



ICHO REPORT

This report outlines the information drawn from forums held in Cairns, Townsville, Rockhampton and Brisbane. The forums were attended by QLD Government Officials, Queensland Shelter staff and Indigenous Community Housing Organisations.

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INTRODUCTION

Forums have been held for Indigenous community housing organisations (ICHOs) across Queensland in Rockhampton, Cairns and Townsville over the past year. In addition, Department of Housing facilitated a forum in Mt Isa in November 2008 to discuss the proposed transition of Indigenous community housing into the one social housing system (OSHS). The role of Queensland Shelter at the three most recent forums has been to facilitate discussion between the organisations and the Queensland government. The purpose of the forums was to provide an opportunity for organisations to raise any issues, concerns or questions, and to ensure that all ICHOs are equipped with the information necessary so that they can make informed and considered decisions as to whether their organisation will elect to bring their portfolio of properties into the one social housing system.

At each of the forums a number of concerns were raised, some of which were organisation and region specific however the large majority of which were echoed across the State. Major concerns included financial viability for organisations electing to come into the system, retention of title of properties, split portfolio possibilities, the securing of properties by way of a mortgage rather than a caveat, issues surrounding the degree of control and autonomy an organisation would continue to have in respect of who is housed in their properties and for how long, and concerns surrounding the rent policies of the OSHS. In addition to these, there were a number of practical concerns surrounding the roll out of the \$60 million for refurbishment of properties owned by ICHOs. A Register of Indigenous Housing Concerns is attached to this report which details these issues and concerns raised in all sessions.

Queensland Shelter believes that the government presents a reasonable opportunity for ICHOs to strengthen and grow through the OSHS. However, we do not believe that the process to date has been conducive to ICHOs embracing the proposed transition. The process itself has been confusing and the basis for many misinterpretations and misunderstandings. Certain departmental staffs have displayed a complete lack of cultural awareness and respect at certain meetings with ICHOs. To date the confusion surrounding the lifting of caveats from properties has been a significant barrier to many organisations transitioning into OSHS. In particular, the written 'Summary of Transition on OSHS' forwarded to RIHOs from the Department, indicates clearly in writing that if the mortgage to the Department of Communities is discharged, the Commonwealth will replace a caveat back over the property. This is contrary to what has been relayed by other representatives from the Department of Communities, Minister Struthers, and representatives from FaHCSIA at the Townsville forum. Misleading statements such as these have not been conducive to organisations embracing the proposed transition. Furthermore, there has not been any single package released which details in writing the terms and conditions relating to the proposed transition of ICHO properties into the OSHS. This process has been the cause of confusion, misunderstandings and on the whole has been the reason for the delay in many organisations electing to transition into the OSHS. In addition, rhetoric from Minister Plibersek's office, the goal to strengthen and grow the community housing sector, maximising self-determination and building the capacity of community housing organisations, seems to conflict with Minister Macklin's approach of compliance with the ICHOs.

Of particular frustration, are the missed opportunities felt by the ICHOs to participate in and take advantage of funding provided through the stimulus package, and schemes such as NRAS. Many of the ICHOs throughout Queensland were arguably in a better position than many community housing organisations because they have considerable assets bases they could leverage, to acquire and manage more properties to house Indigenous peoples.

Despite these missed opportunities, and the confusing transitioning process to date, Queensland Shelter believes that the long term goal and vision should be for organisations to grow through acquiring and managing more properties, and we believe that the Government offers a reasonable avenue through which this may occur, as more funding becomes available in the future. This report will detail the many concerns had by organisations, the Queensland governments' position, Queensland Shelter's view, and finally a list of recommendations proposed by Queensland Shelter to the Federal and State governments, and the ICHOs is included.

Now that the final deadline has passed for many ICHOs to take up the opportunity to receive refurbishment works funding if they transition into OSHS, Queensland Shelter recommends that it is an opportune time for the Queensland government to release a final, clear and concise package on the process involved in transitioning properties into the OSHS, and the details surrounding the ongoing participation as a registered provider in the system. This is of importance for many ICHOs in the state which remain undecided about whether to transition into the State system, and seek in writing, details regarding what this would mean for their organisation.

REFURBISHMENT

Concern

Organisations expressed concern that Q Build would be undertaking the refurbishment works to properties and that the organisations wouldn't have the opportunity to employ contractors or builders with whom they had a previous working relationship. A number of the ICHOs indicated that they had received quotes in the past from contractors to undertake the necessary refurbishment works. They expressed their desire to have the opportunity to decide who would undertake the work, particularly when the quotes differed and this would impact upon the amount the property would be mortgaged to.

A particular concern which was raised was that if Q Build was to carry out all the refurbishment works, this would not particularly assist the Aboriginal and Torres Strait Islander builders and contractors in the communities. Organisations expressly indicated their desire to employ Indigenous contractors and builders rather than Q Build to carry out the refurbishment works in order to boost employment opportunities for Aboriginal and Torres Strait Islander peoples. Organisations also rose whether it is a possibility for there to be opportunities for new construction of properties via new for old title swap.

Government Response

The department indicated that following a scope of works being completed, refurbishment works will be managed by Qbuild. Any Indigenous contractor wanting to undertake the refurbishment

work may become eligible to submit a tender for the work following registration with Qbuild. Maintaining the properties in the future will be the responsibility of the ICHO and works may be undertaken by contractors currently used by organisations.

Queensland Shelter View

Given the closing the gap commitments and targets established by government and agreed at both national and state levels, it seems contradictory that ICHOs must join the OSHS to qualify to access the \$60 million of funding made available for refurbishment works to ICHO properties in Queensland. Access to adequate, safe and secure housing is a precondition to improving health and education outcomes. It is therefore critical that in order to meet the close the gap targets, significantly more houses are needed to tackle the widespread overcrowding which is occurring, and refurbishment works money is needed to address the poor condition of many houses being lived in by Aboriginal and Torres Strait Islanders. This is crucial in closing the gap on Indigenous disadvantage, and considering that housing has been acknowledged as an essential building block to address these gaps, funding should be available to bring all houses up to an adequate standard.

It is also true that mainstream community housing organisations are not provided with maintenance and repairs funding and are required to quarantine a proportion of income from rents in a sinking fund to cover maintenance and repairs. However, the lack of any national regulatory system and the mixed history of property acquisitions for the ICHOs, has meant some properties managed by ICHOs have fallen into disrepair. This is a situation familiar to some State Housing Authorities who have similarly not ensured funds were available for responsive maintenance and have subsequently developed substantial debts to the Commonwealth as a result.

Given the lack of an established system, our view is that the use of maintenance and repairs funding as a bargaining tool for organisations to join OSHS has created barriers due to perceptions over its intent.

Whilst we understand the State has to protect its interest in the properties it uses funds on, it has been perceived as an additional encumbrance on properties because of related concerns over caveats and mortgages. What could be a negotiation about the use of maintenance funds and the benefits of being part of OSHS (properties being well maintained, access to growth, support for business models, training for improved governance and staff development) has been perceived by many as an additional control over their organisation and assets.

Further to many of the concerns raised in forums regarding the employment of Indigenous contractors to carry out repairs and maintenance, Queensland Shelter is of the view that the Department of Communities should work closely with Q Build to establish Indigenous employment strategies. Many practical concerns surrounding the need to be registered to carry out the refurbishments need addressing at the State level to ensure that as many Indigenous contractors as possible can be involved in carrying out the works on properties.

FINANCIAL VIABILITY

Concern

Financial viability was a concern expressed by many organisations if they are to transition into the OSHS. The concern was raised that if the organisations bring their properties into the system, they will be obliged to adjust their rent policies to conform to policies set by the State under the OSHS. Organisations indicated that if forced to limit their chargeable rent to comply with these policies, they are at risk of falling considerably short of meeting their associated costs of running the organisation and providing affordable housing options to Indigenous Australians.

Case examples given by participants indicated that it was not financially feasible for them to charge less for rent due to significantly high rates and other associated costs. The concern for organisations is that if they move under the OSHS and use income based rents their organisations' financial stability and viability is at risk.

Furthermore, organisations raised concern regarding the ongoing need for repairs and maintenance to be carried out on the properties. A number of organisations indicated that at present they are scraping by on the rents or income they are receiving, and that administration costs alone are so high that there is little left over to be able to conduct repairs or maintenance on their properties. The amount of income which the organisations generate from the current rent they charge tenants is not enough to cover all of the maintenance and repairs which are needed. In the long term there is an ongoing trend of things not being fixed in the properties which results in some falling into disrepair. Without a sufficient level of income or staff, organisations find it difficult to operate and in many cases are scraping by from week to week.

ICHOs also questioned whether there was the possibility for split portfolios, to keep some properties out of the OSHS and bring some in. This was raised partly due to concerns organisations had regarding existing tenants who are earning higher income than is accepted under the OSHS. There were also questions regarding financial assistance to cover administration costs, or to establish business management plans as to financial feasibility for individual organisations.

Government Response

The transition of ICHOs is primarily under the Long Term Community Housing Program under which rent is charged at 25% of household income, plus Commonwealth Rent Assistance entitlement, up to market rent whichever is the lowest. One of the flexible policy options made available by the department in response to ICHO concerns, is that ICHOs may apply to charge rents under the Affordable Housing Program if this better suits their business needs (i.e. at a discount to market rent).

The department prefers that all ICHO properties are transitioned for use under the one social housing system. However, for those ICHOs who have high income households or who wish to use rent revenue for purposes other than housing, there is an option to transition a portion of their portfolio. Only properties that transition will be eligible for refurbishment and subject to one social housing program requirements. Where an ICHO would like to transition a property tenanted by a high income household, the department has agreed to a five year exclusion period for ongoing eligibility from the time this policy requirement is implemented for all other long term community housing providers in the next 12 to 18 months.

In particular for smaller organisations, consolidation is encouraged due to the often high and duplicated costs associated with the administration and running of the organisations. The Queensland government agreed to assist smaller organisations to transition into the OSHS up until the deadline of November 30, 2009.

Queensland Shelter View

Queensland Shelter believes that the OSHS is a reasonable base from which ICHOs can use their assets to leverage, acquire more properties and grow so that they can manage more dwellings in which to house Indigenous and Torres Strait Islander peoples. The experience of many mainstream community housing organisations which have transitioned into the OSHS is that it has been a reasonable base from which they could leverage to acquire more stock. It is Queensland Shelter's belief that these same opportunities would arise for ICHOs if they transition into the OSHS. To be able to access funding which may stream through from the Federal government in the future, organisations will have to be registered providers, part of the OSHS. For this reason, Queensland Shelter is of the view that for many ICHOs, the best place for them to operate is from within the state system so that they can have access to these funding streams, which in turn will allow them to grow.

There remain many misunderstandings surrounding the rent policies under the OSHS which have been the cause of significant concern for many ICHOs, particularly regarding the issue of financial viability on the rent setting limits. Queensland Shelters' understanding and belief is that if the Department is to release a concise and clear written package of what the transitioning will mean for organisations, including details regarding all possible rent setting policies and grandfathering provisions, much of the confusion surrounding these issues will clear.

Whilst Queensland Shelter believes that operating within the OSHS is perhaps the best option for a number of ICHOs in that it will allow them to grow and manage more stock, it is our view that the right of all organisations to choose to opt in or out of the system must be respected. This would not preclude organisations joining at a later date.

ELIGIBILITY

Concern

There was significant concern expressed by organisations that they would lose their autonomy in their operations as Indigenous community housing providers. Many organisations were concerned that they would lose control over who is tenanted in their properties, how long they may remain in the properties and the conditions of the tenancies. The criteria and policies which many organisations currently have in place, regarding who can be a tenant in their houses and the conditions surrounding the tenancies, are perceived to be conflict with eligibility policies under the OSHS.

ICHOs are concerned about many of their tenants who may be elderly couples or individuals who are housed in larger houses. Their concern is that in transitioning into the OSHS, these tenants will be forced to move into smaller one and two bedroom units.

Government Response

The government indicated that organisations would retain their autonomy and that assistance would be made available to help organisations bring policies in line with the OSHS policies. Furthermore, there is a degree of flexibility surrounding the eligibility criteria, and grandfathering provisions may be implemented to ensure that the transitioning will not have a negative impact on current tenants.

The department will assess applicants for their eligibility to be allocated to the particular vacant ICHO property and refer appropriate housing applicants to the ICHO for their consideration. Allocations are made by the ICHO in accordance with their constitution, policies, and procedures. Grandfathering arrangements will only apply to existing tenants.

No tenants will be forced to move into a smaller house or unit, however over time the tenants may be encouraged to move in order to make better use of the stock available and match up the needs of individuals and families better.

Queensland Shelter View

The concerns and confusions surrounding the eligibility criteria and grandfathering provisions are a reflection on the importance of we believe, the State government delivering a clear and concise written package of exactly what the transitioning process would entail and mean to the majority of ICHOs in Queensland.

Queensland Shelter is of the view that now that the final deadline has passed for organisations to transition and receive refurbishment works funding, it is important and beneficial that the terms and conditions of operating and being registered in the OSHS be explained in writing for organisations.

Confusion over the grandfathering provisions and the exact timeframe for existing tenants to not be affected by OSHS rent policies or eligibility criteria needs to be detailed in written form for ICHOs. Queensland Shelter is of the view that this will clear up any confusion surrounding these issues and will assist organisations in continuing to decide what is best for their organisation.

TITLE AND SECURITY

Concern

Organisations indicated a concern that if they elect to come into the OSHS, they would lose the title they hold in their land and properties. In addition, organisations are concerned about the way in which the State and Commonwealth will secure their interests in the properties, whether it is by caveat or mortgage. Currently, the Federal government has a caveat over properties acquired through ATSIC, and a key concern of organisations is that these caveats will remain in place even if they come into the OSHS and the State places a mortgage over the properties. Organisations are uneasy regarding the possibility of their properties being secured doubly by the State and Federal by a caveat and a mortgage.

ICHOs expressed their concern that the information they have been receiving from the Department is continually being revised and altered. The lack of concrete and uniform information being relayed

to ICHOs considering coming into the OSHS is seen as a significant barrier. Representatives from organisations referred to the initial information which was relayed to them over 12 months ago in regards to this security, and indicated that it was represented to them that when coming into the OSHS, the caveats would remain and their properties would be additionally secured by way of a mortgage by the State.

Government Response

ICHOs will retain the title to their properties. The State Government uses a mortgage to record its interest in a property based on funds provided for that property. The caveats will be lifted by the Australian Government in favour of the department registering a mortgage. The caveat must be lifted before the department can register the mortgage – there cannot be both. The department's interest will be represented as a percentage of the value of the improvements only. The mortgage can be discharged if the property is sold or the ICHO pays back the department's interest using surplus rent revenue.

The original information provided by the department still stands. Additional information has been provided regarding flexible policy options for organisations whose service does not neatly fit within the Long Term Community Housing Program.

Queensland Shelter View

There has been significant confusion regarding this particular issue. Many organisations have received contrary, or at least confusing, information from the Department of Communities and FaHCSIA regarding the lifting of the Commonwealth caveat when they transition into the OSHS and their property is secured by way of a mortgage to the value of the refurbishment works.

Organisations understandably wish their properties to be as little encumbered as possible and have expressed a desire to have properties unencumbered. Part of this has been to explore if a mortgage, from the Queensland Government provides a pathway to disencumber properties, by paying out that mortgage.

The stated intention of the state government has been that if an organisation brings a property into the OSHS, and refurbishment is carried out on the property, the state will secure their interest in that property by way of registering a mortgage to the value of the refurbishment works and the Commonwealth caveat will at that time be lifted. This is also the intention of the Commonwealth government. However, whether a mortgage and caveat may legally co-exist over a property or not, the Commonwealth interest in many properties remains as it is legislatively based.

Some organisations recently raised the concern that if a mortgage is paid out the Commonwealth would replace their caveat back over the property again, re-securing their interest in it. We have sought further clarification on this issue from the Department and from the Commonwealth government on this issue.

FaHCSIA has confirmed that the Commonwealths' interest in ICHO properties acquired through ATSIC (not all properties owned by ICHOs) is enshrined in legislation which was enacted on the

termination of ATSIC (the *ATSIC Amendment Act 2005*). As a result of this legislation, the Commonwealth's interest in the properties may only be extinguished through legislative amendment.

The Commonwealth has indicated that the intention is to lift the caveats in place of a mortgage. However, regardless of whether a caveat over an ATSIC acquired property is lifted, the Commonwealth interest will remain in those properties until legislation is amended. Having this interest would allow the Commonwealth to place a caveat back over an ICHO property which falls within the legislation, and essentially means that an ICHO property acquired through ATSIC would be doubly encumbered if an ICHO is to bring the property into the OSHS and it has a state mortgage registered against it. The Commonwealth interest will remain in all ICHO properties acquired through ATSIC until legislative amendment to this Act occurs.

Until a greater level of trust exists it is difficult to see this issue being resolved. In the mean time there needs to be clarifying statements issued in writing by the Minister to provide an indication of Commonwealth intent in regard to this issue and a timetable for legislative reform.

CONCLUSION AND RECOMMENDATIONS

At this point in time we are aware of a number of organisations which have elected to come into the OSHS. We expect that a number more will elect to do the same in the future once clear answers are delivered on certain issues, and the confusion over the Commonwealth caveats is addressed.

At this point in time, if an organisation elects to not come into the State system it will retain its current relationship with the Federal government, the caveat will remain in place over the properties, and they will continue to have to negotiate with the Federal government if they wish to sell or use the equity in the properties as financial leverage. Organisations which remain in the Federal system will not have access to the funding and assistance provided by the State to properties in Queensland within the OSHS. Many of the ICHOs throughout the State however, are keen to continue the discussion with Minister Struthers and the Department of Communities, to ensure the best possible outcome for their organisation and the tenants who are housed through them.

From consultations and the ICHO forums held around the state, various recommendations have been developed in response to the proposed transitioning of some ICHO properties into the OSHS.

Queensland Shelter recommends that the Federal Government:

- Make clear their intention regarding the use of or extinguishment of the Commonwealth caveat which is currently over a large number of the ICHO properties.
- Establish a timeframe to amend legislation appropriately to reflect this Commonwealth intention in regards to the residual Commonwealth interest in the ICHOs properties.
- Issue a statement of clarification in relation to caveats and Commonwealth interest.
- Reconsider withholding repairs and maintenance funding from ICHOs unless they join OSHS.

- Reserve any unspent repairs and maintenance budgets so that if ICHOs join subsequently they can access the \$60 million set aside for maintenance and repairs.
- Reserve an element of NRAS funding nationally to specifically allocate to Indigenous organisations to enable them to participate in NRAS and leverage their considerable asset base for affordable housing.

Queensland Shelter recommends to the Queensland Government that:

- The Business Development and Innovation Units are given a specific brief to work with all ICHOs to develop business and management plans to consider their financial viability on entering OSHS.
- The Department of Communities produce a single document which clearly details what is involved for ICHOs when they sign up to the OSHS. This document should cover all aspects of the OSHS policy and how it will affect the ICHOs, including rent policies, eligibility criteria, repairs and maintenance, funding, caveats and mortgages.
- The Department of Communities negotiate with Q Build to establish and develop Indigenous employment strategies and involve registered Indigenous contractors.
- The Department of Communities continue working with the ICHOs in Queensland to help close the gap on Indigenous disadvantage through the provision of safe, secure and affordable housing.
- The Department of Communities, Private Housing Programs, develop initiatives to assist ICHOs to participate in NRAS.

Queensland Shelter recommends to the ICHOs throughout Queensland that:

- Queensland Shelter in conjunction with the Aboriginal and Torres Strait Islander Human Services Coalition and the Regional Indigenous Housing Organisations write to Minister Jenny Macklin seeking to convene a meeting to explore options around:
 - Repairs and maintenance funding;
 - Caveats;
 - Legislation; and
 - Legitimacy.
- ICHO's continue to work with Queensland Shelter and the Aboriginal and Torres Strait Islander Human Services Coalition to provide policy advice to the Queensland Government, the Federal Government and the management committees of ICHOs about their ongoing development.
- ICHOs continue to negotiate with the Department of Communities to pursue becoming registered providers for portions, or all, of their housing.
- ICHOs further involve their tenants in discussions about the future of the organisations and the utilisation of assets under their control.