

Corporate Governance  
in Community Housing  
Managing the challenges posed by growth

Gapp Consulting Services Pty. Ltd

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## Background

Traditionally, the vast majority of social housing in Australia has been delivered through State housing authorities or through relatively small community based organisations.

Over the last few years, the community housing sector's role in provision of social housing has gradually increased. This steady growth has been accompanied by periods of more rapid growth related to policy initiatives implemented by states - such as the 1996 growth strategy in NSW, and the current development of housing associations in Victoria. At the same time, some community housing providers have sought to diversify their roles, building on their capacity to offer responsive community based services to their clients.

To date a handful of larger community based social housing providers have emerged across several jurisdictions. These providers differ from other long term established community housing providers, in the scale and complexity of their business, their capacity to acquire assets and, in some cases, they appear to enjoy greater autonomy from government. For example in Victoria, the Office of Housing is now seeking to establish larger scale not for profit community based organisations, referred to as 'housing associations'; these associations may attract private finance into social housing and enjoy greater autonomy in their operations.

Many community housing providers will choose to continue to operate without major changes to what they currently do, or how they are governed. But others are looking to expand their operations and take on new services or activities. Some have already done so. These organisations may face periods of intense change, growth, and development. Along the way, their boards will also face their own challenges and may need to re-think aspects of their structure and operations. They may have to '*...balance the demands of public and community service and*

*their tradition of volunteerism, with rising professionalism within the sector and a growing expectation that they will be more entrepreneurial in trying to meet the housing needs of their communities.'*<sup>1</sup>

This report is designed to offer some guidance to management and board members, as organisations grow in size or take on more complex business. It may also highlight areas where governments can offer support to organisations, training, or other assistance.

## 'Growth' housing providers

Governance and new delivery models has been the working title for this project. New delivery models have been defined as community housing providers that are:

- not for profit incorporated bodies;<sup>2</sup>
- seeking to significantly grow their business;
- managing or seeking to manage their own assets; and
- moving into new or more complex areas of business.

New delivery models may be emerging from a process of change within existing organisations, or may be newly established entities.

These 'new delivery models' will be referred to throughout this paper as *growth housing providers*. The reference to 'growth' refers not only to the larger scale of operation that they are seeking to achieve, but also to the new or more complex areas of business that these providers may take on such as community development work. In the UK, they have adopted the term 'housing plus' to similarly cover other aspects of new and more diversified businesses. These 'housing plus' activities might include providers taking a role in housing estates undergoing community rebuilding, provision of transitional and supported housing, and redevelopment of older sites and renewal areas.

<sup>1</sup> Georgiou, D. 'Corporate Governance Series Good Practice Guide 1 Good Practice Guide 1 What Makes Boards Work' (Sydney: NSW Federation of Housing Associations Inc, 2004) p 3

<sup>2</sup> Incorporated bodies covers incorporated associations, companies and co-operatives

## Purpose of project

There is already a wealth of information available to boards of community housing providers both here and overseas, on good governance practice. Most recently, the NSW Federation of Housing Associations published a Good Practice Guide 'What Makes Board Works' (referred to here as the *NSW Good Practice Guide*) following on from their earlier report 'Future Directions in Corporate Governance' produced in 2003. The Federation's work has provided a useful starting point for this project.

In addition, the just published report of the Australian Housing and Urban Research Institute (AHURI) titled 'A Practical Framework for Expanding Affordable Housing Services in Australia: Learning from Experience' (Milligan et al, 2004) provides a detailed analysis of newly emerging forms of affordable housing delivery in Australia. Its focus was on the largest affordable housing providers that are involved in development and ownership of their stock. Amongst other things, the project assessed the governance of these affordable housing providers and discussed implications for future development of delivery arrangements in this sector. A second report from this project, to be released later in 2004, will provide a practical guide to affordable housing.

Building on this body of work and literature, the aim of this project is to identify and discuss governance issues that may emerge during transition periods, as organisations evolve, either by embarking on more complex business or growing in size. This report is not restricted to providers of a certain size or those seeking to own their own properties. It should be relevant to providers whose sole business is tenancy management as well as those seeking to get into development and procurement of their own stock or further community development activities.

A second report by the National Community Housing Forum will build on the foundation presented in this report by examining in more detail the functions of growth housing providers and the consequent risks associated with significant growth. The second report will provide further guidance on both governance and management responsibilities.

As part of this project, four research participants were selected and asked to share their experiences in

growing their organisations and taking on new areas of business. The four providers were selected to include:

- three major forms of incorporation being a company, a co-operative and an association;
- geographic spread across Victoria, NSW and the ACT;
- organisations of varying size from 300 to nearly 1000 properties;
- organisations performing differing functions from tenancy management, through to property development/ownership and those seeking to get involved in more community development activities.

The following research participants were involved in this project:

- St George Community Housing NSW.
- Havelock Housing Association ACT.
- Supported Housing Ltd Victoria.
- City West Housing Pty Ltd NSW.

### 1. St George Community Housing NSW.

St George Community Housing Ltd is an incorporated co-operative, managing 950 properties. It has won the National Award for Overall Excellence in Community Housing in 2001, the NSW Award for Excellence in Governance and Organisational Management in Community Housing in 2002 and 2004, the NSW Award for Excellence in Service to Tenants and Community in 2004 and high commendation for the NSW Award for Overall Excellence in Community Housing in 2004.

St George Community Housing has experienced rapid growth since 1998, becoming the largest provider of community housing in NSW; it plans to expand into affordable housing and 'housing plus'. Its current business is tenancy and property management. The organisation manages a range of partnerships to deliver supported housing to their tenants. They have planned on the basis of increasing their stock portfolio by 5% per annum for the next 3 years. The organisation is willing to grow more quickly, if stock transfer programs with the NSW Department of Housing can be achieved.

The organisation also plans to buy stock using surplus funds, private finance, and possibly introduce shared equity models. They believe that they could manage up to 1400 properties without any major changes to current staffing levels.

## 2. Havelock Housing Association ACT

Havelock Housing is an incorporated association, managing over 300 tenancies across 200 properties. It is the largest provider of community housing in the ACT, and its current business is tenancy and property management.

The Association achieved full accreditation in 2003 against the National Community Housing Standards, and has received various awards and commendations including the winner of the National Award for Excellence in Service to Tenants and Communities in 2003, and a High Commendation Award in 1999. It was winner of the National Award for Organisational Management in 2000, 2001, and 2003. It received high commendations for Overall Excellence in 2001 and 2003 and a high commendation for the National Award in Corporate Governance in 2003.

They manage a range of partnerships and further developing, to deliver a higher level of supported housing to their tenants. Havelock is looking to further grow their business through partnerships and new programs, hoping to achieve a greater level of independence from government. They currently own 15 properties, although effective control remains with the ACT government. They would like to continue expanding through a range of projects and aim to hold the titles on the properties they own at some time in the future.

## 3. Supported Housing Ltd Victoria

Supported Housing Ltd is a company limited by guarantee and is the largest non government provider of supported housing for people with a disability in Victoria, with 900 tenancies and 500 properties. Their business includes property development and procurement as well as tenancy and property management. As supported housing specialists they manage a variety of partnerships to deliver supported housing to tenants. They currently own about 60 properties. The organisation is seeking to become a registered housing association in Victoria. They would like to double their tenancy management portfolio over the next 10 years and triple the properties under management.

## 4. City West Housing Pty Ltd NSW

City West Housing Pty Ltd is a company limited by shares set up by the NSW government with the specific purpose to procure, develop, and manage affordable housing for a mixed income clientele, whilst operating independently of government. The company has two ordinary shareholders, the NSW Minister for Housing and the NSW Treasurer. It operates in urban renewal precincts in the Ultimo and Pyrmont areas, and in Green Square South Sydney. The company currently own 365 properties accommodating 750 people. Their business includes property procurement and development, tenancy management, and long term property management. They have plans to acquire a further 216 units in the City West area by 2033, and 283 units in the Green Square area by 2013. They have the capacity to borrow against their assets but have not done so to date.

Clearly, these organisations are not representative of the national community housing sector; they have been chosen for the reasons outlined earlier. Their experiences are referred to throughout the report, to illustrate practical examples of how governance issues may be addressed by organisations at various stages of growth and maturity.

Interviews were conducted with either CEO's or directors in these agencies. Therefore, the views largely reflect management perspectives. Research participants' experiences and views may provide valuable insights for staff and boards of other community housing providers, and also for governments.

## Report structure

The first section of the report outlines the characteristics of growth housing providers including how they are likely to differ over time, from existing community housing providers. The report then goes on to describe briefly the kind of external influences impacting on the development of growth housing providers in Australia, noting that their growth is likely to be incremental rather than rapid.

The second section of the report looks at three 'external' issues that boards may need to consider as they grow: their legal status, tax status, and the changing regulatory environment. These issues are external to the day to day operations of the board.

The third section of the report deals with internal board issues that may need to be reviewed or considered during the transition phase, as organisations become growth housing providers. There are many issues for a board to address in developing its governance framework; this report does not attempt to cover all the issues. Specific matters outlined in

this report are those most likely to require change or reconsideration as a provider grows and develops its business. These are:

- the role and culture of the board;
- the role of the board in strategic planning;
- the structure and composition of the board;
- skills amongst board members;
- tenants and other stakeholders on the board;
- induction and training for board members;
- board operations including frequency of meetings, use of committees and sitting fees; and
- board management relations and reporting.

For each of these issues, the report refers first to existing literature -drawing on most recent studies to update earlier work where relevant. It then refers to current developments within governments regarding each of these issues, and then it outlines ways in which research participants have addressed them. At the conclusion of each issue, there is a set of implications for board members to consider, as organisations make the transition from where they are placed at present, towards becoming growth housing providers.

# Section One: The Transition Phase

## 1. From community housing providers to growth housing providers

Existing community housing providers have grown up incrementally across the states and territories and are generally characterised by the following features:

- They are locally based and manage a relatively small number of properties.
- They operate under a variety of legal structures.
- They are dependent on recurrent government funding.
- Many are niche providers focusing on the needs of their targeted client base.

The following features have characterised the Boards of community housing providers:

- They are made up of elected representatives including tenants.
- They are voluntary positions.
- They may come from strong backgrounds in social welfare policy and service delivery, and are likely to have well developed networks in these fields.

Growth housing providers on the other hand, may take some time to define their 'identity', and differ from other community housing providers in a variety of ways (See Appendix 1).

Growth housing providers are likely to exhibit one or more of the following characteristics:

### Legal Structure

Growth housing providers are likely to be not for profit incorporated organisations. While the forms of incorporation they adopt may vary between them, growth housing providers are likely to choose the most appropriate kind of incorporation, in response to a combination of external and internal factors.

### Regulation and relationship with government

- They are likely to operate at arms length from government, and be regulated by a range of regulatory tools to monitor their performance. They may exercise autonomy over policy setting - such as rents and allocations- within broader agreed parameters set by governments, as it is proposed in Victoria.

### Tax status

- Generally they are able to attract various tax concessions.

### Scale of business

- They are likely to manage relatively large scale social housing portfolios, or to have developed business plans to achieve such scale.

### Funding arrangements and strategies to achieve growth

- They have the capacity, or are developing the capacity, to borrow or attract other sources of finance for social housing projects, and generally function within complex funding arrangements. They have the capacity to attract Commonwealth rent assistance for their tenants. They may contribute their own assets and partner with government in order to expand the supply of social housing.

### Project development capacity

- They have or are developing the capacity, to develop and manage capital projects, including in partnerships with others.

### Partnership capacity

- They have the capacity to manage and enter into alliances and partnerships with others to deliver social housing, and to meet the needs of tenants with complex needs. They have or are developing the capacity to work on community development projects with others.

## 2. The emergence of growth housing providers

It is likely that over the next few years, we will see a slow but steady expansion in the number of growth housing providers. As growth housing providers emerge to take on more complex business and make a contribution towards increasing the provision of social housing, existing providers, and other stakeholders including governments, will monitor the outcomes and closely assess their performance.

As growth housing providers continue to emerge, locally based community housing providers will continue to play a central role in the provision of social housing in the future, as they have done to date. It is acknowledged that many existing providers may choose not to become growth housing providers. Some of the reasons for this include:

- the levels of support provided by governments towards the establishment of new entities is limited

- the community housing sector has limited experience in project management, and development, stock acquisition, and large scale business operations of the kind that might be undertaken by growth housing providers. State housing authorities may regard the strength of community housing providers' as being in tenancy management, placing them in a chicken and egg situation: *'... since most have not been allowed to develop and manage complex housing development projects, they have little experience of this activity and cannot demonstrate their capacity to do so.'*<sup>3</sup>
- providers may wish to remain locally focussed and operating at a level where they can have a greater capacity to stay in touch with their tenants and local communities. The tension between growing large in size and continuing to maintain strong relationships with tenants will be discussed further in the Forum's second report.

The experience in the UK also suggests that rapid growth in the number of growth housing providers in Australia is unlikely. *'More than a decade ago, the English sector was very small with approximately 75% of the sector managing less than 200 units. While most of the very small units stayed the same, 20% of the sector disappeared or amalgamated and 10% became (or were newly established as) very large organisations managing between 4,000 to 6,000 units.'*<sup>4</sup>

Therefore, we are likely to see a relatively slow and steady expansion of growth housing providers as governments, existing providers, and other stakeholders gain confidence in the expanded role of these providers in social housing provision.

### 3. Governance implications for growth housing providers

Given that growth housing providers are likely to become increasingly involved in a higher level of risk and business complexity, it is very important to pay attention to all aspects of governance during the transition phase, or in the case of new entities, during the establishment phase. Research participants were at different stages in developing and implementing changes to their governance arrangements; most agreed that such changes were vital to managing growth competently.

Governance can be broadly defined as *'...the system and processes used by a company to direct the operations of the company.'*<sup>5</sup> This broad definition encompasses the roles and responsibilities of management and boards in developing policies and procedures for the company's operations, driving performance, determining strategic directions, monitoring performance and balancing risk and innovation.<sup>6</sup>

An earlier project on corporate governance in the community housing sector in NSW concluded that: *'It will...be important to identify any specific elements of good corporate governance arrangements required by these types of organisations (ie larger ones) and the tools and resources that their boards will need to govern effectively.'*<sup>7</sup>

As the Institute of Governance in Canada suggests organisations should avoid engaging *'...in governance practices that are not suitable for the current size or complexity of the organisation.'* According to the Canadian Institute, the two most significant factors in choosing a governance approach are:

1. the size of the organisation; and
2. the complexity of the organisation.<sup>8</sup>

The emphasis of this project is on those governance issues that may require consideration by boards, in the process of managing change and growth. Therefore, there is little discussion of management's role in governance.

<sup>3</sup> CHFA 2003 cited in Milligan, V. et al 'A Practical Framework for Expanding Affordable Housing Services in Australia: Learning from Experience' (AHURI 2004), p 87

<sup>4</sup> Barbato et al 'Stakeholder Requirements for Enabling Regulatory Arrangements for Community Housing in Australia: Final Report' (AHURI and NCHF 2002) p 36

<sup>5</sup> Australian Institute of Company Directors Course notes 1998 p 15

<sup>6</sup> Australian Institute of Company Directors Course notes 1998 p 1

<sup>7</sup> 'Future Directions in Corporate Governance Community Housing Corporate Governance Project' (NSW Federation of Housing Associations Inc 2003) p 35

<sup>8</sup> Institute of Governance Canada website material on good governance and board models

## Section Two: The impact of external issues on growth providers

This section examines three external issues that may require consideration by the board, as organisations grow and become involved in more complex business. These three issues are:

- the organisation's legal status;
- the organisation's tax status; and
- the regulatory framework

### 1. The legal status

Existing community housing providers operate under a variety of legal structures that best suit the scale and type of activities performed by the organisation; these may include trusts, state incorporated associations, co-operatives, and companies. They all operate on a not for profit basis.

#### 1.1 Alternative corporate forms

At this stage, neither literature nor experience appears to point to any consensus amongst community housing providers, regarding what the most appropriate corporate or legal structure for their business may be. Companies and associations appear to be more common than co-operatives, but this varies from state to state; co-operatives appear to be greater in numbers in South Australia and Victoria.

Some reports argue that corporation's law '*...is the benchmark for good governance, which it is advisable for boards of all types of organisations to follow.*'<sup>9</sup>

Others have suggested that state-based association's legislation can be confusing and inconsistent. Some say that this kind of incorporation does not provide the same level of accountability that is evident within corporation's law. A recent survey in Australia, undertaken by the University of Melbourne's Centre for Corporate Law and Securities Regulation (referred to hereafter as '*the Woodward study*') of 1700 not-for-profit companies limited by guarantee,

indicated the reasons why the respondents chose a company structure as follows:

- it better suits national or multi-state organisations (34% of respondents);
- the scale of trading activities (40%);
- a preference for dealing with ASIC rather than state regulators (31%); and
- public perception or status (52%) such as the view that 'serious' or 'more sophisticated' not for profits use this structure rather than the incorporated associations' regime.<sup>10</sup>

The fact that more than half of the respondents chose a company structure for public perception reasons was consistent with '*... anecdotal evidence that serious or more sophisticated not-for-profit organisations use the Corporations Act 2001 (Cth) rather than incorporated associations legislation.*'<sup>11</sup>

There may be a perception that corporation's law offers a higher level of accountability than association's legislation, but it is unclear whether this perception is borne out in reality. State based associations legislation differs across the states. Therefore, entities doing business with growth housing providers may be more comfortable and familiar with corporation's law. For example, potential lenders, investors, and development partners, may be used to operating their own businesses within the corporations law framework, but may have had limited exposure to associations' legislation. They may believe that state-based association's legislation offers them less protection, regardless of whether this is the case or not.

Of the seven non government affordable housing models included in the AHURI study referred to earlier (Milligan et al, 2004), three are companies limited by guarantee, two are shareholder companies, and two are incorporated associations.<sup>12</sup> The study supported the use of not for profit companies incorporated under the Corporations Act. It concluded that '*...although two agencies had been managed successfully to date as incorporated associations, to operate their development function at a larger scale they would benefit from the stronger governance principles and guidance provided under the Corporations Act. This view is shared by those agencies and they are presently investigating options for enhancing their governance.*'<sup>13</sup>

<sup>9</sup> 'Future Directions in Corporate Governance' (NSW Federation of Housing Associations Inc 2003) p 6

<sup>10</sup> Woodward, S. and Martin, S. 'A Better Framework: Reforming not-for-profit regulation' (Melbourne: University of Melbourne 2004) p 53

<sup>11</sup> Woodward and Martin p 58

<sup>12</sup> Milligan et al, 2004 Table 4.1, p 51

<sup>13</sup> Milligan et al, 2004 p 100 footnote 94

## Incorporation - Emerging trends in government

Governments have increasingly been moving towards requiring potential growth housing providers to be companies under corporation's law. For example, the Victorian Office of Housing requires prospective housing associations to be not for profit, and incorporated as companies limited by guarantee or by shares.<sup>14</sup> Existing entities incorporated as associations, will be required to become companies under corporations law, if they wish to become registered housing associations. Similarly, the new Queensland Housing Regulations 2003 require any community housing provider wishing to borrow against their assets, to be a company registered under corporation's law.

## Incorporation - Research participants' experiences

The four organisations that participated in this research are incorporated as follows:

- a co-operative
- an incorporated association
- a company limited by guarantee and
- a company limited by shares -with government and other community stakeholders as ordinary and preference shareholders- respectively.

One of the providers had moved from being an association to a company, as a result of having to comply with past government funding requirements. Another participant asserted that board members often appear to be more comfortable and familiar with corporation's law.

The organisations that were not companies believed that their boards may consider alternative forms of incorporation as they continue to grow. Their current incorporation status had suited their organisations up to this point, but their boards would keep a watching brief on whether changes to their status were required, as their business developed.

## 1.2 A new not for profit company structure?

Notwithstanding the diversity of legal structures amongst community housing providers at present, the recent trend towards increasingly favouring the

company structure, has led to a debate regarding whether corporations law suits the not for profit sector.

*The Woodward Study* recommended that a single Commonwealth regulatory regime should be created for the not for profit sector, together with the establishment of a specialist not for profit unit within the Australian Securities and Investments Commission (ASIC). It also advocated for a plain language guide, as well as replaceable rules for not for profits.<sup>15</sup>

The recommendation to adopt a national system of regulation for the not for profit sector in Australia mirrors recent developments in the UK. The Cabinet Office Strategy Unit in the UK conducted a review of charities and not for profit organisations in 2001/02. The review recommended changes to the legal form of not for profit organisations, to ensure that they can grow and flourish. It proposed a new legal form for the social enterprise (or not for profit) sector through the creation of the Community Interest Company (CIC) which would draw on company's legislation.

The report acknowledged that the company structure is attractive to the not-for-profit sector as '*Company law is well developed, and companies are well understood by professionals such as bankers and lawyers.*'<sup>16</sup>

Two of the key features of the proposed Community Interest Companies, and of interest to developing growth housing providers in Australia include:

- the protection of assets against distribution to members or shareholders. Whilst this would not prevent take-overs or mergers, it would ensure that the entity's assets are transferred to an organisation with a similar purpose. Such protection now occurs in the UK (and in Australia) only through sector-specific legislation, often regarded as 'cumbersome.' Provision for the protection of assets is regarded as important to give greater confidence to those providing funding and to governments, guaranteeing that their money '*... will be used for the purpose for which it was given.*'<sup>17</sup>
- a requirement to have a clause in the constitution identifying objects of the company reflecting the public and community interests. The Victorian Office of Housing has placed a similar requirement on prospective housing associations stating that '*... housing associations must have a*

<sup>14</sup> This requirement is identified in the Victorian Office of Housing Registration of Intent for Housing Associations documentation p 23 under 'corporate structure'

<sup>15</sup> Media Release 'Australia's \$2.8 b not-for-profit sector needs reform' University of Melbourne February 16 2004

<sup>16</sup> 'Private Action Public Benefit: A Review of Charities and the Wider Not For Profit Sector' (London: UK Strategy Unit Home Office 2002) p 6

<sup>17</sup> 'Private Action Public Benefit' p 6

*constitution that includes the achievement of affordable housing objectives and supports participation in the Government's Strategy.*<sup>18</sup>

In summary, boards of potential growth housing providers should consider the most appropriate legal form for their organisations as they grow and mature. Companies regulated through the corporation's law are well understood and accepted amongst business, government, and the community sector. Whilst incorporated associations may offer similarly robust governance standards, they may not be as acceptable to stakeholders.

Peak organisations could play a role in assisting boards involved in changing their organisations' legal structures, in order to reduce costs.

Peak organisations may also consider whether there is a need to make representations to the federal government, in order to establish a new national system of corporate regulation for not for profit companies. A new corporate structure would better suit not for profit companies and reduce the complexity of compliance for boards and management.

### Choosing the 'right' legal entity - Considering the implications

Given the scale and complexity of potential business and increased level of risk associated with their activities, boards of growth housing providers should seek to be incorporated under the most effective form of corporate regulation currently available to not for profits in Australia. (find exact earlier text)

Boards adopting the corporation's law may require training and advisory services to inform them of changes and or new requirements under corporation's law.

## 2. The regulatory framework

Community housing providers currently operate within complex and sometimes overlapping legislative and regulatory requirements. However, there are two main kinds of regulation concerning community housing providers.

- The first form of regulation is the 'corporate regulation', managed either by ASIC or state based regulators. Corporate regulation aims to ensure that companies are solvent and that they comply with relevant legislation.
- The second form of regulation aims to ensure achievement of social housing outcomes. This type of regulation is managed by state based regulators and state housing authorities.

The second form of regulation has been defined as: '*...the implementation of a set of rules or processes achieved through various instruments, to ensure social and/or economic outcomes.*'<sup>19</sup> A range of regulatory tools are used, to ensure that the social housing objectives of the organisation are achieved within a sustainable business model.

The Kennedy Report of December 2001 '*A Regulatory Framework for Community Housing in Australia*' proposed five main tools for the regulation of community housing providers including:

- legislation
- registration and licensing
- codes of practice and standards
- accreditation
- funding agreements.<sup>20</sup>

### Funding agreements

Traditionally, the most common form of regulation for community housing providers has been through funding agreements; these identify those requirements that must be met by organisations in return for government funding. It is the board's responsibility to '*...ensure that the organisation complies with its contractual arrangements such as funding agreements.*'<sup>21</sup> The Kennedy Report discussed the advantages and disadvantages of each form of regulation for community housing and highlighted the '*...distinct advantages of legislation as the basis of regulation as opposed to contracts.*'<sup>22</sup>

<sup>18</sup> Victorian Office of Housing Registration of Intent for Housing Associations documentation p 23

<sup>19</sup> As quoted in SACHA Change Management Team discussion paper 'The Funding Agreement in A Community Housing Regulatory Framework' (South Australian Community Housing Authority Nov 2003) p 4

<sup>20</sup> Kennedy, R. 'A Regulatory Framework for Community Housing in Australia Volt 2 Regulatory Options' (National Community Housing Forum Dec 2001) p 42

<sup>21</sup> 'Future Directions in Corporate Governance' 2003 p 7

<sup>22</sup> Kennedy, R. 2001 p 62

## Regulatory tiering

Kennedy also referred to a new approach to regulation involving ‘tiering of regulation’. Tiering is a ‘...process whereby different segments of an industry are treated under different regulations. It is commonly used in industries where there are large variations in the size and sophistication of firms - it provides easier solutions and compliance options for smaller businesses.’<sup>23</sup>

As the community housing sector diversifies and growth housing providers emerge, regulatory tiering will be preferable to a one size fits all approach. Regulatory tiering can provide flexibility to tailor regulation to the level of risks involved in each organisation’s operations. The UK Housing Corporation has just released a discussion paper ‘Regulating through Risk’ which reviews their regulatory code and discusses ways to improve the risk based approach to regulation. The Housing Corporation already has a system of regulatory tiering; this system differentiates on the basis of those providers with more than 250 units. The discussion paper looks at ways to further refine levels of regulation commensurate to specific levels of risk flowing from individual providers’ activities.<sup>24</sup>

## Regulation - Emerging trends in government

Growth housing providers are likely to pose new and different risks for governments. They will increasingly have the capacity to own their own assets, to borrow against their assets and may eventually take on tenancy management of stock transferred from the public sector. Therefore, governments will seek to ensure appropriate regulatory frameworks are in place before growth housing providers develop. Traditional forms of regulation, such as funding agreements, will no longer be adequate.

In NSW and Queensland special purpose companies with government shareholders have been used to protect publicly funded assets. In other states, such as Victoria and Queensland, governments are introducing new legislative frameworks for the community housing sector, with elements of regulatory tiering. According to the AHURI report, it is likely that increasingly, special purpose companies

and legislation will be used as regulatory tools to shape the sector, as community housing becomes more diversified. ‘Where legislation and other regulatory tools can be introduced, however, governments may be more willing to support existing providers taking on a broader and larger role in housing development and finance.’<sup>25</sup>

- For example, the Victorian Office of Housing is introducing legislation to underpin the regulation of the new housing associations. The legislation is likely to allow for regulatory tiering to distinguish between the risks involved in housing associations versus the lower risks involved for other community housing providers. Housing associations will have increased risks through their capacity to borrow funds and develop and own their stock. From a government’s perspective, there will also be risks associated with any transfer of public housing stock to housing associations. Therefore, the government will want to ensure a strong regulatory regime to manage such risks.
- The NSW government has a similar system of regulatory tiering in place, through levels of registration for community housing providers.
- The Queensland Government’s Housing Act and regulations includes a form of regulatory tiering, with additional requirements for those providers wishing to borrow funds.

## Regulation - Research participants’ experiences

Amongst the research participants all organisations - apart from City West Housing Pty Ltd- are regulated through funding agreements; two organisations are also currently being assessed for accreditation against the National Community Housing Standards. Providers made reference to common problems with funding agreements, including inconsistencies in reporting requirements across funding programs, and complex contractual requirements.

City West Housing Pty Ltd is monitored and regulated by the government through its reporting requirements (set out in its constitution) and through the powers vested in the two ordinary shareholders - the NSW Treasurer and the NSW Minister for Housing. The NSW government -through its ordinary shareholding- retains ownership of the

<sup>23</sup> Kennedy, R. 2001 p 69-70

<sup>24</sup> ‘Regulating Through Risk’ Discussion Paper (UK Housing Corporation, 2004)

<sup>25</sup> Milligan, V et al 2004 page 107

assets with the power to intervene or recall assets in the event that the company fails to meet its objectives and performance requirements.

City West Housing Pty Ltd as mentioned earlier was established by the NSW Government for a particular purpose. It has an atypical form of regulation that appears to work well in achieving its objectives, although there is no formal regulatory model for such government owned companies. Milligan et al also questioned its ability to be replicated elsewhere.

Other regulatory issues raised by research participants included the following:

- no one single funding agreement could cover all aspects of the more complex business now operating;
- lack of resources is an impediment to seeking accreditation against the National Community Housing Standards;
- regulation based on legislation would provide certainty and greater stability for growing organisations; and

- regulation should be more outcomes focused and less prescriptive; for example, the UK Housing Corporation, which is the regulatory body for housing associations in the UK, introduced a regulatory code which replaced 64 performance standards with 16 key outcomes.

In summary, boards of organisations developing into growth housing providers may confront new forms of legislatively based regulation, at the same time as their own organisations are growing and changing. Boards and management should seek to have active involvement in the development of any such legislation to ensure it will achieve consistent, efficient, and effective regulation. Greater use of regulatory tiering may also place more onerous reporting requirements, against benchmarks, standards, or outcomes as organisations become larger or more complex. Boards and management should actively seek to have input into the development of such performance measures.

## Regulation - Considering the implications

As the complexity of organisations grow, boards will face more complex and onerous contractual arrangements, including higher levels of accountability.

Governments will need to establish appropriate new regulatory frameworks, as the number of growth housing providers increase. These frameworks are likely to include new forms of legislation and regulatory tiering, matching levels of risk associated with the broader business of new or more complex entities.

Boards will have to comply with legislation that aims to achieve compliance with state government objectives for social housing. Such legislation will include monitoring and reporting requirements set down by new regulators such as has been proposed in Victoria.

Boards will have to become familiar with concepts such as regulatory tiering and outcomes focused monitoring, as regulators move in that direction.

## 3. Tax status

Not for profit organisations can access a range of exemptions when it comes to taxation. Depending on their tax status, providers may have concessions including exemptions from income tax, zero rating for GST purposes, tax deductibility for gifts and donations, fringe benefit tax concessions, and various exemptions or concessions on state government taxes.

This report does not provide a detailed discussion of these concessions and ways to qualify for exemptions. Rather, these are mentioned within this report for three main reasons:

1. As organisations grow, the value of tax concessions may increase and boards may need to consider whether their organisation should seek such benefits, if they do not already have them.
2. Over time organisations have adopted structures that will maximise tax concessions available to

them. As organisations grow, boards should carefully consider that the cost of altering their structure further in order to achieve additional benefits does not outweigh the benefits they currently enjoy.

- 3. Boards should also be aware that a review of the Charity Act has been underway, including reviewing the definition of charity, which underpins these concessions.

### Charity tax status - Emerging trends in government

The Australian Government’s draft exposure Charities Bill 2003, introduced a legislative definition of ‘charity’ to replace the 400 year old interpretation of ‘charity’ through common law. Last year the Australian Government circulated the exposure Bill widely amongst stakeholders seeking feedback. However the draft Bill has since been dropped, as the Treasurer claimed that the Bill did not achieve the level of clarity and certainty that was intended to be delivered to the charitable sector. *‘Therefore, rather than introducing a legislative definition of a charity, the common law meaning will continue to apply.’*<sup>26</sup>

The draft exposure Bill would have allowed various types of entities to meet the definition of charity including, without restriction, *‘... a body corporate, a corporation sole, an association or body of persons whether or incorporated or not and a trust.’*<sup>27</sup>

While most growth housing providers would have fitted within the proposed definition of charity through their advancements of social and community welfare, there was no explicit recognition of the provision of social housing as a defined charitable purpose within the draft Bill. By contrast, the proposed Charities Bill in the UK expands the definition of charity to include amongst other things ‘provision of social housing.’<sup>28</sup>

Boards should also be aware of other government’s requirements in relation to their tax status. For example, the Victorian Office of Housing requires that potential housing associations should have deductible gift recipient (DGR) tax status, and also expects them to have income tax exemption status.

Peak bodies may facilitate access to tax expertise and advice, to those boards responding to more complex business operations.

### Tax status - Research participants’ experiences

All research participants welcomed their organisations’ ability to claim tax concessions. They continue to be required to argue their status as charities on a case by case basis. Boards need to be familiar with these requirements of government, in order to attain and retain tax concessions. For those taking on new areas of business with a more commercial focus - such as setting market rents on pilot properties- considering the tax implications of such arrangements was a priority.

**Tax status - Considering the implications**

- Boards may need to re-evaluate their tax status as they grow and develop.
- Boards may need to consider the tax implications when becoming involved in new areas of business.
- Boards may need to seek out information from management and tax experts on future legislative reform processes involving the not for profit sector.
- Boards should be aware of government funding requirements impacting on their tax status.

<sup>26</sup> Australian Financial Review Article ‘Charities Face Tax Confusion 14 May 2003 p 9

<sup>27</sup> Australian Government Charities Bill 2003 Explanatory Material p 5

<sup>28</sup> Private Action Public Benefit Annex B p 39

## Section Three: The Board's Operations

This section of the report examines matters affecting the role, structure, and operations of the board. As organisations grow, or take on new or more complex areas of business, all aspects of the board's operations should be reviewed. Existing community housing providers that plan to develop into growth housing providers should consider during the transition phase, what elements of good practice they currently have that are worth protecting, and what areas may require change or improvement.

### 1. The role of the board

There are many definitions regarding what is the role of the board and what constitutes good practice in published material, including good practice guides for boards in the community housing and the broader not for profit sector. The Institute of Governance in Canada, states that '*...All boards share a fundamental stewardship role which includes the inescapable basic responsibility to promote the health and well-being of their organisations.*'<sup>29</sup>

The Institute refers to three key areas of responsibilities for the board:

- representation;
- decision making and leadership; and
- accountability.

The UK Housing Corporation describes the role of the board as:

- leading in terms of setting strategic directions and policies
- monitoring performance against agreed criteria
- ensuring compliance with statutory and regulatory requirements
- scrutinising and challenging management ideas and proposals

It stresses that '*The real test of a high-performing board is the effect of its work on the housing association's business or operational performance.*'<sup>30</sup>

Most definitions emphasise the importance of having the board play a role in setting future strategic directions for an organisation, leading the organisation rather than not micro-managing an organisation in its day to day operations. As one guide puts it: '*The board's role is to create the future not to manage the shop.*'<sup>31</sup> For organisations experiencing growth, management may increasingly look to the board to shape and plan their future.

The *NSW Good Practice Guide* emphasises that for larger organisations the board's strategic role is critical: '*Boards of large organisations with more complex business arrangements stay out of operational work of the organisation: they don't manage the service or get involved with day to day decisions...The board needs to act strategically in guiding the organisation.*'<sup>32</sup>

### The role of the board - Research participants' experiences

Research participants spoke about the essential role the board can play in strategic planning and in thinking strategically. As their organisations matured and grew they all identified a greater need for strategic input from the board. One interviewee described the main challenge for the board as being around focussing on policies and priority setting, rather than pre-occupied with day to day management issues. All agreed that the role of the board was to make decisions based on information provided by management.

Some considered that exercising leadership was an essential role for the board, while others considered representation to also be critical. Where leadership is not strong enough, the Chief Executive Officer is left in the position of 'leading' the board. On the other hand, examples were cited where the board had taken decisions -such as employing more staff- showing leadership and a capacity to be forward looking. One board member described the board as the leader working in partnership with the Chief Executive Officer, pointing out that further work needed to be done to ensure greater clarity around the respective roles of board and of management.

<sup>29</sup> Institute of governance Canada [website www.iog.ca](http://www.iog.ca)

<sup>30</sup> 'Treading the boards A self assessment framework for board performance' (UK Housing Corporation 2001) page 13

<sup>31</sup> Boardworks International website [www.boardworksinternational.com.au](http://www.boardworksinternational.com.au)

<sup>32</sup> NSW Good Practice Guide 2004 p 20

## 2. Board culture

Board culture is less easily defined. The *NSW Good Practice Guide* refers to an effective culture as being one that can:

- exercise strong leadership and stewardship;
- be strategic and focused on the external environment;
- show a commitment to accountability;
- be an effective decision making body;
- distinguish between governance and management functions;
- operate in a professional and ethical manner;
- allow its members to express different opinions and disagreement.<sup>33</sup>

It suggests that ‘...Boards need to review regularly how they are operating, check that their culture is a vibrant, positive one and that it is being effectively passed onto new board members.’<sup>34</sup>

### Board culture - Research participants' experiences

Research participants emphasised what those aspects they consider positive about the culture of the board, referring to them as collegiate, cohesive, respecting each other's expertise, engaged and healthy, challenging each other and asking the right questions.

There was a strong awareness amongst providers that as they continued to grow, the board may need to work on further clarifying their role, in order to maintain a healthy and balanced approach. They

spoke of a transformation taking place -from being focused on operational matters to being more focused on monitoring and supervisory issues. Some considered that the board was still in a process of transformation brought on by periods of rapid growth, new strategic planning initiatives, and increased accountability requirements to government.

Other points raised when discussing the role and culture of the board included:

- the importance of having board members/directors with political and lobbying skills, to engage at the political level and represent the interests of the organisation to a wide group of stakeholders;
- the need for board members/directors to engage in open debate and ask critical questions of management;
- the important role of the chair in fostering a healthy board culture. The Chair was regarded as playing a critical role both in allowing room for board members to debate and ask questions, and in providing structure to ensure decisions were reached.

In summary, as organisations grow and expand to take on complex business operations, boards will need to reassess their role and their focus. To be effective, boards will need to clarify their governing role versus the managing role of the CEO and of other staff. An effective board culture in a growing organisation will require a board that shows leadership, sets strategic directions, and one that is comfortable with open debate not only amongst its members, but also between the board and management.

### The role and culture of boards - Considering the implications

As organisations grow and develop, it will be necessary for the board to review and reassess their role and the way it operates.

Boards may need to re-direct their focus away from day to day management to take a more strategic governing role, guiding the change management process.

Boards should ensure that they have the capacity and capability to question management, particularly as the business becomes more complex and larger in scale.

Boards and in particular the Chair, should foster a culture where disagreement and debate are encouraged and valued.

Boards may need external support and guidance during the change management process.

<sup>33</sup> NSW Good Practice Guide 2004 p 15-16

<sup>34</sup> NSW Good Practice Guide 2004 p 16

### 3. Strategic planning - The role of the board

In an environment of change and growth, the Board will need to increasingly engage in robust strategic planning and in setting longer term direction as organisations take on new business operations. Some directors may be less familiar with such processes and may require support and training.

The UK Housing Corporation asserts that a ‘...good board is aware of the value it adds to the strategic directions of the housing association and its entry into new activities or new ways of working.’<sup>35</sup>

However, such awareness amongst directors may take time to cultivate and they may need to feel confident regarding the organisation’s core business before considering new areas of activity.

The NSW Good Practice Guide refers to the board’s strategic role including ‘...it has to ensure that the organisation is meeting its aims and accountabilities, operating within its resources and has a guiding vision that enables it to balance business and service requirements and pursue opportunity.’<sup>36</sup>

#### Strategic planning - The role of the board Emerging trends in government

Governments are interested in ensuring that existing providers have the capacity to plan ahead -both in terms of growth and business development- so

organisations can benefit. If governments are going to partly fund or to procure stock or transfer public housing stock to these organisations, then providers will need to demonstrate they are financially sustainable over a reasonable period of time. For example, the Victorian Office of Housing requires prospective housing associations to provide a five year strategic plan. The City West Housing Pty Ltd constitution requires annual business plans to be approved by the government and other shareholders.

#### Strategic planning - The role of the board Research participants’ experiences

Amongst the research participants, boards were becoming increasingly active in terms of strategic planning and in setting long term directions. Some providers were conducting their first strategic planning exercise. All of the research participants had developed at least one 3-5 year strategic plan. In one case, a 3 year rolling business plan had been produced. This provider’s plan focused on the next 12 months, but included plans for the next 3 years, projections for 10 years, and estimates for 30 years.

Most organisations had scheduled strategic planning days or retreats, generally involving management and board members working together to develop their plans. One provider stated that their board had recognised that past plans had been too operationally focused, and driven more by management than by the board. Their board was now taking a greater leadership role in this process.

#### The role of the board in strategic planning - Considering the implications

The board will need to have the capacity to engage in long term strategic planning if they intend to grow their business significantly and take on new areas of business.

Board should schedule regular planning days -involving board and management working in partnership to develop strategic plans.

<sup>35</sup> ‘Treading the boards’ 2002 p 14

<sup>36</sup> NSW Good Practice Guide 2004 p 19

## 4. The board's structure

Most boards in the community housing sector are made up of elected representatives including tenants, representatives of member organisations, and of the broader community. These boards have operated as representative models, reflecting the interests of the clients of the organisation, and other local community service providers. Typically these boards have not focused on specific skills as a basis for appointment to the board. Board size has been varied.

Growth housing providers may need to reassess aspects of their board's structure and composition, to ensure that they can effectively perform their duties and lead the organisation through the change management process. Board size, a balanced mix between skills and representation, as well as ensuring that an effective chair is elected, are some of the key elements that may require reviewing during this time.

### 4.1 The size of the board

One good practice guide suggests that '*...boards with a smaller number of members are considered more effective than larger boards. While there is no magic number, group theory and current trends point towards the ideal board size being less than ten with seven increasingly seen as an ideal number.*'<sup>37</sup> In the Woodward study, the average size of the not for profit boards was 8 non-executive directors<sup>38</sup>; this appeared to be a 'good' size. However, the study highlighted that the size of boards should be periodically reviewed to '*...make sure that they are small enough to work effectively as a group, but large enough to contain an appropriate mix of skills and perspective.*'<sup>39</sup>

#### The size of the board - Research participants' experiences

The board size of research participants' organisation was between 7 to 9 non-executive directors; this was consistent with the average size in the broader not-for-profit sector. One board had reduced their size from 13 members, which was considered too big and unwieldy. Most considered 7 to be around the right number of directors for effective governance. An interviewee highlighted that a relatively small

number of directors requires that each position be closely considered, to maximise the overall effectiveness of the board. In most cases amongst the research participants, the number of directors was outlined in the constitution or organisation's rules, often providing a range which gave organisations flexibility.

### 4.2 Chairing the board

Boards may include a number of official positions including chair, deputy chair, treasurer and secretary although many boards appear to operate with only a chair and/or treasurer, rather than deputy positions. The chair's role is considered to be critical to effective board operations.

The *NSW Good Practice Guide* notes that '*The role of the chair, or president, is to assist the board to govern effectively. They manage the board on behalf of the owners and are the board's conduit to the executive officer.*'<sup>40</sup> Therefore, these positions must have strong leadership and representation skills, as well as being able to run effective meetings where debate is encouraged and decisions are reached. In the case of growth housing providers, the skills of the chair in these areas may be in greater demand during periods of rapid growth, and when changing business direction. Management and board members/ directors may look to the chair to guide them through the change management process.

#### Chairing the board - Research participants' experiences

Amongst the research participants, CEO's identified a range of skills that they sought from the chair. These included networking skills, ability to provide direction, and an overall capacity to manage the board and lead the organisation. They recognised that the chair may vary in their capacity to deliver in these areas from time to time, and this depends on the approach adopted to elect the chair.

Predominantly, two kinds of approaches are taken to electing the chair:

- The chair is elected from amongst board members/ directors or
- The chair is elected directly by members of the organisation.

<sup>37</sup> www.boardworksinternational.com.au

<sup>38</sup> Woodward, S. and Martin, S. 2004 p 97

<sup>39</sup> Woodward, S. and Martin, S. 2004 p 98

<sup>40</sup> NSW Good Practice Guide 2004 p 23

Amongst research participants, the positions of chair were elected from amongst board members/directors. In such cases, board members/directors may need some guidance as to the skills required to be an effective chair. This method of election emphasises the chair's role in helping the board to do its job. The alternative approach that of the chair being elected by members of the organisa-

tion emphasises the chair's role as a representative of the organisation.<sup>41</sup>

In some cases, the chair was elected on the basis of their length of tenure on the board. This is no longer considered to be good practice, length of time on the board may not necessarily equate with having the necessary skills to do the job well.

### The board's structure - Considering the implications

The board may need to review its size to ensure that it is operating efficiently and effectively. Boards should be small enough to function efficiently, but large enough to have sufficient skills and diversity.

Board may need to consider their election processes for the position of chair. They should ensure that the chair has strong leadership and management skills to direct the board and the organisation through phases of transition and growth.

## 5. The board's composition

Directors also need to consider the composition of the board. As noted earlier, in the majority of community housing organisations, boards in the past have predominantly been based on representative models. Representative based boards are made up of members who represent or promote the interests of a group of stakeholders, and who also contribute to the organisation with their expertise. Expertise based boards on the other hand, are primarily selected on the basis of having skills on particular areas, rather than on the basis of representation.

The NSW Federation of Housing Associations has identified that there may be a gradual trend towards expertise based boards.<sup>42</sup> As providers grow and their businesses become more complex, they may choose to move from a more traditional representative based board to an expertise based board providing a range of technical skills considered necessary to govern larger entities.

The *NSW Good Practice Guide* states that boards may undergo a period of transition from having a representative structure through to selecting board members on the basis of their expertise and experience, and that throughout this transition process, boards will need support and guidance.<sup>43</sup> This

transition process can be 'quite traumatic' as suggested by an example provider

### The board's composition - Emerging trends in government

Increasingly, governments are taking an interest in the composition of boards. The Victorian Office of Housing requires that prospective housing associations will follow the following approach: '*The selection or election of housing association board members must be open and transparent. Housing association board members should act in a personal capacity.*' Further, prospective housing associations must '*...describe the range of skills and experience demonstrated by your (proposed) board members and how they support the business needs and social objectives of the Housing Association*'<sup>44</sup>

### The board's composition - Research participants' experiences

Amongst the research participants, there was a range of board models including:

- expertise based boards;
- a mixture of tenant directors, and expertise based positions on the board; and
- a representative board.

<sup>41</sup> 'Future Directions in Corporate Governance' 2003 p 19

<sup>42</sup> Future Directions in Corporate Governance 2003 p 23

<sup>43</sup> NSW Good Practice Guide 2004 p 14

<sup>44</sup> Victorian Office of Housing Registration of Intent for Housing Associations documentation p 23 and 24

Regardless of the current composition of different boards, all research participants had been through, or were going through a process of reviewing the basis for making appointments to their boards. They regarded this review process as essential to developing their governance framework within a growth strategy. Their comments suggest that, as providers grow, part of the change management process involves reviewing board composition and reassessing criteria for board recruitment.

Amongst research participants, in those cases where boards had evolved from being representative towards being expertise based, research participants sometimes described the process of re-evaluation, forward planning, and board restructuring as traumatic.

Even amongst expertise based boards, research participants described as important the need to regularly reassess the skills required for to board to remain effective; one provider had implemented an annual skills audit for board members. Needs changed overtime, for example one organisation no longer considered it critical to have legal expertise on the board, as they were now large enough to be able to buy legal expertise. Their attention instead has turned towards acquiring other skills, such as human resource management and business development skills, to assist the organisation in the next phase of the process.

### The board's composition - Considering the implications

Boards will need to review their board composition and assess the relative merits of expertise versus representative based boards.

Boards should have a written policy on board composition.

Boards may need to allow sufficient time to move from a representative based model to an expertise based model. They should also consider support mechanisms to manage the potentially challenging process of change.

## 6. Skilled based boards

If a board decides to move towards skills based membership, they first will need to decide what the right skill mix is for directors, and then determine a review a process.

Generic skills identified for boards include:

- *'The ability to adopt a helicopter view of issues and concerns*
- The ability to provide leadership in relation to organisational values
- Knowledge of the organisation, its business and marketplace
- Conceptual and analytical skills in the areas of finance and key strategic issues facing the organisation
- A willingness to delegate to others
- *The ability to ask questions that go beyond the immediate and obvious and which go to the heart of critical organisational performance matters.'*<sup>45</sup>

These skills also cover personal attributes required of board/members directors. They do not only refer

to the technical skills that are often considered important within not for profit boards. The *NSW Good Practice Guide* refers to the need for technical or content skills such as experience in law, financial management, social housing management, property development, project management and human resource management.<sup>46</sup> It suggests that all board members should also have expertise or experience in corporate governance or social justice.

If boards of organisations that are developing into growth housing providers choose to become expertise based, then the technical skills referred to above will be important. But equally important are the generic skills. A study by the UK Housing Corporation found that providers considered that *'...at least some board members ...should have experience in critically challenging management's plans and assumptions...This experience was felt to be even more important for larger and more complex associations that were going through rapid change than those that were smaller or more risk averse in their development.'*<sup>47</sup>

<sup>45</sup> www.boardworksinternational.com.au

<sup>46</sup> NSW Good Practice Guide 2004 p 13

<sup>47</sup> 'Treading the boards' p 32

At the same time, diversity of skills and experience may -if not managed appropriately- generate conflict. Board members from backgrounds which are predominantly commercial may have differing views on future directions to say board members with a strong social justice background. However, such conflicts can be positive and constructive. The UK Housing Corporation study found that *‘The tension created by having members with commercial experience and members with a senior background in social organisations was ... important in adding value.’*<sup>48</sup>

### Skilled based boards - Research participants' experiences

Amongst those research participants with full or partly skills based boards, there was an awareness of the need to review and update the skill set required of the board to reflect changes in the organisation's operations.

- For City West Housing Pty Ltd, their constitution, which was developed by government, sets out 8 categories of expertise required of their board members/directors. The board must have at least 5 categories covered with the first 2 - social housing management and finance- considered essential at all times.
- For St George Community Housing, their rules are less prescriptive regarding the skills of their directors. This more flexible approach to identifying required directors' skills is seen as vital in responding to the changing needs of the organisation.

Research participants referred to typical technical skills for their boards as including legal, financial, business and property development and asset management. Others considered that some of this expertise may be better bought on a fee for service

basis, as required. They considered that once they reached sufficient size, they could purchase these skills when they needed them. This approach frees up board positions for people with particular skills required at each stage of the organisation's development. As one interviewee put it, it also avoids appointments of *‘lawyers who are good lawyers but bad board members’*.

The research participants referred to a range of other attributes required of their board members/directors including:

- strategic thinking
- political lobbying and representation
- capacity to ask hard questions
- leadership
- business development.

Some also emphasised that financial management and social justice awareness skills are always required regardless of the maturity of the organisation.

During periods of rapid growth and change, good board members/directors are those with the ability to ask questions and challenge management. As providers took on new areas of business, CEOs were looking to their boards to engage and debate proposals with management. They were also looking for strong strategic planning and strategic thinking skills as discussed earlier.

Amongst research participants, conflict between board members was generally viewed as a positive outcome, reflecting the mixed skills and the diversity of views amongst board members. Situations were cited where differing positions had been taken by board members on matters such as changes in rent setting policies, or purchasing differing types of properties. However debate and tensions surrounding such decisions was described as constructive and healthy.

### Skilled based boards - Considering the implications

Expertise based boards should regularly review the skills of board members, to ensure skills reflect the current and future business development requirements of the organisation.

Expertise based boards should consider the range of technical skills and personal attributes required of board members and directors.

Boards should consider their capacity to 'buy in' technical expertise as required.

<sup>48</sup> 'Treading the boards' p 32

## 7. Board members' induction and training

Implementing formal induction and regular training for board member/directors is essential in enabling them to contribute to the organisation's ongoing development. In *the Woodward study* various forms of induction were provided to new directors of not for profit organisations including:

- providing a copy of the annual report and constitution (considered to be a basic minimum requirement for new directors (81% of respondents)
- providing briefings by senior staff (81% of respondents)
- providing copies of the strategic and business plans (63%)
- providing on site visits where relevant. (78%)

The study noted that large organisations '*... far more frequently had better practices than small organisations...*'<sup>49</sup> which may partly reflect resource levels. It may also reflect the fact that smaller organisations may not have well documented business or strategic plans to provide to new directors.

The literature also highlights the need for quality rather than quantity of information in induction and training processes. Sometimes the best produced manuals are not actively used by board members, particularly busy board members/directors and therefore '*... imagination is required to achieve good board orientation... Initiatives that involve activities, such as facility tours or visits to program delivery sites, can be good ways of getting board members' attention and communicating information to them in a manner that is more likely to stick.*'<sup>50</sup> For larger organisations engaged in more complex business, it is important to present material which can be complex in nature, in easy to digest formats.

## Board members' induction and training - Research participants' experiences

Some research participants had developed induction kits and implemented processes to assist new directors. Some encouraged potential directors to attend board meetings before the final selection took place or before elections. Other forms of induction included:

- in house induction by the chair or CEO;
- access to external training provided by peak bodies;
- orientation guides; and
- a buddy system, where an outgoing director would serve as a mentor to an incoming director.

Following induction processes, regular training of board members/directors included:

- providing information on external training;
- providing a designated training budget for board members/directors;
- in house training by CEO and staff; and
- the use of Australian Institute of Company Directors' courses and materials.

Suggested approaches for other training included:

- half hour training sessions coinciding with board meetings;
- accessing training options provided by peak bodies;
- access to specific workshops; and
- accesses to printed material provided with board papers, given most directors are too busy to attend external training.

### Board members' induction and training - Considering the implications

Boards may need to review induction provided to new board members/ directors to ensure they receive relevant documents and briefings from management and other board members/directors.

Boards may need to review the training needs of existing board members/directors regularly, to ensure that boards are operating to the best of their ability, and are able to address the changing needs of the organisation.

Providing change management training to board members may also be appropriate in some cases, as developing growth housing providers take on new business that may pose a new set of risks to organisations.

<sup>49</sup> Woodward, S. and Martin, S. 2004 p 153

<sup>50</sup> [www.iog.ca](http://www.iog.ca)

## 8. Tenant representation on the board

Boards should consider the ongoing role of tenants and other stakeholders within their organisations. Traditionally, most community housing providers have included tenant representatives on their boards; many boards in fact are made up entirely of tenant directors. Others have invited representatives from other stakeholder groups, such as government or industry bodies.

If boards move in the direction of placing greater emphasis on skills based boards, then they may need to review the best way to continue to include tenants and other stakeholders on boards.

### Tenant representation on the board - Emerging trends in government

Given that a central feature of community housing has been tenant participation, governments have required community housing providers to demonstrate ongoing tenant involvement in their housing provision. As community housing providers grow in size, governments will be keen to ensure that this positive aspect of community housing is maintained. For example, the Victorian Office of Housing requires prospective housing association boards to *‘...ensure that tenants’ views are well represented at meetings. It is envisaged that this will be through direct representation of one or more Housing Association tenants on the Board and through other consultative mechanisms, such as tenant surveys. Board representation should follow a democratic nomination process.’*<sup>51</sup>

### Tenant representation on the board - Research participants’ experiences

Amongst the research participants, there were two main approaches to inclusion of tenants on boards. The first approach is to include tenant’s representatives who are elected to the board by tenants who are members of the organisation. These board members are not necessarily required to have particular skills or expertise, although some providers look to tenants for the broad life experience they often bring to

these positions. In the case of Havelock Housing Association, 5 of the 9 director’s positions are currently held by tenants.

The second approach is that skill based boards nominate positions within it, as being designated tenant positions.

Tenants are elected to the board on the same basis as other directors. Tenants are expected to bring expertise or experience to the board in addition to bringing a tenant perspective. Directors who are tenants are not acting as representatives of tenants only. These boards provide training and support for directors who are tenants.

Those organisations adopting the second approach considered it essential that tenant positions not be seen as token forms of tenant participation. With only 1 or 2 positions for tenants -amongst boards of between 7 to 9 members- the risk of perceiving tenant representation as token was regarded as a problem. For these organisations, it was critical that tenants were able to fulfil their obligations and duties as well as bringing a tenant perspective to the board.

Training was perceived as being of critical importance in this process. In one case, it was noted that tenant directors could be more risk averse than other directors; this was so particularly in circumstances where tenants have had limited exposure to property procurement and borrowing arrangements for example.

Boards should also consider alternative mechanisms to secure tenants’ input into their discussions. For example, St George Community Housing has a tenant advisory group as part of its participation policy. Various reporting mechanisms have been established between the tenant advisory group, the board, and broader tenant forums. The role of the advisory group is, amongst other things:

- to provide comment and advice to the directors about any issue relating to the management and service delivery of the organisation and
- to nominate representatives for sub-committees or working parties established by the board.<sup>52</sup>

As organisations grow and become more complex, these types of processes may provide a clear and transparent method to ensure boards do not get ‘out of touch’ with tenants.

<sup>51</sup> Victorian Office of Housing Registration of Intent for Housing Associations documentation p 23

<sup>52</sup> St George Community Housing Ltd policies and procedures

## 9. Other stakeholders on the board

As noted earlier, community housing providers have traditionally had strong representation of community stakeholders on their boards. Amongst the broader not for profit sector there appears to be less involvement of other stakeholders on boards. According to the Woodward study, about 20% of not for profit boards have members that represent sectional or stakeholder interests, beyond the members of the organisation.<sup>53</sup>

### Other stakeholders on the board - Research participants' experiences

In the case of City West Housing Pty Ltd, other stakeholders' interest groups are to some extent recognised through an additional layer of preference shareholders. While these shareholders are not on the board, they have the power to appoint directors to the board. According to City West Housing Pty Ltd's Constitution, between 6 and 15 preference shareholders must be selected from functional categories that is groups with an interest in affordable rental housing in the City West areas (currently

there are 11). They currently include people from the finance sector, churches, community housing, and local government. They have a range of other powers in addition to selecting and appointing directors, including approving the organisation's business plan.

Interestingly, City West Housing Pty Ltd specifically excludes state and local government employees from being members of their board; members taking up government appointments are required to resign their positions.

Another research participant ensured the interests of their partner organisations were well represented on their board. As providers grow larger, there is some risk that they may lose touch with their local communities. At the same time, as they enter into partnership arrangements with other agencies to deliver 'housing plus' type services, partners may want to have input into the way organisations run. Potential growth housing providers may need to consider a range of mechanisms to ensure that their boards remain grounded and in touch with both their tenants and the broader community in which they operate. Such mechanisms may include service agreements, briefing partners on major developments, or establishing other advisory structures.

### Tenants and other stakeholders on boards - Considering the implications

Boards should review tenant involvement at board level.

Traditional strictly representative tenant positions may no longer be appropriate on predominantly skills based boards.

Tenants who become directors are able to bring life experience and other forms of expertise on to the board; they should have equal opportunities to be recruited and should be supported and trained to maximise their participation on the board.

Alternative mechanisms to ensure boards remain receptive to tenants' views should be explored and established.

Boards should consider ways to be inclusive of other stakeholders' views - including partner organisations.

## 10. Board recruitment and selection process

Recruiting and retaining effective board members is essential to good board operations. Community housing board members have often been recruited by word of mouth and amongst local community networks. For growth organisations, recruitment methods may need to expand, in order to attract a

broader cross section of people and to overcome the recruiting difficulties often experienced by voluntary boards. Larger and more complex businesses also need to have robust and transparent recruitment processes, including policies covering directors' terms and succession plans.

Amongst the not for profit sector, advertising for board members is more common amongst larger organisations, (20%) than smaller ones (2.5%).<sup>54</sup>

<sup>53</sup> Woodward, S. and Martin, S. 2004 p 132

<sup>54</sup> Woodward, S. and Martin, S. 2004 p 121

The *Woodward study* highlighted difficulties in attracting directors for not-for-profit boards. It is not unusual to experience difficulties in recruiting directors across the not for profit sector; nearly a third (29%) of all respondents in the Woodward study reporting problems recruiting directors.

One option for attracting additional board applicants might be the establishment of a register of potential applicants, including a database outlining the skills of those registered. Such a register could operate on a similar basis to the women’s board registers used in several states/territories, and by the Australian government to promote women onto corporate boards. The register could be actively promoted amongst private sector companies seeking to enhance their corporate social responsibility, wishing to give something back to the community.

### Board recruitment and selection process - Research participants’ experiences

Amongst the research participants, there was evidence of organisations changing their recruitment processes to reflect the degree of maturity of their business. Some had detailed policies and procedures for all stages of the recruitment process, while others were embarking on developing such policies.

It was increasingly common practice amongst the research participants for non-tenant director board positions to be advertised in local, state, and national newspapers. The advertising process usually included references to the skills required at the time. These varied depending on the skills of the former director who held the position.

- In one case, a provider had advertised in the finance pages of the state based newspaper, looking for applicants with a finance/accounting background.
- Others had advertised in the Australian Financial Review for similar reasons.
- Some have had very few applicants despite wider advertising. In one case, board members and management, actively pursued applications from skilled people to increase the level of choice.

Tenant director’s positions were generally advertised amongst tenants via newsletters. In some cases, management also played a role in encouraging tenants with appropriate skills to nominate for board positions.

The research participants also had documented a selection processes for board members/directors.

- As outlined earlier, in the case of City West Housing Pty Ltd, the preference shareholders determine board appointments following advertisement processes. In filling vacant positions, preference shareholders may exercise some discretion in selecting applicants by looking beyond the specific skills required, also taking into account broader life experience.
- In the case of St George Community Housing Ltd all members of the co-operative are eligible to vote for the directors at the AGM; the board usually provides a list of preferred or board endorsed candidates. These candidates are considered to have the preferred skills to fill the positions on the board at that time.

### Board recruitment and selection process - Considering the implications

Board recruitment processes may require reviewing in order to attract skilled directors.

Boards should develop robust and transparent recruitment policies, including policies covering directors' terms and succession plans.

Boards should consider advertising in relevant newspapers to attract a broad selection of applicants.

Boards may need to consider additional mechanisms for encouraging appropriate applicants to come forward.

## 11. Board's operations

Board operations refer to the efficient and effective day to day running of the board. Three areas of board operations that should be reviewed as a provider grows are: the frequency of meetings, the use of board committees, and directors' remuneration.

### Board's operations - Emerging trends in government

Governments are increasingly interested in monitoring the efficient and effective functions of boards. For example, the Victorian Office of Housing requires prospective housing associations to '*...describe how the (proposed) board will operate including any proposed sub-committees, delegations, management reporting systems and systems to achieve compliance with statutory and regulatory requirements.*'<sup>55</sup>

#### 11.1 Frequency of meetings

Boards should only meet as often as required to do their business. The literature suggests that '*Increasingly best practice boards meet less often for longer periods. To fulfil all the requirements of good governance and, at the same time, create a strong governance team, boards should probably not meet less often than every two months.*'<sup>56</sup>

Amongst the not for profit sector, the *Woodward study* found that nearly half (47%) of not for profit boards met monthly, with larger organisations more likely to meet on a monthly or more frequent basis and for longer time than smaller ones. Over two thirds of boards in large organisations met for more than two hours, compared with just over a third of boards in small organisations. According to the *Woodward study* '*...This difference may simply be a result of the amount of time required to oversee the more complex arrangements of a large organisation compared with a smaller one.*'<sup>57</sup>

### Frequency of meetings - Research participants' experiences

Amongst the research participants, board meetings were held monthly in 3 out of 4 cases. Their CEOs considered that monthly meetings were important to

keep the board involved and informed during periods of growth and development. In the case of City West Housing Pty Ltd, they have moved from monthly to bi-monthly meetings on the basis that the organisation is now well established and there is less need for the board to meet so frequently. Also, monthly board meetings took up considerable management resources in preparing reports and other materials. Board resolutions are circulated via email in the non-meeting months and the CEO provides a short monthly report.

#### 11.2 The use of committees

Committees can be used to reduce the burden of meeting time for all board members/directors, and to ensure that issues are thoroughly examined by a smaller group of board members.

The UK Housing Corporation suggests that '*... larger more complex associations may have established business activity sub-committees that can address critical issues in more detail than would be possible for the main board.*'<sup>58</sup> However, it notes that where such committees are used there should not be any overlap amongst them, or gaps in the areas covered.

The UK Housing Corporation suggests that audit committees should oversee accounting policies in medium to large associations.<sup>59</sup>

Others suggest that the role of committees should be clear and not confused with management responsibilities. '*Where used, board committees are focused on better preparing the board to do its own job never to instruct or interfere with staff work.*'<sup>60</sup>

Three main types of committees are identified:

- permanent business activity committees -such as audit and recruitment committees;
- executive or management committees, with responsibility for managing the board's business; and
- project or task focused groups, established only until the project or task is completed.

The *NSW Good Practice Guide* suggests that project groups are preferable to permanent committees (other than audit committees) because of the potential dangers of long term committees including:

<sup>55</sup> Victorian Office of Housing Registration of Intent documentation p 24

<sup>56</sup> [www.boardworksinternational.com.au](http://www.boardworksinternational.com.au)

<sup>57</sup> Woodward, S. and Martin, S. 2004 p 153

<sup>58</sup> 'Treading the boards' p 28

<sup>59</sup> 'Treading the boards' p 27

<sup>60</sup> [www.boardworksinternational.com.au](http://www.boardworksinternational.com.au)

- fragmentation of decision-making;
- the committee undertaking management work; and
- the committee creating extra work for management in servicing their meetings.<sup>61</sup>

This approach is consistent with the Boardworks International Best Practice Guide<sup>62</sup> which recommends the use of working parties rather than standing committees.

Similarly, *the Woodward study* suggested caution in the use of smaller management committees which according to their research, were found to exist in nearly half of the not for profit boards. They suggested that the use of board management committees could lead to other board members not fulfilling their responsibilities, or not staying on top of board business.<sup>63</sup>

The establishment of audit committees is considered good practice, particularly for larger organisations. *The Woodward study* reported that a legal practitioner, experienced in dealing with a large range of not for profit organisations, ‘...advises larger NFPs to enshrine an Audit Committee of the Board (but with at least some outside people) in the constitution.’<sup>64</sup>

The *NSW Good Practice Guide* suggests that ‘...for organisations preparing themselves to manage rapid growth or for those who have already reached a significant size, establishing an audit committee may significantly reduce pressure in main board meetings and give greater confidence to the board (and other stakeholders) that an organisation is travelling well.’<sup>65</sup>

The roles and functions of an audit committee are outlined in Volume 2 of the *NSW Good Practice Guide*. The Guide and other literature emphasises that audit committees do more than oversee the financial health of an organisation, and should take a broader view in monitoring and reporting systems, as well as risk management. Audit committees often invite outside expertise.

### The use of committees - Research participants’ experiences

Research participants had various committee arrangements, although none were using smaller management groups. Given that their boards were relatively small in size, there was probably no need for these committees.

All providers had a finance or audit sub-committee. One CEO commented that due to lack of outside expertise on the committee, they were unable to adequately question management reports due to limited expertise amongst committee members. Other committees established included appeals and tenant participation committees. One provider used project groups on an informal basis, drawing on board members’ expertise from time to time.

One CEO commented that the use of committees requires careful consideration as issues can get lost between committees and board meetings.

## 11.3 Directors’ remuneration

The literature indicates that traditionally board members in the not for profit sector have participated in committees on a voluntary basis. This is hardly surprising given that most organisations rely on government funding or donations and such resources are directed to providing services to clients. As a NSW report on good governance states: ‘...To put it simply, organisations are often not in a position to remunerate board members.’<sup>66</sup> However, the issue of remuneration of directors appears to be under discussion in some organisations at present, and larger providers may find they have an increased capacity to pay directors.

In *the Woodward study*, larger organisations were more likely to pay (16%) compared with 7% of smaller organisations. It was noted that the larger organisations may entail greater responsibility for the board and therefore ‘greater argument for remuneration.’<sup>67</sup> The study referred to earlier work that indicated that there may be consequences to having voluntary board members such as they may have limited time for meeting and preparation. This lack of time could be an issue for larger organisations. As a provider grows or its business becomes more complex, it is likely to place additional demands on board members’ time.

Payment of sitting fees may recognise the level of commitment required by directors. However, there are other issues to consider. The NSW Federation of Housing Associations highlights that paying fees may impact on income related rents, in the case of lower income tenant directors, and it may also affect their income support payments.<sup>68</sup> For higher income directors, the payment of a relatively small

<sup>61</sup> NSW Good Practice Guide 2004 p 21-22

<sup>62</sup> [www.boardworksinternational.com.au](http://www.boardworksinternational.com.au)

<sup>63</sup> Woodward, S. and Martin, S. 2004 p 143

<sup>64</sup> Woodward, S. and Martin, S. 2004 p 144

<sup>65</sup> NSW Good Practice Guide 2004 p 30

<sup>66</sup> ‘Future Directions in Corporate Governance’ 2003 p 20

<sup>67</sup> Woodward, S. and Martin, S. 2004 p 112

<sup>68</sup> ‘Future Directions in Corporate Governance’ 2003 p 21

sitting fee may make little difference to their decision to join a board.

## Directors' remuneration - Research participants' experiences

Research participants had taken a range of approaches to paying directors fees. City West Housing Pty Ltd was the only organisation paying sitting fees to directors. These are reviewed annually and have been lowered from their original level because the organisation is now well established and therefore the demands on board members/directors are less onerous than in the establishment phase. The fees were lowered when the board moved from monthly to bi-monthly meetings.

City West Housing Pty Ltd regards their sitting fees of around \$2,500 per annum to directors; this is a relatively small amount paid towards meeting basic directors' expenses. However, the payment of sitting fees is perceived as important in promoting a professional image. It could also provide a mechanism for ensuring directors attend meetings. Directors are required to attend all meetings. If they miss more than 3 meetings then their position must be reconsidered. Board meetings are set to accommodate directors and can be re scheduled if required. The CEO reported that directors attend most meetings.

In another case where sitting fees were not paid, the CEO stated that it can sometimes be difficult achieving a quorum and that volunteer directors may take their

role less seriously than if they were paid. In the case of this organisation, travelling expenses for board members are met by the organisation. The board has previously considered the issue of paying sitting fees, and would pay them if funded for such costs.

Other points made in regards to paying sitting fees included that they would:

- raise the profile of the organisation and would help to emphasise the important role that board members/directors have and their obligations;
- encourage more applicants for directors' positions;
- align with private sector practice; and
- provide greater transparency when compared to payments for travelling expenses.

Those providers not paying sitting fees considered that this issue would need to be revisited as the organisation continued to grow, and aimed to attract skilled directors. However, professional people in the corporate sector may be attracted on to boards for non-monetary reasons. One CEO stated that their directors were often professional people who wanted to make a voluntary contribution and give something back to the community. A few thousand dollars would not make a big difference to these people and could work against their 'benevolent' motivations. With a growing trend towards corporate social responsibility in the private sector, there may be more opportunities to attract private sector people on to growth housing provider boards, without the payment of sitting fees.

### The board's operations - Considering the implications

Boards should review the frequency of their meetings to ensure the right balance between frequency and length of meetings; fewer, longer meetings were generally considered to be good practice.

Boards may also consider greater use of electronic mechanisms for decision making purposes, such as email.

Boards should establish an audit/finance committee in keeping with good practice.

The use of external expertise on these committees should also be considered.

Long term established committees should be kept to a minimum. Instead, boards should consider the establishment of working parties from time to time; these groups should disband once the project or task has been completed.

Boards should assess the potential benefits and costs of paying sitting fees to directors, particularly when attracting directors across income groups. There should be a documented policy on sitting fees (whether paid or not) and payment of travel expenses.

## 12. Board - Management relations

The relationship between management and the board is critical to the overall performance of the organisation. In particular, the chair and CEO should have a good working relationship based on trust and mutual respect. The chair must have sufficient time and expertise to fulfil their duties and to work closely with the CEO. The chair's performance should be reviewed as the organisation grows and takes on more complex business to ensure their ongoing capacity to achieve results.

The *NSW Good Practice Guide* suggests that: *'The relationship between the board and the executive office should be open, productive and collaborative. Effective governance arrangements for the executive officer include:*

- *support and respect for their role*
- *supervision and guidance*
- *reasonable performance targets and appraisal process*
- *clear delegations.'*<sup>69</sup>

As organisations develop their business, boards need to determine the level of guidance versus the level of autonomy that they will provide to their CEOs. Clearly agreed and documented delegations can help to provide boundaries within which the CEO can operate.

The level of autonomy granted to the CEO by the board will vary and may reflect the stage of maturity of the organisation. A UK Housing Corporation report on risk management noted that *'Older established registered social landlords that were diversifying into new activities tended to grant the highest level of autonomy to the chief executive and senior management. Where boards retained a high level of control this often restrained the registered social landlord's consideration of new activities.'*<sup>70</sup>

As providers grow larger and have more staff, boards may also need to consider more formal arrangements for managing relationships between management and the board. With only a few staff, such relationships can be managed informally. For developing growth housing providers however, staff numbers may grow to include specialised areas for

tenancy management, asset management, and financial management for example. More formalised arrangements may provide opportunities for specialist managers to relate directly to the board, through the CEO.

Boards should also consider the role of 'executive directors'. The term 'executive directors' refer to CEO's or managers, being appointed to the board. The *Woodward study* found that around three quarters (77%) of not for profit boards had no executive directors. Executive directors are often seen as less 'independent' than outside directors and less likely to make tough decisions such as terminating a CEO. However, *the Woodward study* notes that even amongst the for profit sector there is much debate about what constitutes an 'independent' director and simply being non-executive may not of itself be sufficient.<sup>71</sup>

### Board - Management relations Emerging trends in government

Governments are interested in ensuring adequate reporting mechanisms between management and boards. For larger organisations, they want to ensure that reporting covers all areas of business and that it is appropriate for the levels of risk that are involved. For example, the Victorian Office of Housing requires prospective housing associations to describe how boards will exercise control over the business of the organisation, through the implementation of appropriate reporting and decision making processes.<sup>72</sup>

With regard to the board's independence, some jurisdictions, such as NSW, specifically prohibit executive directors under the terms of the funding agreement.

### Board - Management relations Research participants' experiences

CEO's amongst the research participants, reported healthy relationships with their chairs, describing them as productive and sometimes challenging. They looked for advice and leadership from them, and would communicate with them regularly. In one case, the chair and CEO discuss the board agenda and related issues before each board meeting; they see themselves working in partnership. They all had delegations in place within their organisations, awarding varying degrees of autonomy to the CEO.

<sup>69</sup> NSW Good Practice Guide 2004 p 10

<sup>70</sup> 'A Strategy for success: effective risk and business management' (UK Housing Corporation 2001) p 33

<sup>71</sup> Woodward, S. and Martin, S. 2004 p 105

<sup>72</sup> Victorian Office of Housing Registration of Intent for Housing Associations documentation p 24

One CEO noted the importance of having such autonomy and flexibility, particularly in relation to property procurements.

Amongst research participants all CEO's attended board meetings but were not directors on the board.

Only one CEO suggested that the board should possibly reconsider them becoming an executive director, to allow for a greater engagement in decision making.

### Board - Management relations - Considering the implications

Boards should review their delegations for CEO's and other staff on a regular basis to ensure they are adequate to meet the needs of a growing business.

Boards will need to review board management relations as the organisational structures grow in size and complexity.

## 13. Board - Management reporting

Information and reporting requirements will change as boards and organisations mature. For older and larger organisations, boards should not become involved in detailed operational aspects. They should look for strategic information and focus on key performance indicators. However, this may take time to achieve, and the level of reporting required by boards may fluctuate based on the level of growth and activity of individual organisations.

During periods of rapid growth and change, boards may need more information to satisfy themselves that the change process is being well managed. *'In theory, the board should set its performance expectations in advance and monitor actual performance against them. However, for organisations which are growing or which operate in a volatile environment this can be difficult.'*<sup>73</sup>

In the UK, where the sector is more developed, the Housing Corporation reports that *'...Some associations have been developing informative and easy to digest quarterly or monthly summaries of key performance indicators for management. These documents show trends, explain changes and variances against budget/target and explain the association's performance against external benchmarks.'*<sup>74</sup>

### Board - Management reporting Research participants' experiences

Research participants stated that reporting arrangements had developed over time. One provider described it as changing from a situation where the board

got too little information, to getting too much information, until recently when they found the right balance.

In the case of a couple of research participants, boards thought they were getting too much information, even though the information provided was consistent with the National Community Housing Standards reporting requirements. For example, providing monthly information on vacancies and arrears to the board, when these items are not the responsibility of the provider. Similarly, another board considered that such information could be provided quarterly rather than monthly. Others were reviewing their reporting in order to streamlining it and focus on strategic performance indicators. One provider felt they went beyond the accreditation requirements in some areas of reporting, to ensure that their board was well informed.

The content of reporting to the boards varied. In one case, the CEO reported against their annual business plan on behalf of all staff. In other cases, in addition to the CEO's report, detailed reports were prepared by sections of the organisation including reports on:

- finance -covering matters such as accounts and budgets- with performance commentary from management;
- housing management, covering items such as vacancies, arrears and complaints; and
- development, including current and future property developments, procurements, feasibility studies and contracts.

In some cases, staff attended meetings during relevant sections to be present during discussions. Policies and procedures manuals were used to outline the content of the various reports to the board.

<sup>73</sup> 'Future Directions in Corporate Governance' 2003 p 16

<sup>74</sup> 'Treading the boards' p 27

## Board management reporting - Considering the implications

Boards will need to:

- adjust reporting requirements as business grow and change;
- be able to move from detailed operational reports to performance based strategic reports;
- ensure adequate reporting during periods of rapid growth and change;
- have the expertise and confidence to interpret and challenge management reports; and
- have written policies and procedures regarding content for reports to the board.

## 14. Conclusion

This paper has highlighted governance issues that may require board consideration, for those organisations facing growth and change. Some boards may have addressed a significant number of these matters within planning and governance reviews. For others, completing such processes may involve time, dedicating additional resources, training, and providing support. Governments and peak/resourcing organisations should consider what role they may be able to play in ensuring that the sector continues to develop strong governance frameworks, as organisations enter a different phase of expansion and maturity in the provision of social housing and related services. Where appropriate, peak bodies should look to lessons arising from the experiences

of other not for profit organisations, and to lobby governments for change to benefit the wider not for profit sector.

The Forum's second report will complement this project by providing further analysis of the functions of growth housing providers and associated risks management. That report will focus specifically on what are the requirements to manage and govern growth housing providers, including development and housing management, within a community development framework.

The final suggestions, from the Institute of Governance Canada's website, provide guidance on triggers for reviewing governance as organisations develop and mature.

### Final tips for boards:

'Don't get mired in tradition and past practices that don't match your organisation's current needs or approach...

All board members should expect the governance structure to change as the organisation grows, and be prepared to step back when the time is right. It is time to re-evaluate the organisation's governance approach when:

- The number of staff has grown or decreased by more than half.
- The mission or mandate has changed (e.g. service-oriented to fundraising).
- The client base or the way the organisation offers services has changed (e.g. local to provincial).
- The organisation has experienced more than one financial crisis in the past two or three years.
- The exact same governance model has been used since the organisation began more than five years ago'.

## 15. References

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'Treading the boards A self assessment framework for board performance' (UK Housing Corporation 2001)

'A Strategy for success: effective risk and business management' (UK Housing Corporation 2001)

Woodward, S. and Martin, S. 'A Better Framework: Reforming not-for-profit regulation' (Melbourne: University of Melbourne 2004)

### Useful Websites:

Boardworks International  
[www.boardworksinternational.com.au](http://www.boardworksinternational.com.au) <<http://www.boardworksinternational.com.au>>

Institute of governance Canada [www.iog.ca](http://www.iog.ca) <<http://www.iog.ca>>

Housing Corporation UK [www.housingcorp.gov.uk](http://www.housingcorp.gov.uk) <<http://www.housingcorp.gov.uk>>

Strategy Unit Home Office UK [www.strategy.gov.uk](http://www.strategy.gov.uk) <<http://www.strategy.gov.uk>>

### Other reference material:

Australian Financial Review Article 'Charities Face Tax Confusion 14 May 2003

Australian Government Charities Bill 2003 Explanatory Material

Media Release 'Australia's \$2.8 b not-for-profit sector needs reform' University of Melbourne February 16 2004

Office of Housing Victoria Registration of Intent for Housing Associations 2004

Queensland Housing Act 2003 and Regulations

St George Community Housing Ltd policies and procedures

SACHA Change Management Team discussion paper 'The Funding Agreement in A Community Housing Regulatory Framework' (South Australian Community Housing Authority Nov 2003)

# Appendix One:

## Comparison of community housing providers and growth housing providers <sup>75</sup>

Topic	Traditional community housing	Growth housing providers
<b>Legal structure</b>  <b>Board appointment</b>  <b>Board composition</b>	<p>Non profit cooperative, association, trust, or foundation. May also be local government based or within a larger voluntary service agency. In very limited cases, may not be incorporated.</p> <p>Directors elected by members as individuals or representatives Some directors appointed without election process</p> <p>Voluntary directors Composition not specified except for possibly including tenant representatives</p>	<p>Will be incorporated entities</p> <p>Transparent and documented process for appointment/election of directors</p> <p>Paid or voluntary directors Expertise more likely to be a requirement and may be specified in the constitution.</p>
<b>Scale</b>	Very small with incremental growth (Australian data: 8% CHOs manage >75 dwellings, 42% manage 1 to 5 dwellings, average 25) (cw UK average 450, larger > 2500)	Will build sufficient scale to be efficient and viable and to support broad functional span.
<b>Functions</b>	<p>Typically centred on tenancy management (sometime specialised) and minor property management.</p> <p>Most do not undertake property development or purchase</p> <p>Joint ventures usually in partnership with government</p>	<p>Will increasingly take on the full range of functions of housing authority, including procurement, long term asset management and possibly fund raising.</p> <p>Some functions may be subcontracted</p> <p>May include other housing related services/ products</p> <p>May undertake joint ventures with private developers</p>
<b>Fund raising</b>	<p>Generally no</p> <p>Limited capacity to bring in alternative finance (by virtue of small scale, voluntary nature of the organisation)</p>	<p>Possible</p> <p>Aim is to establish an organisational model at arms length from government that will be acceptable to investors/ financiers</p>
<b>Asset holder</b>	Generally no- to the extent they own property they tend to have passive balance sheet	<p>Possibly – with government powers to recover</p> <p>Active balance sheet</p>

<sup>75</sup> Based on material provided by Vivienne Milligan

