies to make that viable. That is crucial.

The fourth area is building up the capacity of organisations. We have seen a pretty dramatic change in Australia over the past 10 years in the size and nature of organisations, from cottage industry into one that has a reasonable degree of professionalism. We are seeing organisations with executive staff who have strong management expertise, with boards that are highly skilled-based, but you could not say that is across the board. So, building that capacity remains crucial. Part of doing that is having the industry infrastructure. By that I mean particularly things like industry peak bodies, as any other industry has, whether it is banking or whatever, that provide resources to support and maintain the capacity of their members. That is pretty crucial.

There are probably some other things we could introduce, such as structures for volume purchasing, such as the body I mentioned in South Australia that provides volume purchasing and a pooled fund across the sector for asset management. Some of those structures could be useful. One might use those for holding title. That is another option and we see a couple of those, one in Victoria and one in the Australian Capital Territory, that provide some comfort to government as a volume business while allowing the local stuff to happen more flexibly. Some of that infrastructure is important.

I think government confidence is the bottom line, and that is where regulation plays a crucial role, but so does the confidence of other stakeholders—the finance sector, partners in joint ventures and developers, for example. There are a lot of development opportunities from the developer's point of view but also the things that public housing is undertaking at the moment, which involves a local community management strategy, which is far better managed by community housing organisations because they have the expertise in that area. We need assurances that will bring those other players into the industry so that it becomes able to meet public policy objectives.

CHAIR: Do most of those things you have listed apply to all States in Australia, perhaps in greater or lesser degree? You have not listed any that our only true of New South Wales?

Mr FARRAR: One of the big differences—and it is one of your other questions and I have not touched on it here—is the one around control over the assets, because that is the core of the business.

CHAIR: We can get to that now because questions 5, 6 and 7 are all, in one way or other, about the issue of title or equity in assets, and so on.

Mr FARRAR: Question 5 puzzled me a little, so can I reframe it?

CHAIR: Basically, I guess we are saying that if government is to keep title presumably your regulatory system would differ in some fairly significant ways from what would happen if government were not keeping title. We then get onto the question of your organisation's support for title being given to housing providers in certain circumstances.

Mr FARRAR: I will comment briefly on the first point by relaying a comment by the manager of regulation in the United Kingdom Housing Corporation—I was writing that part of the

report this morning so it is fresh in my mind. She said that when housing associations were 100 per cent grant funded—which, in fact, is similar to saying when, as in New South Wales, nearly all funding goes into delivering some assets that are not used flexibly and do not involve any external investment or private investment—there was very little to do because the risks were pretty minimal. It was her view that the risks were relatively minimal because the business was one size fits all. But as soon as you started bringing in other investment the regulatory arrangements had to change fundamentally so that there was much clearer focus on financial viability and good financial knowledge. It introduced a range of financial ratios and had to provide comfort to a wider range of stakeholders. That is one of the significant differences.

In terms of the broad question about the need to transfer assets, historically there are a couple of reasons for talking about a transfer of assets. One of them does not really mean a transfer—it was a transfer in name only. It basically said "You have access to the management of what had previously been managed by public housing authorities" but the assets stayed where they were. That is basically what we mean by stock transfer in New South Wales today. It was basically saying that we are not changing the social housing system or growing that system but we are trying to get some of your capacity to be a bit more flexible in a range of areas, such as allocations, and build up organisational skills. That was an important developmental stage but it did not do anything about increasing the total pool of assets.

A second reason that you might be looking at, in this case, a change in the way that assets are used is to provide organisations with more effective control over them—I explicitly use that word rather than the "transfer of title". The issue is about what you can do with the assets not about the title per se. However, if you want to get any benefits out of a non-government system, it is crucial that it is able to manage the core part of its business, or one of the core parts of its business—its assets—effectively. For example, if needs change you want to be able to reconsider your assets to meet those changed needs. If the assets need reconfiguring or simply have to be improved because you have to manage them over time it is important that you can do that as effectively as possible. So you need to control the ability to do that.

Then we come to the controversial part: how you can manage those assets to enhance, and preferably increase, their value and use that value to lever additional resources into the system. That is where I think the issue of title comes into play because, with the best will in the world, you cannot borrow unless you have some interest in those assets. I think we will need to borrow for that reason, and that reason only. We specifically need to see a transfer of title. For anything else we could have arrangements that provide effective control and the title could sit anywhere. I think that last reason is pretty crucial.

The Hon. IAN WEST: I am looking at the other side of the coin in terms of the decrease in the asset value and, for some reason, a reluctance or inability on the part of the controller to maintain the quality of the product.

Mr FARRAR: That is absolutely the other side of the coin that must be balanced. That is why we must have a regulatory arrangement. We have a history of assets being transferred to non-government organisations in the past and exactly what you have said has happened. It is not acceptable to repeat that history. The crucial question is: How can government ensure that those assets are managed appropriately at the same time as creating the capacity to use them more effectively? I think there are a couple of answers to that question. One is simply to have a very clear system. In the past it has basically been totally arm's length: there have been no public policy objectives, it has just been, "Over to you; do what you like".

The first thing is to grow organisations that have a real sense of partnership with government—that is, we are all trying to do the same thing. They have as big an interest in maintaining those assets as government does. The first thing is getting ownership and partnership. The second thing is to ensure that you have a way of telling when something is going wrong—when the value of the asset is being run down. That is where some of your risk management frameworks must come into play. You must be able to monitor what is happening with those assets. That needs to be a part of the regulatory framework. I guess the last point is then some assurance about the use of the asset. Ultimately there must be some control to make sure that organisations do not go feral and sell off farm. I think government needs to know that that will not happen.

CHAIR: Points such as these are one of the reasons we specifically ask, in question 6, about the positive and negative impacts on different groups. For instance, is transfer of control likely to be good for tenants or could it have a bad impact? What about particular sorts of groups who are highly represented in social housing, such as people with a disability or a mental illness?

Mr FARRAR: I will return later to the question of what is the best way to secure the ultimate assurance that we will not sell off the farm. In terms of those lists, for tenants as a whole it is certainly in their primary interests—you get this from all the tenant satisfaction survey work—to have access and to have maintenance done properly. We hear that time and time again. The closer the housing manager is to control over the asset, the more timely are repairs and the better and more responsive to tenants' needs you can be. From the point of view of tenants, there is a real strength in transferring control of the asset to the housing manager. Exactly the same strength applies I think to access to housing. When there are unclear arrangements and rights and responsibilities—as occurs in some areas with complex nomination rights—you are more likely to get bogged down in red tape and therefore it is more likely to be frustrating for tenants in terms of allocation. I think it is relatively neutral but that is just a risk that you need to manage. The main point is the capacity to do good, timely maintenance so that tenants have the right standard of housing.

CHAIR: Could tenants end up paying higher rents?

Mr FARRAR: This goes to the spectrum from control to what you are doing with it. It is absolutely the case that there is a risk with private financing that tenants could pay higher rents in order to finance those borrowings. But the answer lies entirely with government. Government can control that by deciding that it needs to get private investment, ensuring that the subsidy structure is such that tenants are not penalised and then making sure that the discretion around rents does not exist. In the United Kingdom, for example, the experience was that the public policy was to get in private investment and to transfer stock to housing associations. That was clear and explicit public policy. They underwrote the cost to low-income tenants by having a housing benefit that was completely open-ended—that is, it met the full rental cost for low-income tenants. But it did not do that for tenants on moderate incomes so there was a mix of public investment and private finance.

Housing associations bid for the public investment by saying "We'll borrow more so that we can win this tender because it won't cost government as much". They won the bids by getting more private investment and therefore pushing up the cost of financing it. That flowed through to those tenants who were not protected by housing benefit. Recently the United Kingdom Government said that is not acceptable and it is now phasing in a rent policy that will prevent that from happening. Basically, it means that the public investment share goes up and the risks around private lending must be managed more tightly—that is what the lenders are saying.

CHAIR: Are those things much harder to adjust in Australia, with our Federal system of government and the considerable temptation to cost shift?

Mr FARRAR: Absolutely—that is certainly the short answer. Any development of private financing models should be done in partnership with the Commonwealth and it must take account of rent assistance. Ideally, we want to see rent assistance restructured.

CHAIR: Particularly given the housing cost differential between Sydney and the rest of the nation.

Mr FARRAR: Yes. Those policy levers may be a little more open to negotiation at the moment than at other times but they are not in the hands of the States at this point. In a sense, one is working with the existing framework. Our rent assistance is not a very effective income subsidy and it has to be supplemented. If the State wanted to go it alone on private financing it would have to have some other kind of subsidy stream to make sure that tenants did not bear the cost. You must have that rigorous and transparent subsidy stream to support it and you must have a regulatory arrangement that ensures that providers cannot just set any old rent they want to. That is pretty important and clear.

In terms of the housing needs of people with complex needs, the experience is that the more control you have over the design of the housing and the ability to configure it to meet the needs of

people with complex needs, the better the outcome for them will be. The capacity to have some control over the physical design will produce better outcomes for disadvantaged tenants. That has been the experience everywhere. In terms of negative or positive impacts for government, the positive impact is that it will enable an expansion in social housing that may well not be enabled otherwise. That is a pretty positive impact. The negative impact is that government will have to use indirect means through regulation, rather than direct means through doing business itself, to use its current assets and investments to meet its policy objectives.

It puts some policy at arm's length but, by the same token, the trade-off is that you get more investment and more innovation and, with a reasonably robust regulatory framework, you get all the assurance you want. Clearly, community housing providers will be able to do their business as effectively as they would like only if they have more effective control. They will be able to grow only if they have access to alternative financing sources—and, again, I think that requires access to title. The bottom line is: How can government be assured about those assets while at the same time transferring title or control to providers in other ways?

CHAIR: We spent a little time this morning talking to Andrew Cappie-Wood about the situation where there is a partnership in financing between typically a church, which may provide the land, and government, which may then provide the money to build a certain quantity of housing on it. Obviously, there are issues that then arise about the long-term future of those projects. Do you have any particular comments to make on the issue of the title? Is it easier or harder to change the way those arrangements are legally done?

Mr FARRAR: I think it is clearly harder because you are bringing in other partners who have a direct interest in the assets. Often, in the case of churches it is not just a direct interest; it is also—again going back to the notion of a mission—they have a duty and see that those assets are held in trust. So if you want to get a win-win—and I think we do—then like any negotiation, there are some compromises on both sides. The sorts of arrangements that have been reached in places like South Australia involve that kind of win-win, that is, they allow the use of those assets to be specified as social housing for a particular period of time. After that period of time the organisation can choose to buy out the Government interest, if it wants to do that, or alternatively it can roll the arrangement over.

In that case, then that government interest is amortised over I think it may be another 10 to 20 years. In effect, the Government does not really lose because it would be, in any case, having to finance the upgrade of the assets after 20 to 40 years. It would already be reinvesting quite heavily. So to transfer the ownership of the asset back to the partner is not a loss overall to government and getting that initial access to church resources in the first place is a pretty good win-win for everybody over a considerable length of time. In some senses it is not much different to the kinds of arrangements that we see being talked about through the affordable housing research consortium which has a bond issue that would see the stock sold off over a period of time. It is basically saying you get a benefit for a period of time, you pay for that benefit but you do not have the benefit forever. There would be a cost in having the benefit forever anyway.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Picking up your point about ideology, if you borrow and have assets, most people would say that that is a neutral situation. So part of the driver for this is simply the ideological position that although we have assets we may not borrow because somebody said so. I do not know if it is the international banks or the government being timid or what, but you would say that partly all these difficulties in regulation are to get innovation but, rather, the main driver is the ideological position that governments may not borrow even if that borrowing is to be done against existing assets or assets that are purchased which hold their value.

Mr FARRAR: It seems like the bottom line to me.

The Hon. JAMES SAMIOS: Earlier in your discussion you spoke of the \$20 billion spent in the United Kingdom over 13 years. Is that correct?

Mr FARRAR: Yes, invested by the private lenders.

The Hon. JAMES SAMIOS: You are saying that that method of financing community housing in the United Kingdom is very similar to our financing of tollways and tunnels.

Mr FARRAR: Yes.

The Hon. JAMES SAMIOS: The Government is not really putting its hand in its pocket but is guaranteeing private investors. Are you saying that that would be the *modus operandi* here?

Mr FARRAR: There is a slight difference. In the United Kingdom—in fact, this goes back to the regulation—they do not guarantee the return to the lender. In Canada it in effect does because the Government has established market insurance and then it stands behind the insurance, so it does in fact underwrite the returns to the investors. In the United Kingdom they do not but what they do through the regulatory arrangement is provide such confidence that nothing will fall over—and I would have to say that previous history of housing benefit provided something of a blank cheque which helped—that lenders are prepared to go into and create that market.

On your general point though it is interesting that lenders in Australia are increasingly saying that, although we are talking about mortgages, it is not like a traditional mortgage. It is much more like an infrastructure lend, that is, we would never want to step in; even if the deal fell over we would never want to step in and reclaim the asset because just in terms of public relations putting social housing tenants out into the street is not a very good look for the banks which are already very sensitive about their public image. So they are saying they would never do that. They see it as much more an income stream lend and therefore much more like an infrastructure investment.

The Hon. JAMES SAMIOS: There is a difference, is there not? The United Kingdom is more like a PPP situation, a public-private partnership financing.

Mr FARRAR: It is more like a large-scale traditional mortgage than a PPP but over history it has shifted from being totally just slightly bigger mortgage arrangements to being highly sophisticated, the cost of funds has come down from being about 2 per cent above the prime rate to being 0.5 per cent above the prime rate and they are inventing new products all the time so there has been a lot more sophistication. But it is still seen as a mortgage market. There are some bond issuers in the United Kingdom as well that parcel up funds and distribute them. There are probably a bit more of the bond issues going to the finance markets directly.

CHAIR: There may be a yes or no answer to question 7. The community housing organisations you mentioned that have been able to leverage funds on the basis of equity they have in their stock, has this occurred in New South Wales?

Mr FARRAR: My understanding is that it has happened in a couple of tiny cases, and we are talking about a dwelling. So in any significant way, no. In principle, yes, you can see just enough on the ground to say it can happen. In Victoria there has been some substantial, particularly a disability organisation that is quite large does quite a lot of that kind of work but not much in New South Wales.

CHAIR: Our next question relates to the South Australian model which you have talked about in your submission and in a number of the organisation's publications. What else do you want to tell us?

Mr FARRAR: The short answer to A is no. The debenture arrangement in South Australia is basically structured so that the title—this goes to the point about why title is not always the answer to anything—sits with community housing organisations. Hopefully, it gives them a sense of ownership. They can never hold equity even though they have title because they can never repay the debenture. It is structured in a way that that does not happen, which means they can never use their equity to raise any further finance. So the answer is no, that structure does not deliver anything in terms of additional finance.

CHAIR: Would that be an issue in New South Wales? For instance, earlier this morning we heard a great deal about the level of debt that the public housing sector in New South Wales has and

that if the title was to be transferred essentially the relevant proportion of the debt would have to be transferred with it. Would that create similar difficulties?

Mr FARRAR: It would not be the same thing because in South Australia it is the structure of the debenture which simply cannot be repaid so the amount that they are paying back will never in principle repay the debt. In New South Wales—and I am now commenting very much off the top of my head—obviously the risk increases the more debt that goes with the transfer and the problem with social housing debt in Australia is not that there was debt. That is not a bad thing. A reasonable gearing ratio—again, if I can go back to the United Kingdom housing associations, they are geared to about 31 per cent at the moment and that is seen as being a good financial ratio. But if you do not have the financial structure of your business structured to meet that gearing requirement, then obviously it is a problem.

What happened in social housing in Australia is that the policy changed so that what was sustainable stopped being sustainable and the policy change was targeting which meant that the income streams which once very comfortably were able to make the debt repayment, the debt servicing cost, the income streams dropped through a policy change which meant that for some reason which is beyond me no-one said we are changing policy on the income streams, will this not have an impact on our capacity to sustain the debt we already have? So if you get the financial structure of the business right, there is not a problem with carrying some debt. If you take too much of it over in the first place then there will be no capacity to gear further and that may well be a problem.

CHAIR: So it is another sense in which the title may be there but not enable you to seek private investment.

Mr FARRAR: Yes.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Have the rates of inflation impacted on that very much? Has the rate of the rise in housing prices changed? Has that been relevant in that imbalance? Has the housing percentage rise per year increased?

Mr FARRAR: In terms of the whole housing system, the answer is probably not directly because we stopped borrowing for the social housing system as a whole 10 years ago. So it is historic debt. And we have not been borrowing more—

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: That is because we have not been playing the market. Has the market itself done that?

Mr FARRAR: It is certainly the case that the cost of housing has meant that it has reduced our capacity to expand the stock. There is no doubt about that.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Some of that is the change in the housing market as well as the change in the inputs but you are saying that the change to the inputs by targeting only so that the mean rent paid per unit dropped. That is what you are saying, is it not?

Mr FARRAR: The mean rent paid per unit dropped, yes, and that is in fact not relevant in any sense to the cost of the housing because although we talk about rebated rents actually no dollars change hands in a rebate. There is no formal subsidy stream for our rebated rents except in the case of the community leasing program which of course is leased from the private market and that is a real subsidy stream.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: But that is a benchmark. The fact that the rest of the system has simply withdrawn from the whole market, in fact it is shrinking, is it not, the percentage of total need or total market?

Mr FARRAR: I am not sure that I understood that last point.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you say that the inflation of the house next door can go through the roof but we have our little house here which we rent on a fairytale

rent or quarantined or historical rent, the population is rising and you have a quarantined stock, in a sense, so that is hardly relevant.

Mr FARRAR: I guess what is quarantined, although the value of the asset is increasing so there is a capacity to do more with your asset management, if you like the cost of housing across the market has a bearing on the overall stock but it has no bearing on the financial viability because your rental streams are in fact falling rather than rising. They are not responding in any way to the changes in the wider market.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: If you were to get this key worker concept so that workers have subsidised rents but the absolute level of rent was higher than the welfare sector rents, this would in fact give you much bigger flexibility to play the markets with your stock, would it not?

Mr FARRAR: It would certainly give you more capacity. In fact, it is almost a precondition. Any of the models that have looked at private investment do say that you have to have that wider income group so that you can in fact have higher overall rents so that you have an income stream that will support some of that private borrowing. It is almost a precondition. The other way of doing it is to transfer that cost to government through another form of subsidy.

CHAIR: I am very conscious of the time. There is one major question remaining which you may be able to answer briefly. We have had some considerable discussion amongst witnesses about whether there is an optimal size for community housing providers. Some of us were amazed at the size of some of the British ones. We just want to know whether you think there is an optimal size and, if so, what it is.

Mr FARRAR: The answer is yes, I do think there is an optimal size. There is a sort of part A answer to that which is that it usually is a bit larger than what it currently is, whatever that number might be. That has been the history. People have said that community housing could not possibly be any bigger than 200. When the organisation has got to 200, they say, "It could not possibly be bigger than whatever." Some of the best housing organisations in the United Kingdom are the ones which have about a quarter of their turnover. They are in a band around 12,000 units. That is bigger than some of the State housing, at least the Territory housing authorities. The largest in the United Kingdom go to about 50-something-thousand units.

The view of an Australian developer who was looking internationally so that he could understand what is good practice in doing some of the joint ventures with public housing in redeveloping estates was that when he was talking to the people that were around 12,000, they still had developer managers and people on the ground who knew the local area and were able to be responsive. He then talked to ones that were engaged at the 50,000 size and found that they could have been anybody: they just did not have any of that knowledge. That is someone else's experience. He found when you got above that you stopped having local knowledge. There are all sorts of ways to get local responsiveness, area officers and all sorts of things like that.

The Hon. IAN WEST: Is there another factor involved in England, that is, the configuration of the units and therefore the geography? The geography is a lot smaller than it would be here?

Mr FARRAR: Yes. I think the answer is still that we in Australia want to see what are by and large local providers. You can be local in a number of ways. The largest ones in the United Kingdom are national and they do not have any ownership of particular localities. One of the strengths of community housing is that it is a local management model. Local can still be quite big.

CHAIR: Have you answered the question? You may have said 12,000 maximum and you certainly said 200 was not reasonable?

Mr FARRAR: I have said 12,000 maximum. I certainly think that organisations managing in excess of 1,000 units are not a problem at all. That is a bit of a range, I accept. But we will not get to 12,000 all that quickly so we have time to succour it and see, to be quite honest.

CHAIR: As the 200s grew to 250 and to 500 we have been doing that for a while. What is your opinion of the move in New South Wales last year towards a new regulatory framework. How satisfactory were they? In the meantime a certain amount of rethinking has gone on and the department and the Office of Community Housing are looking at new detail in their proposed regulatory framework.

Mr FARRAR: To qualify myself, I am seeing that from the outside. Others have been on the ground and were directly involved. That is an important proviso. My impression is that some of the objectives that were being sought were very important objectives: to clearly recognise community housing in legislation so that you started to get a focus on the business was vital; to try to overcome some of the conflict between other bits of legislation or regulation was important; to enable some of the regulatory arrangements, the powers of intervention, the powers to monitor and those sorts of things were important and were need to be put in place; but more importantly, the whole principle of saying we will establish a fairly robust regulatory framework was a really important policy decision.

My impression is that there were some serious shortcomings which are largely being addressed now. The first is that there was no discussion about why it was being done. Unless you say why you are doing it, it is a bit hard to bring people with you. That was really critical and could perhaps have overcome what I suspect were some of the problems. The second was that it said very little about the regulator itself. It was all focussed on identifying powers but not about who would use them, how the powers were to be managed. I think that was a failure. In a couple of places, it significantly overstepped the mark in terms of enabling organisations to meet their own responsibilities.

I mentioned the issue of surpluses earlier. I am guessing, but I think there was a policy intention which I would support, that is, to enable arrangements like the one that I mentioned in South Australia where there is a sectorwide fund which gives you the advantage of volume purchasing. It gives you a lot of capacity, but that is a voluntary fund and it was not done by saying, "We will claw back all your surpluses, undermine your capacity to manage your business prudently in order to set this up. It was an entirely appropriate objective but completely inappropriately reflected in proposed legislation. The second was some of the powers to override other contractual arrangements, particularly with the lease-hold properties. I think that would be something which would drive the private sector right out of the business, and that does not seem to me to be outcome that you would want.

There were a number of mistakes made. The last mistake was not to have been able to already describe a kind of regulatory framework that you want. What have we done since? This inquiry hopefully will establish the kind of policy objectives that were missing, which is very important. The performance management framework starts to look at how you really do the risk management effectively. I have not mentioned accreditation at all but there is a review of the National Standards looking at how you put your quality part of the system, your quality assurance, into the overall suite of regulatory arrangements that you have in place. Then and only then can you start to talk about what kinds of powers of intervention you might have, otherwise you frighten the horses and that does not seem a very useful thing to do. We are well on the way, but it was a false start, but one that was quickly put back on track.

CHAIR: You mentioned some research that is under way at the moment that sounds very valuable. What is the finishing date on that?

Mr FARRAR: I have a finishing date, but whether it will be finished by that date is another matter. The draft report is due to be finished by the end of this month. There will then be a process for it to be reviewed and finalised. I can check whether it is impossible to get the draft report available to you as long as it is clear that that is what its status is. There is also a positioning paper which outlines some of the preliminary information and that can certainly be made available.

(The witness withdrew.)

(The Committee adjourned at 1.25 p.m.)

