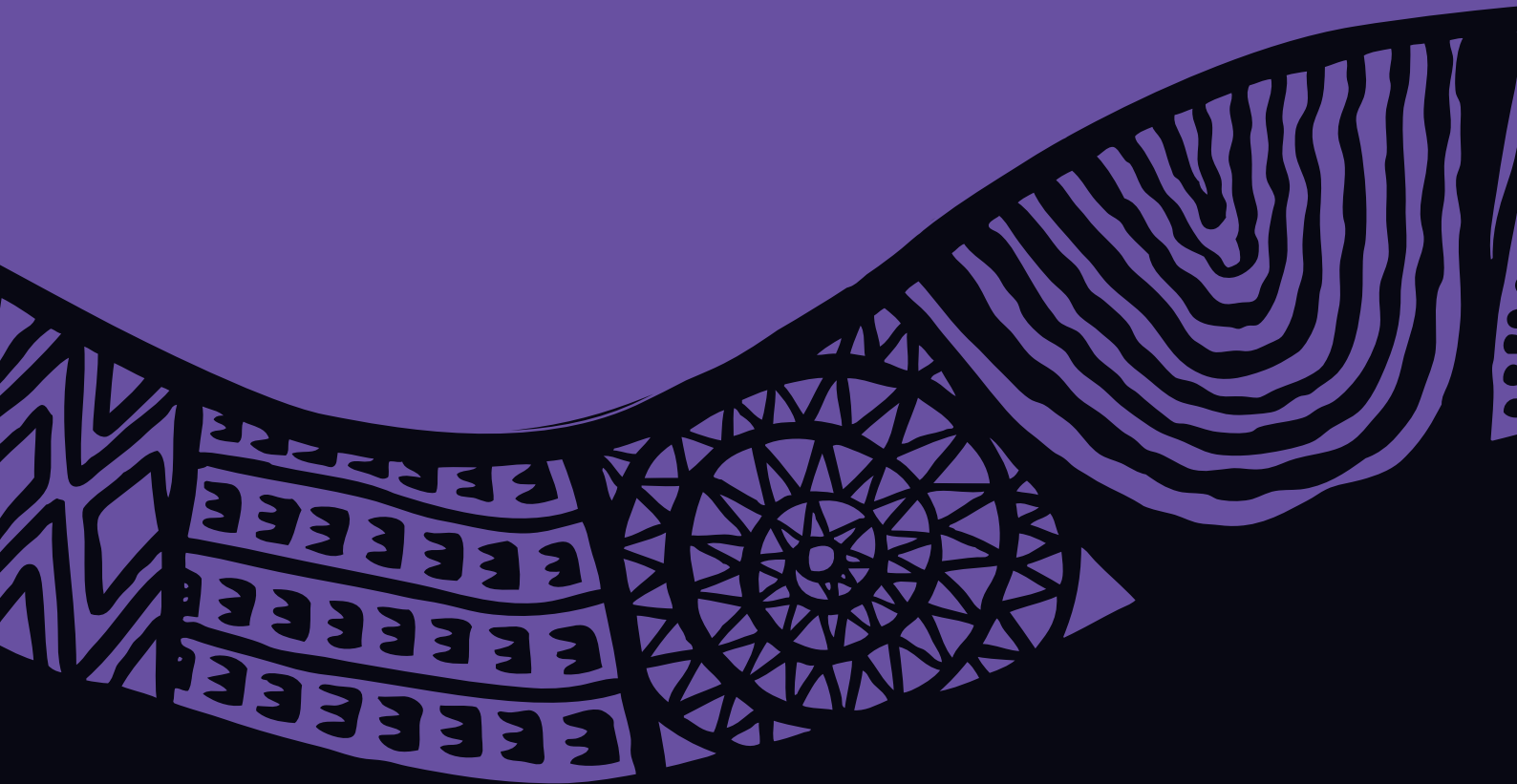


Position Paper | June 2021

Reforming the National Regulatory System for Community Housing (NRSCH) in Queensland



Aboriginal and Torres Strait Islander
Housing Queensland



Position Paper

Reforming the National Regulatory System for Community Housing (NRSCH) in Queensland

Aboriginal and Torres Strait Islander Housing Queensland supports the intent and purpose of the National Regulatory System for Community Housing (NRSCH). Our organisation would like to work with the Queensland Register to remove complexity and identify a number of opportunities to modernise and simplify the NRSCH in Queensland. This position paper provides 15 recommendations that would create National Regulatory System for Community Housing (NRSCH) reforms in Queensland.



1. Background

In 2012, the Commonwealth and all states and territories except Victoria and Western Australia signed an Inter-Government Agreement (IGA) to establish the NRSCH. In August 2012, the National Law establishing the NRSCH passed through the Queensland Parliament and the regulatory system commenced on 1 January 2014.

The NRSCH is the system of community housing regulation in each State and Territory (except Victoria and Western Australia, who maintain separate systems). The purpose of the NRSCH is to ensure a well governed, well managed and viable community housing sector meets the housing needs of tenants and provides assurance for government and investors.

There are approximately 65 Aboriginal and Torres Strait Islander community housing providers in Queensland. As of 1 June 2021, 12 of these Aboriginal and Torres Strait Islander community housing providers (less than 20%) were registered under NRSCH in Queensland. This is a low number of housing providers despite the original intentions of the NRSCH scheme to be an industry standard and the fact that NRSCH has been present in Queensland since 2014.

Current Aboriginal and Torres Strait Islander community housing provider impediments to their participation in the NRSCH scheme include:

- conflicting legal obligations regarding the disposal of housing assets in the event of winding up
- the evidence requirements that community housing providers need to meet and achieve registration, and
- compliance requirements including associated staff time and ongoing compliance costs.

Another challenge Aboriginal and Torres Strait Islander community housing providers is that NRSCH has a 'wind up' clause in its registration. This has also prevented some Aboriginal and Torres Strait Islander housing providers from being registered under the NRSCH for fear that their community-controlled organisation, many of which were established in the 1970's and 1980's by local leaders, could be wound up for regulatory breaches.

This 'wind up' clause needs to be addressed to ensure that more Aboriginal and Torres Strait Islander housing providers participate in the NRSCH, while also ensuring that there is appropriate protection of any assets provided by the Queensland Government.

2. NRSCH design

The NRSCH is a decentralised regulatory system, which relies on individual State and Territory jurisdictions applying a common set of rules and practices consistently across jurisdictions. The system was designed to provide direction to community housing providers to ensure that this approach did not result in significant inconsistencies in the application of the National Law across jurisdictions.

The system was designed to ensure a graduated approach to registration and compliance in line with the complexity and size of the individual community housing providers.

Since the establishment of NRSCH, aspects of the NRSCH Framework have not been established as envisaged, including a formal *Ministerial Council* (MC) and *Ministerial Advisory Committee* (MAC), as well as a *National Regulatory Council* (NRC). In its place, and to support the effective operation of the system, mechanisms such as the *Regulatory Advisory Group* (RAG) and *Registrars Forum* have allowed registrars, policy officials and sector representatives to discuss and perform a number of the functions proposed for the *National Regulatory Council* (NRC) and *Ministerial Advisory Committee* (MAC).

These informal mechanisms do not entirely replace the roles envisaged for the *National Regulatory Council* (NRC) and *Ministerial Advisory Committee* (MAC). For example, the ability of the *Regulatory Advisory Group* (RAG) to review the performance of Registrars to ensure participating State and Territory jurisdictions are meeting the agreed performance standards and national guidelines is limited.

There is also little scope for the *Regulatory Advisory Group* (RAG) to approve changes to the National Law or resolve disputes related to cross-jurisdictional issues where agreement cannot be reached. These factors have impeded the achievement of the NRSCH purposes and objectives in an efficient manner.

These informal mechanisms represent what Aboriginal and Torres Strait Islander Housing Queensland describe as a fragmented regulatory framework.

Our recommendations

1. Aboriginal and Torres Strait Islander Housing Queensland recommends the establishment of a formal *Ministerial Council (MC)* and *Ministerial Advisory Committee (MAC)* to oversee NRSCH across Australia.
2. Aboriginal and Torres Strait Islander Housing Queensland recommends the establishment of a formal *Regulatory Advisory Group (RAG)* to review the performance of all Registrars to ensure participating State and Territory jurisdictions are meeting the agreed performance standards and national guidelines.

While individually playing important roles, the number of elements that come together to make up the NRSCH has the potential result of overlap and confusion about its purpose and objectives. They also have the potential to cause difficulties for new Aboriginal and Torres Strait Islander community housing providers navigating the system and third parties seeking to understand how the regulatory system operates.

Aboriginal and Torres Strait Islander Housing Queensland believe that this fragmentation will impact on the purpose of NRSCH function of the Registrars. While Registrars meet monthly to share their experience and promote good practice, Registrar operations may benefit from being clarified and streamlined to support consistent application across all States and Territories.

Our recommendation

3. Aboriginal and Torres Strait Islander Housing Queensland recommends the role of NRSCH Registrars be identical across State and Territory jurisdictions to ensure the consistent applications of Registrar functions and operations.

Aboriginal and Torres Strait Islander Housing Queensland believes that additional confusion arises from the design of the NRSCH tier structure. Aboriginal and Torres Strait Islander community housing providers registered under NRSCH in Queensland believe that the tier structure has been misinterpreted by third parties, including financiers, investors and occasionally government agencies. Some Aboriginal and Torres Strait Islander community housing providers in Queensland view the tier structure as a community housing provider performance ranking system, with Tier 1 Community Housing Providers regarded as more capable and viable than Tier 2 or Tier 3 Community Housing Providers. Aboriginal and Torres Strait Islander community housing providers in Queensland are concerned that investors and financiers may interpret tiers as a measure of creditworthiness.

Our recommendations

4. Aboriginal and Torres Strait Islander Housing Queensland recommends the removal of a tier structure that publicly categorises community housing providers.
5. Aboriginal and Torres Strait Islander Housing Queensland recommends that a tier structure be an internal NRSCH classification system to determine and apply a common set of rules and practices.

Core Elements of NRSCH Design

Three (3) core elements make up the NRSCH Framework and include National Law, the NRSCH Charter and the National Regulatory Code.

1. **National Law** - The NRSCH was introduced in 2014 through consistent State and Territory based legislation, referred to as the National Law. It was first enacted in the host jurisdiction, New South Wales, and either applied or adopted thereafter by other jurisdictions.
2. **NRSCH Charter** - The vision, key objectives, six regulatory principles and philosophy behind the

NRCHS are set out in this NRSCH Charter.

3. **National Regulatory Code** - The Code sets out the performance requirements that registered housing providers must comply with in providing community housing under the National Law. It does not prescribe how providers should run their businesses, but focuses on the achievement of outcomes in the following areas:
 1. *Tenant and housing services* – The community housing provider is fair, transparent and responsive in delivering housing assistance to tenants, residents and other clients
 2. *Housing assets* – The community housing provider manages its community housing assets in a manner that ensures suitable properties are available at present and in the future
 3. *Community engagement* – The community housing provider works in partnership with relevant organisations to promote community housing and to contribute to socially inclusive communities
 4. *Governance* – The community housing provider is well-governed to support the aims and intended outcomes of its business
 5. *Probity* – The community housing provider maintains high standards of probity relating to the business of the provider
 6. *Management* – The community housing provider manages its resources to achieve the intended outcomes of its business in a cost-effective manner
 7. *Financial viability* – The community housing provider is financially viable at all times.

Aboriginal and Torres Strait Islander Housing Queensland supports the intent and purpose of the NRSCH Charter and the National Regulatory Code and would like to work with the NRSCH, the Queensland Registrar, and Aboriginal or Torres Strait Islander community housing providers in Queensland have registered under the NRSCH to continually meet the Charter and Code.

While the NRSCH in its current form may not hinder the achievement of the system's purposes and objectives, there is an opportunity to review the overall number of elements and Code focus areas in the system without diminishing the overall effectiveness of the system.

Our recommendation

6. Aboriginal and Torres Strait Islander Housing Queensland recommends a review of all NRSCH elements and Code focus areas in the system to determine opportunities to modernise and simplify the NRSCH in Queensland.

3. Operation of NRSCH in Queensland

The Office of Best Practice Regulation (OBPR) administers the Queensland Government’s regulatory review requirements, which aim to ensure regulation is necessary, well-designed and fit-for-purpose. The Office of Best Practice Regulation (OBPR) delivers training and guidance, provides formal advice on the quality of regulatory review, and oversees the regulator performance framework.

The Office of Best Practice (OBPR) Regulator Performance Framework is designed to ensure regulators undertake their functions through a consistent, risk-based approach and with the minimum impact necessary to achieve their regulatory objectives.

This Office of Best Practice (OBPR) Regulator Performance Framework includes six (6) standards:

1. Regulators do not unnecessarily impede the efficient operation of regulated entities
2. Communication with regulated entities is clear, targeted and effective
3. Actions undertaken by regulators are proportionate to the regulatory risk being managed
4. Compliance and monitoring approaches are streamlined and co-ordinated
5. Regulators are open and transparent in their dealings with regulated entities
6. Regulators actively contribute to the continuous improvement of regulatory frameworks

The following provides context of the Regulator Performance Framework as it relates to the NRSCH operations nationally and in Queensland.

1. Regulators do not unnecessarily impede the efficient operation of regulated entities

According to the Office of Best Practice (OBPR) Regulator Performance Framework, effective regulatory administration should be appropriately flexible, seeking to restrict regulatory burden, especially for smaller entities.

Through the tiered registration system and the NRSCH Evidence Guidelines, the NRSCH targets compliance requirements differently to community housing providers based on an assessment of their potential risk derived from the nature, scale and scope of the community housing providers’ activities.

The NRSCH allows community housing providers to use a range of evidence sources to demonstrate compliance against each performance indicator. In instigating regulatory action against a community housing provider in Queensland, the NRSCH allows the Queensland Registrar to tailor their investigations and enforcement action to the specific areas of a community housing providers operations that require attention.

All State and Territory Registrars undertake periodic assessments of the NRSCH Evidence Guidelines and other supporting guidelines and documentation. This ensures their ongoing currency and allows consideration of the balance between a robust regulatory system and compliance burden on community housing providers. Each Registrar also conducts a service evaluation survey after a community housing provider submits their registration and compliance assessments to seek to gauge the performance of the NRSCH operations.

Recommendation

7. Aboriginal and Torres Strait Islander Housing Queensland recommends that NRSCH (Queensland) works with our organisation to support Aboriginal and Torres Strait Islander community housing providers in Queensland to achieve their ongoing NRSCH compliance against each NRSCH performance indicator.



2. Communication with regulated entities is clear, targeted and effective

According to the Office of Best Practice (OBPR) Regulator Performance Framework, clear communication is vital for the efficient delivery of regulatory services and the reduction of compliance burden.

The NRSCH provides community housing providers with a suite of guidance materials, including overarching guidelines for the operation of the NRSCH and Provider Guides on registration, compliance, and the Community Housing Regulatory Information System (CHRIS). State and Territory Registrars periodically review and update these documents.

NRSCH guidelines in Queensland clearly state the expected timeframes for assessing applications and making regulatory and enforcement decisions, as well as the expected timeframes for community housing providers to respond to the Queensland Registrars’ requests for information.

Some documents on the NRSCH website have not been updated since the establishment of the NRSCH, potentially supplying community housing providers and stakeholders in Queensland with out-of-date information.

Aboriginal and Torres Strait Islander Housing Queensland are also concerned that the NRSCH tiered registration system is often misinterpreted by third parties, including financiers, investors and government agencies. Australian Housing and Urban Research Institute (AHURI) researchers in 2017 found that the tier system obscures the effectiveness of the system to monitor and manage risk and suggests NRSCH communications must be amended to minimise future miscommunication. Aboriginal and Torres Strait Islander Housing Queensland agrees with AHURI.

Recommendation

8. Aboriginal and Torres Strait Islander Housing Queensland recommends that NRSCH (Queensland) works with our organisation to develop a culturally appropriate suite of guidance materials, including overarching guidelines for the operation of the NRSCH and Provider Guides on registration, compliance, and the Community Housing Regulatory Information System (CHRIS) for Aboriginal and Torres Strait Islander community housing providers in Queensland.



3. Actions undertaken by regulators are proportionate to the regulatory risk being managed

According to the Office of Best Practice (OBPR) Regulator Performance Framework, efficient regulatory engagement takes into account the activities undertaken by the regulated entity, the nature of their operations, their compliance history, and any other external factors.

The NRSCH allows State and Territory Registrars to adopt a graduated approach to regulatory engagement and enforcement action, providing clear guidance before taking steps to enforce compliance, such as issuing binding instructions and appointing a statutory manager.

The State and Territory Registrars’ approach to enforcement is publicly available on the NRSCH website, listed in the NRSCH Enforcement Guidelines and the Regulatory Engagement, Assessment, Investigation and Enforcement Action policies.

Recommendations

9. Aboriginal and Torres Strait Islander Housing Queensland recommends that NRSCH (Queensland) works with our organisation to remedy potential breaches before implementing enforcement action on an Aboriginal and Torres Strait Islander community housing providers in Queensland.
10. Aboriginal and Torres Strait Islander Housing Queensland recommends that NRSCH (Queensland) works with our organisation to develop culturally appropriate suite of guidance materials, including NRSCH Enforcement Guidelines and the Regulatory Engagement, Assessment, Investigation and Enforcement Action policies for Aboriginal and Torres Strait Islander community housing providers in Queensland.



4. Compliance and monitoring approaches are streamlined and co-ordinated

According to the Office of Best Practice (OBPR) Regulator Performance Framework, compliance and monitoring approaches should be streamlined and co-ordinated.

The collection of information and data from NRSCH regulated Aboriginal and Torres Strait Islander community housing providers in Queensland imposes a compliance administration cost. While the collection of information and data allows the Queensland Registrar to maintain a minimum level of regulatory engagement over regulated Aboriginal and Torres Strait Islander community housing providers in Queensland, the reporting required of these community housing providers appears to be growing.

Beyond the NRSCH, regulated Aboriginal and Torres Strait Islander community housing providers in Queensland have other reporting requirements which may include:

- grant funding and contract agreements with government housing agencies
- agreements with banks and potentially the National Housing Finance and Investment Corporation (NHFIC)
- tripartite agreements with government housing agencies and financiers
- reporting to the Australian Charities and Not-for-profits Commission (ACNC) and;
- reporting to the Office of Indigenous Corporations
- reporting to the Australian Securities and Investments Commission (ASIC).

In addition to the provision of housing services, some Aboriginal and Torres Strait Islander community housing providers in Queensland also provide health related services. They are heavily regulated under national schemes that require them to maintain professional standards that set out specifications, procedures and guidelines to ensure products, services, and systems are safe, consistent, and reliable and that these businesses are managed and governed to a high standard.

They include the following accreditations:

- ISO standards
 - ISO 9001: Quality Management Systems
 - ISO 45001: Occupational Health & Safety Systems
 - ISO 14001: Environmental Systems
- Australian Health Service Safety and Quality Accreditation
- Australian General Practice (AGPAL) Accreditation
- Royal Australian College of General Practitioners (RACGP) Accreditation
- Royal Australasian College of Physicians (RACP) Accreditation

Our recommendations

11. Aboriginal and Torres Strait Islander Housing Queensland recommends that consultations remain an ongoing activity between NRSCH (Queensland) and Aboriginal and Torres Strait Islander Housing Queensland to identify and prioritise potential areas for red tape improvement.
12. Aboriginal and Torres Strait Islander Housing Queensland recommends that NRSCH (Queensland) incorporate input from our organisation and Aboriginal and Torres Strait Islander housing providers in Queensland (and other stakeholders) which identifies ways to reduce regulatory burden and also their suggestions on how we can all ensure best practice regulation.
13. Aboriginal and Torres Strait Islander Housing Queensland recommends NRSCH (Queensland) works with Aboriginal and Torres Strait Islander community housing providers in Queensland to identify ways to streamline compliance processes.
14. Aboriginal and Torres Strait Islander Housing Queensland recommends an ISO 9001: Quality Management Systems accredited Aboriginal and Torres Strait Islander community organisation in Queensland be provided with automatic NRSCH (Queensland) registration.

5. Regulators are open and transparent in their dealings with regulated entities

According to the Office of Best Practice (OBPR) Regulator Performance Framework, transparency is vital for increasing confidence in the sector and ensuring regulators are accountable to government and the entities they regulate.

The NRSCH website provides community housing providers with information regarding the operation of the NRSCH and how decisions are made. There is less information available that catalogues decisions across the community housing sector. This can make it difficult to assess the consistency of decision making between Registrars and the relative performance of community housing providers.

Our recommendation

15. Aboriginal and Torres Strait Islander Housing Queensland recommends that NRSCH (Queensland) provides a rationale to decisions that have a negative impact on Aboriginal and Torres Strait Islander community housing providers in Queensland.

6. Regulators actively contribute to the continuous improvement of regulatory frameworks

According to the Office of Best Practice (OBPR) Regulator Performance Framework, efficient and effective regulation incorporates a cycle of continuous improvement through clear communication with both the regulated entities, policy departments and sector representatives.

The NRSCH Registrars regularly review and seek feedback on operational guidelines, policies and guidance to continually improve the performance of the system. This process is informed by service surveys that cover Registrar communication, the effectiveness of resources and Community Housing Regulatory Information System (CHRIS).

Given many of the intended governance arrangements for the NRSCH have not been established, there are few official feedback mechanisms for Commonwealth and State and Territory Ministers to gauge the performance of the NRSCH and Registrars. This could limit transparency within the system and restrict the development of mechanisms to drive system and sector performance to the point that achievement of the system's purposes and objectives are compromised.

4. Summary of recommendations

1 Aboriginal and Torres Strait Islander Housing Queensland recommends the establishment of a formal *Ministerial Council (MC)* and *Ministerial Advisory Committee (MAC)* to oversee NRSCH across Australia.

2 Aboriginal and Torres Strait Islander Housing Queensland recommends the establishment of a formal *Regulatory Advisory Group (RAG)* to review the performance of all Registrars to ensure participating State and Territory jurisdictions are meeting the agreed performance standards and national guidelines.

3 Aboriginal and Torres Strait Islander Housing Queensland recommends the role of NRSCH Registrars be identical across State and Territory jurisdictions to ensure the consistent applications of Registrar functions and operations.

4 Aboriginal and Torres Strait Islander Housing Queensland recommends the removal of a tier structure that publicly categorises community housing providers.

5 Aboriginal and Torres Strait Islander Housing Queensland recommends that a tier structure be an internal NRSCH classification system to determine and apply a common set of rules and practices.

6 Aboriginal and Torres Strait Islander Housing Queensland recommends a review of all NRSCH elements and Code focus areas in the system to determine opportunities to modernise and simplify the NRSCH in Queensland.

7 Aboriginal and Torres Strait Islander Housing Queensland recommends that NRSCH (Queensland) works with our organisation to support Aboriginal and Torres Strait Islander community housing providers in Queensland to achieve their ongoing NRSCH compliance against each NRSCH performance indicator.

8 Aboriginal and Torres Strait Islander Housing Queensland recommends that NRSCH (Queensland) works with our organisation to develop culturally appropriate suite of guidance materials, including overarching guidelines for the operation of the NRSCH and Provider Guides on registration, compliance, and the Community Housing Regulatory Information System (CHRIS) for Aboriginal and Torres Strait Islander community housing providers in Queensland.

9 Aboriginal and Torres Strait Islander Housing Queensland recommends that NRSCH (Queensland) works with our organisation to remedy potential breaches before implementing enforcement action on an Aboriginal and Torres Strait Islander community housing providers in Queensland.

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11 Aboriginal and Torres Strait Islander Housing Queensland recommends consultations remain an ongoing activity between NRSCH (Queensland) and Aboriginal and Torres Strait Islander Housing Queensland to identify and prioritise potential areas for red tape improvement.

12 Aboriginal and Torres Strait Islander Housing Queensland recommends that NRSCH (Queensland) incorporate input from our organisation and Aboriginal and Torres Strait Islander housing providers in Queensland (and other stakeholders) which identifies ways to reduce regulatory burden and also their suggestions on how we can all ensure best practice regulation.

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14 Aboriginal and Torres Strait Islander Housing Queensland recommends that an ISO 9001: Quality Management Systems accredited Aboriginal and Torres Strait Islander community organisation in Queensland be provided with automatic NRSCH (Queensland) registration.

15 Aboriginal and Torres Strait Islander Housing Queensland recommends that NRSCH (Queensland) provides a rationale to decisions that have a negative impact on Aboriginal and Torres Strait Islander community housing providers in Queensland.

5. Contributing to NRSCH reforms

Aboriginal and Torres Strait Islander housing providers in Queensland can contribute to cutting to NRSCH reforms by emailing your ideas and feedback to Aboriginal and Torres Strait Islander Housing Queensland at admin@housingqueensland.com.au.





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