



New South Wales

Housing Amendment (Community Housing Providers) Act 2010 No 3

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Housing Amendment (Community Housing Providers) Act 2010 No 3

Act No 3, 2010

An Act to amend the *Housing Act 2001* to make further provision in relation to community housing providers; and for other purposes. [Assented to 18 March 2010]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Housing Amendment (Community Housing Providers) Act 2010*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Housing Act 2001 No 52

[1] Section 3 Definitions

Omit the definition of *Department*. Insert instead:

Department means the Department of Human Services.

[2] Part 9A, Division 1A

Insert after the heading to Part 9A:

Division 1A Interpretation

67AA Definitions

In this Part:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

instrument means an instrument (other than this Act) that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order or process of a court.

land includes:

- (a) a legal or equitable estate or interest in the land, or
- (b) an easement, right, charge, power or privilege over, or in connection with, the land.

liabilities means any liabilities, debts or obligations (whether present or future and whether vested or contingent and whether personal or assignable).

new owner, in relation to land vested by an order under this Part, means the community housing provider in which the land is vested by the order.

notice of intent to cancel registration means a notice issued under section 67F (3).

notice of non-compliance means a notice issued under section 67F (2).

officer of a registered community housing provider has the same meaning as the term *officer* of a corporation has in the *Corporations Act 2001* of the Commonwealth.

rights means any rights, powers, privileges or immunities (whether present or future and whether vested or contingent and whether personal or assignable).

vesting date, in relation to land vested in a community housing provider by an order under this Part, means the date on which the vesting takes effect.

[3] Section 67C Register

Insert after section 67C (2):

- (2A) Without limiting subsection (2), the Registrar is to include in the register a copy of each notice of intent to cancel registration issued to a registered community housing provider.

[4] Section 67F

Omit the section. Insert instead:

67F Compliance with Act and regulations

- (1) The Registrar may take action under this section if the Registrar reasonably believes that a registered community housing provider is not complying with this Act or the regulations.
- (2) The Registrar may issue to a registered community housing provider a notice in writing (a *notice of non-compliance*) identifying the matters required to be addressed in order to avoid cancellation of the provider's registration and specifying a period of at least 30 days in which those matters are to be addressed.
- (3) The Registrar may issue a *notice of intent to cancel registration* to a registered community housing provider if the Registrar is of the opinion that:
 - (a) the provider has not addressed the matters identified in a notice of non-compliance issued to the provider within the period specified in the notice of non-compliance, or
 - (b) the provider's failure to comply with this Act or the regulations is serious and requires urgent action.
- (4) A notice of intent to cancel registration is a notice in writing that identifies the matters that the Registrar considers warrant cancellation of the provider's registration and states:
 - (a) that the provider's registration will be cancelled unless, within the period specified in the notice (being a period of at least 14 days), the provider satisfies the Registrar that its registration should not be cancelled, or

- (b) that the provider's registration will be cancelled unless:
 - (i) within the period specified in the notice (being a period of at least 14 days), the provider appoints in accordance with section 67FA a person with qualifications of a kind specified in the notice as a special adviser to assist the provider to address those matters, and
 - (ii) within such further period specified in the notice, the provider reports to the Registrar on those matters and satisfies the Registrar that its registration should not be cancelled.
- (5) Any period specified in a notice under this section may be extended in writing by the Registrar at the request of the community housing provider concerned if the Registrar is satisfied that there are good reasons for extending the period.

[5] Section 67FA

Insert after section 67F:

67FA Appointment of special adviser

- (1) A special adviser is a person appointed by a registered community housing provider for the purposes of a notice of intent to cancel registration issued to the provider.
- (2) A special adviser is to be appointed to assist the provider in complying with this Act and the regulations and, in particular, to assist the provider in addressing the matters identified in the notice of intent to cancel registration.
- (3) A special adviser is to be a person who is independent of the community housing provider.
- (4) The costs relating to the appointment of a special adviser and payable to a special adviser are payable by the community housing provider.
- (5) The community housing provider is to give the special adviser access to any accounts, records or other documents that the special adviser considers necessary to inspect in order to carry out his or her functions as special adviser.

[6] Section 67G Cancellation of registration

Insert "or to appoint a special adviser as referred to in section 67F (4) (b)" after "cancelled" in section 67G (1) (d).

[7] Section 67GA

Insert after section 67G:

67GA Information to be provided to Corporation by Registrar

The Registrar is to give the Corporation a copy of the following:

- (a) each notice of intent to cancel registration,
- (b) each extension granted by the Registrar under section 67F (5),
- (c) each notice of cancellation of registration given by the Registrar under section 67G (2).

[8] Section 67HA

Insert before section 67I:

67HA Circumstances in which Corporation is considered to have interest in certain land

For the purposes of this Part, the Corporation is taken to have an interest in land of a community housing provider in the following circumstances:

- (a) if the land is vested in, or transferred to, the community housing provider by an order under this Part or in accordance with an instruction given under this Part,
- (b) if the land is acquired by the community housing provider wholly or partly with funding provided by the Corporation,
- (c) if the Corporation constructs housing or makes other improvements on the land,
- (d) if a community housing agreement with the community housing provider identifies the land as being land in which the Corporation has an interest.

[9] Section 67J Community housing agreements

Insert before section 67J (1):

- (1A) The Corporation may enter into a community housing agreement with a registered community housing provider:
 - (a) for the purposes of providing assistance under section 67I, or
 - (b) with respect to land that has been vested in or transferred to the community housing provider by order under this Part or in accordance with an instruction given under this Part.

[10] Sections 67K–67N

Insert after section 67J:

67K Conditions of community housing agreements relating to land in which Corporation has an interest

A community housing agreement may include conditions relating to any land of the community housing provider concerned in which the Corporation has an interest, including conditions that have effect if:

- (a) the community housing provider fails to use the land for the purposes contemplated by the agreement, or
- (b) the community housing provider proposes to sell or otherwise dispose of the land, or
- (c) the registration of the community housing provider is cancelled under this Act.

67L No dealings in land in which Corporation has an interest without consent of Corporation

- (1) A community housing provider must not transfer or otherwise deal with land in which the Corporation has an interest unless:
 - (a) the Corporation consents to the transfer or other dealing, or
 - (b) the transfer or other dealing is authorised, or is of a class that is authorised, by a community housing agreement with that community housing provider (*an exempt transaction*), or
 - (c) a community housing agreement with the community housing provider provides that this section does not apply to the land concerned.
- (2) The Corporation must not unreasonably withhold consent under subsection (1) (a).
- (3) The Registrar-General must, on application by the Corporation, make a recording in the Register kept under the *Real Property Act 1900* to signify that the land specified in the application is subject to this section.
- (4) The application is to provide details of any exempt transactions.
- (5) If a recording under subsection (3) has been made by the Registrar-General, the Registrar-General is not to register under

the *Real Property Act 1900* a transfer of that land or any other dealing that is otherwise registrable under that Act unless:

- (a) the consent of the Corporation to the transfer or other dealing has been endorsed on the transfer or other dealing, or
 - (b) the transfer or other dealing is an exempt transaction (as notified to the Registrar-General by the Corporation), or
 - (c) the recording has ceased to have effect (as recorded by the Registrar-General under subsection (6)).
- (6) The Registrar-General must, on the application of the Corporation, make in the Register a recording to signify that a recording made under subsection (3) has ceased to have effect.
 - (7) An application by the Corporation under this section is to be made in an approved form under the *Real Property Act 1900* and is to be accompanied by such fee, if any, as may be prescribed by the regulations under that Act.
 - (8) If the Corporation makes an application under this section, the Registrar-General is not to inquire into whether the Corporation has an interest in the land concerned or into the terms of any community housing agreement.
 - (9) This section does not affect the operation of any other prohibition or restriction relating to transfers or other dealings in land.

67M Creation of charge in agreement

- (1) A community housing agreement may provide that land of a community housing provider that is a party to a community housing agreement is to be charged with the payment of money that is or may become payable under the agreement.
- (2) If the land is land to which the *Real Property Act 1900* applies, section 56 of that Act applies in respect of any such charge.

67N Agreements binding on community housing providers

- (1) A community housing agreement is binding on the community housing provider to which it relates.
- (2) The Corporation may monitor the activities of a community housing provider to determine whether it is complying with the terms and conditions of a community housing agreement.

[11] **Part 9A, Divisions 4–6**

Insert before Part 10:

Division 4 Vesting of Corporation land in registered community housing providers

67O Vesting of Corporation land in registered community housing provider

- (1) The Governor may, by order published in the Gazette, vest land owned by the Corporation in a registered community housing provider that is a company registered under the *Corporations Act 2001* of the Commonwealth.
- (2) Land is authorised to be included in an order under this section even if the land is subject to other interests.
- (3) The vesting of the land in the registered community housing provider takes effect:
 - (a) on the day specified in the order, or
 - (b) if no day is specified in the order or the day specified in the order occurs before the order is published in the Gazette, on the day on which the order is published in the Gazette.
- (4) Subject to the other provisions of this section, land may be vested by order under this section despite any requirement of any other Act or law that relates to dealing with or disposing of the land.

67P Effect of vesting of land

- (1) On the vesting date relating to land vested by order under this Division, the land vests in the new owner for an estate in fee simple:
 - (a) without the need for any further conveyance, transfer, assignment or assurance, and
 - (b) subject to any trusts, estates, interests, dedications, conditions, restrictions and covenants to which the land was subject immediately before the vesting date.
- (2) On the vesting date relating to land vested by order under this Division, the following provisions have effect:
 - (a) the rights or liabilities of the Corporation in relation to the land become by virtue of this section the rights or liabilities of the new owner,

- (b) all proceedings relating to the land commenced before the vesting date by or against the Corporation or a predecessor of the Corporation and pending immediately before the vesting date are taken to be proceedings pending by or against the new owner,
 - (c) any act, matter or thing done or omitted to be done in relation to the land before the vesting date by, to or in respect of the Corporation is (to the extent to which that act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the new owner,
 - (d) the new owner has all the entitlements and obligations of the Corporation in relation to those assets, rights and liabilities that the Corporation would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the order took effect,
 - (e) a reference in any Act, in any instrument made under any Act or in any document of any kind to the Corporation or a predecessor of the Corporation is (to the extent that it relates to that land or those rights or liabilities but subject to the regulations) to be read as, or as including, a reference to the new owner.
- (3) Regulations may be made for or with respect to the conversion of references to the Corporation in any document or class of document to references to the new owner as a consequence of any vesting of land under this Division.

Division 5 Provisions to protect Corporation's interest in land

67Q Director-General may require information from registered community housing provider

- (1) The Director-General may, by notice in writing, require a registered community housing provider or an officer of a registered community housing provider to do one or more of the following things:
 - (a) provide, in accordance with directions in the notice, such information relating to the assets and liabilities of the community housing provider or any financial matter relating to the community housing provider as is specified in the notice,
 - (b) produce, in accordance with directions in the notice, such records relating to the assets and liabilities of the community housing provider or any financial matter

relating to the community housing provider as are specified in the notice and permit examination of the records, the taking of extracts from them and the making of copies of them,

- (c) authorise a person described in the notice to comply with a requirement of the kind referred to in paragraph (a) or (b),
 - (d) furnish to the Director-General such authorisations and consents as the Director-General requires for the purpose of enabling the Director-General to obtain information (including financial and other confidential information) from other persons relating to the assets and liabilities of the community housing provider or any financial matter relating to the community housing provider.
- (2) A person who complies with a requirement of a notice under subsection (1) does not on that account incur a liability to another person.
- (3) A person who is the subject of a notice under subsection (1) must comply with a requirement of the Director-General contained in the notice.
Maximum penalty: 20 penalty units.
- (4) A reference in this section:
- (a) to an asset of a registered community housing provider extends to an asset that was previously owned by the community housing provider but has been disposed of, and
 - (b) to a registered community housing provider includes a reference to a community housing provider whose registration has been cancelled.

67R Instructions to community housing provider in relation to land in which Corporation has an interest

- (1) The Corporation may take action under this section in respect of a community housing provider that holds land in which the Corporation has an interest if:
- (a) the provider's registration under this Part is cancelled, or
 - (b) the provider has become insolvent, or
 - (c) the land was vested in or transferred to the provider by order under this Part or in accordance with an instruction given under this Part and the provider failed to enter into a community housing agreement with the Corporation with respect to the land before the expiration of the period of

40 days after that vesting or transfer or the expiration of such other period as may be prescribed by the regulations.

- (2) The Corporation may give instructions to a community housing provider or an officer of a community housing provider requiring:
 - (a) the transfer of land in which the Corporation has an interest so that it vests in the Corporation or in a specified registered community housing provider, or
 - (b) that a term or condition of a community housing agreement that is binding on the community housing provider be complied with.
- (3) A community housing provider or officer of a community housing provider to whom an instruction is given under this section must comply with the instruction.
- (4) Before giving an instruction under this section, the Corporation is to have regard to the following matters:
 - (a) the interests of any tenants of the community housing provider who may be affected,
 - (b) the interests of any creditors of the community housing provider who may be affected.
- (5) This section applies to land in which the Corporation has an interest only if the interest has been recorded under section 67L (3).

67S Displacement of Corporations Act 2001 (Cth) and other relevant legislation

- (1) Sections 67Q and 67R are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of that Act generally.

Note. Section 5G of the *Corporations Act 2001* of the Commonwealth enables a State to displace the operation of the provisions of the Corporations legislation of the Commonwealth in favour of provisions of State laws that are declared under State law to be Corporations legislation displacement provisions for the purposes of that section. See, in particular, section 5G (4), (5) and (11) of the *Corporations Act 2001* of the Commonwealth in relation to the displacement effected by this section.
- (2) Sections 67Q and 67R prevail to the extent of any inconsistency with the *Associations Incorporation Act 1984*, the *Associations Incorporation Act 2009* and the *Co-operatives Act 1992*.

Division 6 Miscellaneous

67T Provisions relating to operation of Divisions 4 and 5

- (1) Compensation is not payable to any person or body in connection with the operation of Division 4 or 5.
- (2) The operation of Division 4 or 5 is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (3) The operation of Division 4 or 5 is not to be regarded as an event of default under any contract or other instrument.
- (4) No attornment to a person in whom property is vested or to whom property is transferred under Division 4 or 5 by a lessee of the previous owner of the property is required.
- (5) The operation of Division 4 or 5 includes the making of an order under Division 4, the giving of instructions under Division 5 and the taking of any action in compliance with such instructions.

67U No duty payable in relation to vestings or transfers under Act

Duty under the *Duties Act 1997* is not chargeable for or in respect of:

- (a) a vesting or transfer of property effected under Division 4 or 5, or
- (b) anything certified by the Minister as having been done in consequence of such a vesting or transfer.

67V No compensation payable by Crown

- (1) Compensation is not payable by or on behalf of the Crown in connection with the operation of this Part.
- (2) Without limiting subsection (1), compensation is not payable by or on behalf of the Crown arising directly or indirectly from any of the following:
 - (a) the publication in the register kept under section 67C of any notice of intent to cancel registration,

- (b) the appointment of a special adviser under section 67FA,
- (c) the exercise by any person of any function of a special adviser under section 67FA or a failure by any person to exercise any such function.

- (3) In this section:
- compensation** includes damages or any other form of monetary compensation.
- the Crown** means the Crown within the meaning of the *Crown Proceedings Act 1988*, and includes an officer, employee or agent of the Crown.

[12] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Housing Amendment (Community Housing Providers) Act 2010

[Agreement in principle speech made in Legislative Assembly on 3 December 2009
Second reading speech made in Legislative Council on 9 March 2010]

BY AUTHORITY