

# Community Housing Providers (Adoption of National Law) Act 2012 No 59

[2012-59]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2018 No 68](#) (not commenced — to commence on 8.1.2019)
  - [Government Sector Finance Legislation \(Repeal and Amendment\) Act 2018 No 70](#) (not commenced)

### Authorisation

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# Community Housing Providers (Adoption of National Law) Act 2012 No 59



New South Wales

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# Community Housing Providers (Adoption of National Law) Act 2012 No 59



New South Wales

An Act to apply as a law of this State a national law relating to the registration of community housing providers, to make other provision for community housing providers and community housing and to make consequential amendments to the *Housing Act 2001* and to other legislation.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Community Housing Providers (Adoption of National Law) Act 2012*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation.
- (2) Different days may be appointed under subsection (1) for the commencement of different provisions of the Community Housing Providers National Law.

### 3 Objects of Act

- (1) The objects of this Act are as follows:
  - (a) to apply as a law of this State a national law for the registration and regulation of community housing providers under a national system of registration,
  - (b) to facilitate government investment in the community housing sector and ensure the protection of that investment,
  - (c) to ensure that registered community housing is developed as a viable and diversified component of the New South Wales social housing sector,
  - (d) to support the provision of registered community housing for people on a very low, low or moderate income.
- (2) In the administration of this Act, regard is to be had to the objects of this Act to the maximum extent possible taking into consideration the needs of the State and

available resources, and subject to any directions of the Minister.

#### 4 Definitions

(1) For the purposes of this Act, **the local application provisions of this Act** are the provisions of this Act other than the Community Housing Providers National Law.

(2) In the local application provisions of this Act:

**community housing provider** means an entity that provides community housing.

**Community Housing Providers National Law (NSW)** means the provisions applying in relation to this jurisdiction because of section 5.

**Housing Agency** means any of the following:

(a) the Housing Corporation,

(b) the Housing Secretary,

(c) a Division Head of a Division of the Government Service, or a NSW Government agency, prescribed by the regulations for the purposes of the provision of this Act in which the expression occurs.

**Housing Corporation** means the New South Wales Land and Housing Corporation constituted by the [Housing Act 2001](#).

**Housing Secretary** means the Secretary of the Department of Family and Community Services.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

(3) Terms used in the local application provisions of this Act and also in the Community Housing Providers National Law have the same meanings in those provisions as they have in that Law unless a contrary intention appears.

(4) The Appendix forms part of this Act but notes included in this Act (other than in the Appendix) do not form part of this Act.

## Part 2 Application of Community Housing Providers National Law

### 5 Adoption of Community Housing Providers National Law

The Community Housing Providers National Law, as in force from time to time, set out in the Appendix to this Act:

(a) applies as a law of this jurisdiction, and

(b) as so applying may be referred to as the *Community Housing Providers National Law (NSW)*, and

(c) so applies as if it were an Act.

## **6 Meaning of certain terms in Community Housing Providers National Law for purposes of this jurisdiction**

In the *Community Housing Providers National Law (NSW)*:

**Appeal Tribunal** means the Civil and Administrative Tribunal.

**this jurisdiction** means the State of New South Wales.

## **7 Community housing legislation**

For the purposes of the *Community Housing Providers National Law (NSW)*, the provisions of Parts 3 and 4 of this Act and Schedule 1 to this Act are declared to be community housing legislation of this jurisdiction.

## **8 Housing Agencies**

For the purposes of the *Community Housing Providers National Law (NSW)*:

(a) the Housing Secretary and the Housing Corporation are declared to be Housing Agencies in relation to the definition of **community housing asset** in section 4 of that Law, and

(b) the Housing Secretary is declared to be a Housing Agency in relation to sections 10 (1) (h) and 20 (4) of that Law, and

(c) the Housing Corporation is declared to be a Housing Agency in relation to section 15 (2) (c) of that Law.

## **9 Relevant Minister**

For the purposes of the *Community Housing Providers National Law (NSW)*, the Minister for Family and Community Services is declared to be the relevant Minister.

## **10 Registrar**

(1) For the purposes of the *Community Housing Providers National Law (NSW)*, the Registrar is declared to be the individual appointed as Registrar under this section.

(2) The Minister may appoint an individual as Registrar for the purposes of the *Community Housing Providers National Law (NSW)*.

(3) Schedule 1A contains provisions relating to the Registrar.



## 11 Delegation of Registrar's functions

- (1) For the purposes of section 11 of the *Community Housing Providers National Law (NSW)*, the persons to whom functions may be delegated under that section are:
  - (a) a Public Service employee, or
  - (b) a person, or person of a class of persons, prescribed by the regulations under this Act.
- (2) Despite subsection (1), investigative functions may only be delegated to a person referred to in that subsection who is employed in the Department of Family and Community Services and whose duties include the carrying out of investigative functions and who has been issued by the Registrar with an identification card that complies with subsection (3).
- (3) An identification card must:
  - (a) state that it is issued under this Act, and
  - (b) give the name of the person to whom it is issued, and
  - (c) contain a recent photograph of the person, and
  - (d) contain a copy of the person's signature, and
  - (e) describe the nature of the powers conferred, and
  - (f) state the date (if any) on which it expires, and
  - (g) be signed by the Registrar.
- (4) In this section, **investigative functions** means the functions conferred on the Registrar by the conditions of registration referred to in section 15 (2) (e)-(g) of the *Community Housing Providers National Law (NSW)*.

## 12 Fees

For the purposes of section 13 (4) of the *Community Housing Providers National Law (NSW)*, the fee is the fee prescribed by the regulations under this Act.

## Part 3 Additional New South Wales provisions relating to community housing

### Division 1 Interpretation

#### 13 Definitions

- (1) 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.

**community housing agreement** means an agreement between a Housing Agency and a registered community housing provider made in accordance with this Act.

**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.

**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.

**registered community housing provider** means a registered community housing provider within the meaning of the Community Housing Providers National Law (NSW) and includes an entity registered under the local registration scheme established under section 25A.

**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.

- (2) A reference in this Part to land owned by a Housing Agency includes a reference to land owned by the State and under the control of a Housing Agency.

## **Division 2 Giving assistance to registered community housing providers**

### **14 Circumstances in which Housing Agency is considered to have interest in certain land**

For the purposes of this Part, a Housing Agency is taken to have an interest in land of a

community housing provider in the following circumstances:

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

### **15 Housing Agency may give assistance**

- (1) A Housing Agency may, if it is consistent with the objects of this Act and if it considers it prudent to do so, give assistance to a registered community housing provider under a community housing agreement.
- (2) Assistance may include, but is not limited to, either or both of the following:
  - (a) providing funding, land or other property to a community housing provider,
  - (b) entering into a partnership with a community housing provider.
- (3) Assistance is not to be given to a community housing provider unless the community housing provider is registered and, as far as reasonably practicable, a Housing Agency is to withdraw assistance from a community housing provider that ceases to be registered.
- (4) A Housing Agency is to ensure that the giving of any assistance under this section is consistent with the [Public Authorities \(Financial Arrangements\) Act 1987](#) and any relevant guidelines of the Housing Secretary.

### **16 Community housing agreements**

- (1) A Housing Agency may enter into a community housing agreement with a registered community housing provider:
  - (a) for the purposes of providing assistance under section 15, 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.
- (2) A community housing agreement:

- (a) may be in a standard form approved by the Housing Secretary, and
  - (b) is to contain such terms and conditions as may be prescribed by the regulations, and
  - (c) may contain such terms and conditions as the Housing Agency which is entering into the agreement considers appropriate (whether or not the standard form of agreement is used).
- (3) Without limiting subsection (1), a community housing agreement may include provisions with respect to:
- (a) requiring the registered community housing provider concerned to meet specified standards and targets in relation to the community housing services and programs provided by that community housing provider, and
  - (b) ensuring that the funding, housing and other assistance provided to the registered community housing provider is used for the purposes for which it was provided.
- (4) The regulations may make provision for or with respect to community housing agreements, including (but not limited to) prescribing terms and conditions that are taken to be included in community housing agreements (whether or not existing community housing agreements).

**17 Conditions of community housing agreements relating to land in which Housing Agency has an interest**

A community housing agreement may include conditions relating to any land of the community housing provider concerned in which the Housing Agency that is a party to the agreement 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 the Community Housing Providers National Law (as applied by a participating jurisdiction).

**18 No dealings with land in which Housing Agency has an interest without consent of Housing Agency**

- (1) A community housing provider must not transfer or otherwise deal with land in which a Housing Agency has an interest unless:
- (a) the Housing Agency 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) A Housing Agency must not unreasonably withhold consent under subsection (1) (a).
- (3) The Registrar-General must, on application by a Housing Agency, make a recording in the appropriate Register 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 on application by a Housing Agency, the Registrar-General is not to register a transfer of that land or any other dealing that is otherwise registrable under the [Real Property Act 1900](#) or the [Conveyancing Act 1919](#) unless:
  - (a) the consent of the Housing Agency 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 Housing Agency), 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 a Housing Agency that applied for a recording under subsection (3), make in the appropriate Register a recording to signify that the recording made under subsection (3) has ceased to have effect.
- (7) An application by a Housing Agency under this section:
  - (a) is to be made in an approved form under the [Real Property Act 1900](#) (in the case of land under that Act) or under the [Conveyancing Act 1919](#) (in the case of other land), and
  - (b) is to be accompanied by such fee, if any, as may be prescribed by the regulations under that Act.
- (8) If a Housing Agency makes an application under this section, the Registrar-General is not to inquire into whether the Housing Agency 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 with land.
- (10) In this section:

**deal with land** includes register any plan or other instrument relating to the land under the [Real Property Act 1900](#) or the [Conveyancing Act 1919](#).

**Register** means a register kept under the [Real Property Act 1900](#) or the [Conveyancing Act 1919](#).

### **19 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.

### **20 Agreements binding on community housing providers**

- (1) A community housing agreement is binding on the community housing provider to which it relates (whether or not it is registered).
- (2) A Housing Agency 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.

## **Division 3 Vesting of Housing Agency land in registered community housing providers**

### **21 Vesting of Housing Agency land in registered community housing provider**

- (1) The Governor may, by order published in the Gazette, vest land owned by a Housing Agency 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.

## **22 Effect of vesting of land**

- (1) On the vesting date relating to land vested by order under this Division that was owned by a Housing Agency immediately before that date, 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 that was owned by a Housing Agency immediately before that date, the following provisions have effect:
  - (a) the rights or liabilities of the Housing Agency 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 Housing Agency or a predecessor of the Housing Agency 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 Housing Agency 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 a Housing Agency in relation to those assets, rights and liabilities that the Housing Agency 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 Housing Agency or a predecessor of the Housing Agency 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 a Housing Agency 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 4 Provisions to protect Housing Agency's interest in land**

### **23 Housing Secretary may require information from registered community housing**

**provider**

- (1) The Housing Secretary 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 Housing Secretary such authorisations and consents as the Housing Secretary requires for the purpose of enabling the Housing Secretary 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 Housing Secretary 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.

**24 Instructions to community housing provider in relation to land in which Housing Agency has an interest**

- (1) A Housing Agency may take action under this section in respect of a community housing provider that holds land in which the Housing Agency has an interest if:
  - (a) the provider's registration under the Community Housing Providers National Law



(as applied by a participating jurisdiction) 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 Housing Agency 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 Housing Agency 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 Housing Agency has an interest so that it vests in the Housing Agency 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, a Housing Agency 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 a Housing Agency has an interest only if the interest has been recorded under section 18 (3).

## **25 Displacement of [Corporations Act 2001 \(Cth\)](#) and other relevant legislation**

- (1) Sections 23 and 24 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 23 and 24 prevail to the extent of any inconsistency with the [Associations](#)

*Incorporation Act 2009*, the *Co-operatives (Adoption of National Law) Act 2012* and the *Co-operatives National Law (NSW)*.

## **Division 5 Miscellaneous**

### **25A Local registration scheme**

- (1) The Minister is to establish a local system of registration, monitoring and regulation of entities that provide community housing but are unable to be registered under the Community Housing Providers National Law (NSW) (the **local registration scheme**).
- (2) The Minister is to endeavour to ensure that the local registration scheme is, as far as reasonably practicable, consistent with the national system of registration, monitoring and regulation of community housing providers under the Community Housing Providers National Law (NSW).
- (3) The Minister may, for the purposes of the local registration scheme, impose functions on the Registrar for this jurisdiction.
- (4) The regulations may make provision for or with respect to the local registration scheme, including by providing that provisions of the Community Housing Providers National Law (NSW) are taken to apply in respect of the local registration scheme subject to any modifications that may be prescribed by the regulations.
- (5) The Minister may delegate the exercise of any function of the Minister under this section to the Housing Secretary.
- (6) In this section:

**entity** means an entity within the meaning of the Community Housing Providers National Law (NSW) and includes a body prescribed by the regulations.

### **26 Provisions relating to operation of Divisions 3 and 4**

- (1) Compensation is not payable to any person or body in connection with the operation of Division 3 or 4.
- (2) The operation of Division 3 or 4 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 3 or 4 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 3 or 4 by a lessee of the previous owner of the property is required.
- (5) The operation of Division 3 or 4 includes the making of an order under Division 3, the giving of instructions under Division 4 and the taking of any action in compliance with such instructions.

## **27 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 3 or 4, or
- (b) anything certified by the Minister as having been done in consequence of such a vesting or transfer.

## **Part 4 Miscellaneous**

### **28 Proceedings for offences**

Proceedings for an offence against this Act (including the *Community Housing Providers National Law (NSW)*) or the regulations under this Act may be disposed of summarily before the Local Court.

### **29 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by the local application provisions of this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to the local application provisions of this Act.
- (2) The regulations may create an offence punishable by a penalty not exceeding 50 penalty units.

### **30 (Repealed)**

### **31 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament

within 12 months after the end of the period of 5 years.

## **Schedule 1 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) For the avoidance of doubt, any provision of the regulations made for the purposes of this clause may, if the regulations so provide, have effect despite any specified provision of this Act (including a provision of this Schedule).

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Definitions**

In this Part:

**repealed Part 9A** means Part 9A of the *Housing Act 2001* as repealed by this Act.

**transitional period** means the period of 18 months from the commencement of this Part or such other period as may be prescribed by the regulations.

#### **3 Operation of repealed provisions**

- (1) Despite the repeal of the following provisions of the *Housing Act 2001* by this Act, those provisions are taken to continue to have effect during the transitional period:
  - (a) the definitions of **community housing**, **community housing agreement**, **community housing provider**, **registered community housing**, **registered community housing provider** and **Registrar** in section 3,

- (b) Part 9A,
  - (c) section 75 (2) (a), (c) and (d).
- (2) On the expiration of the transitional period, those repealed provisions cease to have effect except as follows:
- (a) repealed Part 9A continues to have effect in relation to any written request made, or notice issued, to a community housing provider under section 67E, 67F or 67Q of that Part before the expiration of the transitional period,
  - (b) repealed Part 9A continues to have effect in relation to the appointment of a special adviser under section 67FA of that Part that was made before the expiration of the transitional period,
  - (c) repealed Part 9A continues to have effect in relation to any instructions given to a community housing provider or an officer of such a provider under section 67R of that Part before the expiration of the transitional period,
  - (d) Division 6 of repealed Part 9A continues to have effect in relation to any action taken under, and the operation of, that Part (including that Part as continued on by this clause),
  - (e) section 67H of repealed Part 9A continues to have effect in relation to any decision referred to in that section that was made before the expiration of the transitional period.
- (3) The registration of a community housing provider under repealed Part 9A ceases to have effect:
- (a) on the registration of the provider under the Community Housing Providers National Law (as applied by a participating jurisdiction), or
  - (b) on the expiration of the transitional period,
- whichever occurs first.
- (4) Subclause (2) applies to and in respect of a community housing provider whether or not the registration of the provider under repealed Part 9A has ceased by operation of subclause (3) or otherwise.
- (5) Despite the repeal of the *Housing Regulation 2009* by this Act, the provisions of that Regulation continue to have effect for the purposes of the repealed provisions of the *Housing Act 2001* continued on by this clause, subject to any modifications prescribed by regulations under that Act.

#### **4 Registrar**

The person holding office as Registrar of Community Housing under section 67A of the

*Housing Act 2001* immediately before the repeal of that section by this Act is taken to have been appointed as Registrar under section 10 of this Act.

## **5 Community housing agreements**

On the expiration of the transitional period, a community housing agreement in force under section 67J of the *Housing Act 2001* immediately before that expiration is taken to have been entered into under Part 3 of this Act.

## **6 Transfer and vesting of land under repealed provisions**

A reference in Part 3 of this Act to land that has been vested in or transferred to a community housing provider by an order made, or in accordance with an instruction given, under that Part includes a reference to land that has been vested in or transferred to a community housing provider by an order made, or in accordance with an instruction given, under Part 9A of the *Housing Act 2001* before its repeal by this Act.

## **7 Consent to land dealings**

A consent given for the purposes of section 67L of repealed Part 9A in relation to particular land is taken to be a consent given also for the purposes of section 18 of this Act in relation to that land.

# **Schedule 1A Provisions relating to Registrar**

(Section 10 (3))

## **1 Term of office**

- (1) The Registrar holds office for such term, not exceeding 5 years, as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person is not eligible to be appointed for more than 2 terms of office as Registrar (whether or not consecutive terms).

## **2 Full-time office**

The office of Registrar is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister.

## **3 Employment and remuneration**

- (1) The employment of the Registrar is (subject to this Schedule) to be governed by a contract of employment between the Registrar and the Minister.
- (2) The following provisions of or made under the *Government Sector Employment Act 2013* relating to the employment of Public Service senior executives apply to the

Registrar (but in the application of those provisions a reference to the employer of any such executive is to be read as a reference to the Minister):

- (a) provisions relating to the band in which an executive is to be employed,
- (b) provisions relating to the contract of employment of an executive,
- (c) provisions relating to the remuneration, employment benefits and allowances of an executive.

#### **4 Vacancy in office**

(1) The office of Registrar becomes vacant if the holder:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (e) becomes a mentally incapacitated person, or
- (f) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (g) is removed from office under clause 5.

(2) If the office of Registrar becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

#### **5 Removal from office**

- (1) The Minister may remove the Registrar from office, but only for incompetence, incapacity or misbehaviour.
- (2) The Registrar cannot be removed from office under Part 6 of the [Government Sector Employment Act 2013](#).

#### **6 Registrar not Public Service employee**

The office of Registrar is a statutory office and the provisions of the [Government Sector Employment Act 2013](#) relating to the employment of Public Service employees do not apply to that office (except as provided by clause 3).

## Schedule 2 (Repealed)

### Appendix Community Housing Providers National Law

(Section 5)

#### Part 1 Preliminary

##### 1 Short title

This Law may be cited as the Community Housing Providers National Law.

##### 2 Commencement

This Law commences in a participating jurisdiction as provided by the Act of that jurisdiction that applies this Law as a law of that jurisdiction.

##### 3 Object

- (1) The object of this Law is to provide for a national system of registration, monitoring and regulation of community housing providers:
  - (a) to encourage the development, viability and quality of community housing, and
  - (b) to promote confidence in the good governance of registered community housing providers so as to facilitate greater investment in that sector, and
  - (c) to make it easier for community housing providers to operate in more than one participating jurisdiction.
- (2) A purpose of registration is to identify appropriate entities to which government funding for community housing might be provided under other legislation or policies of a jurisdiction.

##### 4 Definitions

- (1) In this Law:

***binding instructions*** means instructions given under section 19.

***category of registration*** means a category of registration under this Law for which provision is made in the guidelines under section 10 (2).

***community housing*** means housing for people on a very low, low or moderate income or for people with additional needs that is delivered by non-government organisations.

***community housing asset*** of a community housing provider means:

- (a) land vested in the provider by or under the community housing legislation of a



participating jurisdiction, or

- (b) land acquired by the provider wholly or partly with funding provided by a Housing Agency of a participating jurisdiction, or
- (c) land vested in the provider on which a Housing Agency of a participating jurisdiction has constructed housing or made other improvements, or
- (d) funds provided to the provider by a Housing Agency of a participating jurisdiction for the purposes of community housing, or
- (e) any other asset of the provider that is of a class of assets declared by the community housing legislation of a participating jurisdiction as community housing assets for the purposes of this Law.

**community housing legislation** of a participating jurisdiction means:

- (a) this Law as it applies as a law of that jurisdiction by an Act of that jurisdiction (including provisions of that Act that relate to the application of this Law in that jurisdiction), or
- (b) so much of an Act of that jurisdiction that contains provisions that substantially correspond to the provisions of this Law,

and includes any other legislation of that jurisdiction that the law of that jurisdiction declares to be community housing legislation.

**entity** means the following:

- (a) a company limited by shares or guarantee under the [Corporations Act 2001](#) of the Commonwealth,
- (b) an Aboriginal and Torres Strait Islander corporation registered under the [Corporations \(Aboriginal and Torres Strait Islander\) Act 2006](#) of the Commonwealth,
- (c) a body corporate, cooperative or incorporated association created under legislation of the Commonwealth or a State or Territory.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**Housing Agency** of a participating jurisdiction, means a body or officer declared to be a Housing Agency of that jurisdiction by the community housing legislation for that jurisdiction for the purposes of the provision of this Law in which the expression occurs.

**National Register** means the National Register of Community Housing Providers

established by this Law.

**notice of intent to cancel registration**—see section 20.

**notice of non-compliance**—see section 18.

**participating jurisdiction** means an Australian jurisdiction in which:

- (a) this Law applies as a law of the jurisdiction, or
- (b) a law that substantially corresponds to the provisions of this Law has been enacted.

**primary jurisdiction**—see section 5.

**primary Registrar** for an unregistered entity or registered community housing provider means the Registrar for the primary jurisdiction of the unregistered entity or registered community housing provider.

**registered community housing provider** means an entity registered under this Law as a community housing provider.

**Registrar** means a Registrar for a participating jurisdiction as referred to in section 9.

**registration** means registration under this Law.

**relevant Minister** means the Minister declared by the community housing legislation of this jurisdiction as the relevant Minister for the purposes of the provision of this Law in which the expression occurs.

**State** means the Crown in right of a participating jurisdiction, and includes:

- (a) the Government of a participating jurisdiction, and
- (b) a Minister of the Crown in right of a participating jurisdiction, and
- (c) a statutory corporation, or other person, representing the Crown in right of a participating jurisdiction.

**statutory manager** means a statutory manager appointed under section 21.

- (2) In this Law, a reference to registration or any other matter under this Law includes registration or any other act or matter under a law of a participating jurisdiction that substantially corresponds to the provisions of this Law.
- (3) This Law is to be interpreted in accordance with the [Interpretation Act 1987](#) of New South Wales.

## 5 Primary jurisdiction

- (1) For the purposes of this Law, the **primary jurisdiction** of an unregistered entity or registered community housing provider is:
  - (a) the participating jurisdiction in which the unregistered entity or registered community housing provider provides the majority of its community housing, or
  - (b) in the case of an unregistered entity that provides no community housing in a participating jurisdiction, the participating jurisdiction in which it intends to provide the majority of its community housing, or
  - (c) if the Registrars for each participating jurisdiction agree on a different participating jurisdiction, that jurisdiction.
- (2) The Registrars may agree to a different primary jurisdiction at any time whether or not on the application of the unregistered entity or registered community housing provider.
- (3) As soon as is practicable after making an agreement under this section, the Registrars must ensure that the unregistered entity or registered community housing provider concerned is notified in writing of its new primary jurisdiction and if the agreement relates to a registered community housing provider, that the National Register is updated accordingly.
- (4) Housing in a jurisdiction other than a participating jurisdiction is not to be taken into account in determining where the majority of the community housing of an unregistered entity or a registered community housing provider is located.

## 6 Single national register

It is the intention of the Parliament of this jurisdiction that this Law, as applying under the community housing legislation of this and other participating jurisdictions, has the effect that the National Register of Community Housing Providers is one single national register.

## 7 Extraterritorial operation of Law

It is the intention of the Parliament of this jurisdiction that the operation of this Law is to, as far as possible, include operation in relation to the following:

- (a) things situated in or outside the territorial limits of this jurisdiction,
- (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this jurisdiction,
- (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Law, be governed or otherwise affected by the law of another jurisdiction.

## **8 Law binds the State**

This Law binds the State.

## **Part 2 The Registrar**

### **9 The Registrar**

- (1) There is to be a Registrar for each participating jurisdiction.
- (2) The Registrar for a participating jurisdiction is the individual or body declared by the community housing legislation of that jurisdiction to be the Registrar for the purposes of this Law.
- (3) The Registrar for a participating jurisdiction is subject to the control and direction of the relevant Minister of that jurisdiction.

### **10 Functions of Registrar**

- (1) A Registrar has the following functions:
  - (a) to maintain the National Register of Community Housing Providers jointly with the Registrars of other participating jurisdictions,
  - (b) to assess the suitability of entities to be registered as registered community housing providers,
  - (c) to register entities as registered community housing providers and to cancel the registration of registered community housing providers,
  - (d) to monitor compliance by registered community housing providers with community housing legislation and to exercise enforcement and intervention functions under that legislation,
  - (e) to investigate complaints about the compliance of registered community housing providers with community housing legislation,
  - (f) to provide information about the registration of entities and information about the compliance of registered community housing providers with community housing legislation,
  - (g) to share information and to cooperate with Registrars of other participating jurisdictions for the purposes of community housing legislation,
  - (h) to provide information and advice to the relevant Minister and Housing Agency in relation to the registration of entities and the regulation of registered community housing providers and any other matter under community housing legislation,
  - (i) any other function conferred or imposed on the Registrar by or under this Law or

any other law.

- (2) In exercising functions under this Law, a Registrar is required to comply with any guidelines made jointly by the relevant Ministers of each participating jurisdiction and published in the New South Wales Government Gazette or on the NSW legislation website.
- (3) A Registrar and any delegate of the Registrar is not personally liable for any matter or thing done or omitted to be done in good faith in the exercise of his or her functions under this Law.

#### **11 Delegation of functions by Registrar**

- (1) The Registrar for this jurisdiction may delegate any of the Registrar's functions under this Law (other than this power of delegation) to:
  - (a) the Registrar for another participating jurisdiction, or
  - (b) a person, or person of a class, declared by the community housing legislation of this jurisdiction for the purposes of this section.
- (2) Without limiting subsection (1), the functions that may be delegated under this section include:
  - (a) functions of the Registrar as primary Registrar for an unregistered entity or registered community housing provider, and
  - (b) functions conferred on the Registrar by the conditions of registration referred to in section 15, and
  - (c) functions delegated to the Registrar by the Registrar for another participating jurisdiction.

### **Part 3 Registration**

#### **12 National Register of Community Housing Providers**

- (1) The National Register of Community Housing Providers is established.
- (2) The following information is to be recorded on the National Register in respect of each entity whose application for registration has been approved:
  - (a) the name and identifying details of the entity,
  - (b) the category of registration of the entity,
  - (c) the primary jurisdiction of the entity,
  - (d) each other participating jurisdiction in which the entity has community housing assets,

- (e) the conditions to which the registration of the entity is subject,
  - (f) a copy of any notice of intent to cancel registration issued to the entity,
  - (g) whether the registration of the entity has been cancelled at any time and details of any such cancellation, including a copy of any notice of cancellation issued to the entity,
  - (h) a copy of any binding instructions issued to the entity,
  - (i) details of any appointment of a statutory manager, including a copy of the relevant instrument of appointment,
  - (j) any other information about the entity that a Registrar considers to be relevant for the purposes of this Law.
- (3) The Registrars may agree to divide the National Register into different parts to assist in the administration of the National Register.
- (4) The primary Registrar for an entity may at any time, by notice in writing to the entity, vary the category of registration of the entity and move the registration of the entity to any other part of the National Register.
- (5) Information on the National Register is to be made publicly available.
- (6) A Registrar may carry out searches of the National Register on a person's behalf and may charge a reasonable fee for the search.

### **13 Application for registration or variation of registration**

- (1) An application for registration or the variation of an existing registration may be made by or on behalf of an entity that provides or intends to provide community housing.
- (2) An application may only be made to the primary Registrar for the entity.
- (3) A Registrar who receives an application but who is not the primary Registrar for the entity is to refer the application to the primary Registrar.
- (4) An application must be in a form approved by the primary Registrar for the entity and be accompanied by the fee determined in accordance with the community housing legislation of the primary jurisdiction.
- (5) The primary Registrar may require an applicant to provide further information or documents for the purposes of determining the application, including information or documents with respect to the following:
  - (a) the exercise of the provider's functions and any arrangements with other persons in relation to the exercise of the provider's functions,

(b) the affairs of the provider.

(6) Subsection (5) does not authorise a Registrar to require information or any document that identifies an individual who is an occupier of residential premises.

#### **14 Determination of application**

- (1) The primary Registrar for an entity must approve an application duly made by or on behalf of the entity under section 13 if the Registrar is satisfied that:
  - (a) the entity provides or intends to provide community housing in a participating jurisdiction, and
  - (b) the entity will comply with the community housing legislation of the participating jurisdictions, and
  - (c) the entity will comply with any conditions to which its registration, or registration as varied, will be subject, and
  - (d) approval of the application is appropriate in the circumstances.
- (2) The primary Registrar must, as soon as is practicable after making a determination under this section, notify the applicant in writing of:
  - (a) the determination, and
  - (b) if the application is not approved, the reasons for the determination, and
  - (c) if the application is approved, the category of the registration including whether the entity has been registered in a particular part on the National Register and any conditions to which the registration is subject.

#### **15 Conditions of registration**

- (1) A registered community housing provider must comply with the conditions to which its registration is subject.
- (2) The following are conditions of the registration of each registered community housing provider:
  - (a) the provider must comply with those provisions of the National Regulatory Code set out in Schedule 1 to this Law that are identified on the National Register as applying to the provider,
  - (b) the provider must comply with any applicable requirements of the community housing legislation of a participating jurisdiction in relation to the transfer of, or other dealing with, any community housing assets of the provider,
  - (c) the provider must have provision in its constitution for all its remaining community

housing assets in a participating jurisdiction on its winding up to be transferred to another registered community housing provider or to a Housing Agency in the jurisdiction in which the asset is located,

- (d) the provider must, at the times and in a manner approved by the primary Registrar for the provider, provide any information required by the primary Registrar with respect to the exercise of the provider's functions, including arrangements with other persons with respect to the exercise of the provider's functions,
- (e) the provider must, after receiving a written request for information from a Registrar in relation to the affairs of the provider, provide within 14 days (or such longer period as may be permitted by the Registrar) the Registrar with the information requested including a copy of any document or record specified in the request,
- (f) the provider must, if requested to do so in writing by a Registrar, ensure that a suitably qualified officer of the provider attends, at such times as the Registrar may direct, a meeting with the Registrar in order to answer questions about the affairs of the provider,
- (g) the provider must allow a Registrar to carry out inspections at any reasonable time of the provider's premises or records,
- (h) the provider must notify the primary Registrar for the provider of the occurrence of any of the following within the time specified:
  - (i) a decision to appoint a voluntary administrator to the provider or a decision to wind-up the provider—as soon as practicable after the decision,
  - (ii) the appointment of a receiver to the provider—as soon as practicable after the provider learns of the appointment,
  - (iii) a decision to apply for the cancellation of the provider's registration—as soon as practicable after the decision and at least 28 days before the application is made,
  - (iv) a decision to conduct a vote at a meeting on a matter that could affect the provider's eligibility to be registered or its category of registration—as soon as practicable after the decision and at least 28 days before the meeting is held,
  - (v) a change in the affairs of the provider that may have an adverse impact on its compliance with the community housing legislation—before or no later than 72 hours after the change,
  - (vi) any other occurrence notified in writing to the provider by the primary Registrar—within the time specified in that notice,



- (i) the provider must keep a list of all of the provider's community housing assets in a form approved by the primary Registrar and must make the list available to the primary Registrar on request,
  - (j) a standard condition imposed by the primary Registrar under subsection (3).
- (3) The Registrars may agree to additional standard conditions of registration which may be imposed on the registration of a registered community housing provider by the primary Registrar for the provider:
- (a) when determining an application under this Part, or
  - (b) at any other time by notice in writing to the provider.
- (4) An additional standard condition may be revoked by the primary Registrar for the registered community housing provider at any time by notice in writing to the provider.
- (5) The primary Registrar for a registered community housing provider must give the provider an opportunity to make a submission on any proposed notice under subsection (3) (b) and take any submission made into account before issuing the notice to the provider.
- (6) This section does not authorise:
- (a) a registered community housing provider to provide information to a Registrar that identifies an individual who is an occupier of residential premises, or
  - (b) a Registrar to enter residential premises occupied by an individual, other than with the consent of the individual.

## **16 Cancellation of registration**

- (1) The primary Registrar for a registered community housing provider may cancel the registration of the provider if:
- (a) the provider has applied to the Registrar in a form approved by the Registrar for its registration to be cancelled, or
  - (b) the provider has been wound up or has otherwise ceased to exist.
- (2) The primary Registrar may refuse to cancel the registration of a community housing provider under subsection (1) (a) if the primary Registrar is not satisfied that each community housing asset of the provider in each participating jurisdiction has been transferred or otherwise dealt with in accordance with the community housing legislation of a participating jurisdiction that applies to the asset.
- (3) The primary Registrar for a registered community housing provider may also cancel

the registration of the provider if:

- (a) the primary Registrar has issued a notice of intent to cancel registration to the provider under section 20 and the provider has not, within the time specified in the notice, satisfied the primary Registrar that its registration should not be cancelled, and
- (b) the primary Registrar has given written notice to the provider of the primary Registrar's decision to cancel the provider's registration setting out the reasons for the proposed cancellation and the date on which the cancellation is to take effect.

## **Part 4 Enforcement powers of Registrar**

### **17 When action may be taken under Part**

The primary Registrar for a registered community housing provider may take action under this Part if the Registrar reasonably believes that the provider is not complying with the community housing legislation of a participating jurisdiction.

### **18 Notice of non-compliance**

- (1) The primary Registrar for a registered community housing provider may issue to the 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 for not complying with the community housing legislation and specifying a reasonable period in which those matters are to be addressed.
- (2) The Registrar is to provide a copy of the notice to the Registrar for each participating jurisdiction.

### **19 Binding instructions to rectify non-compliance**

- (1) The primary Registrar for a registered community housing provider may give written instructions to the provider as to the manner in which the provider is to address any matter that is the subject of a notice of non-compliance issued to the provider.
- (2) More than one set of instructions may be issued in relation to a notice of non-compliance.
- (3) A registered community housing provider and each relevant person must comply with any instructions given to the provider under this section within the period (if any) specified in those instructions.
- (4) A Registrar must, in determining whether to give instructions under this section:
  - (a) have regard to the interests of any tenants of the registered community housing provider, and
  - (b) take such steps as are reasonably practicable to obtain the views of any

regulatory bodies that the Registrar considers have a relevant interest in the matter.

(5) In this section:

**relevant person** in relation to a registered community housing provider means:

- (a) a member of the governing body of the provider, or
- (b) an officer or employee of the provider.

## 20 Notice of intent to cancel registration

- (1) The primary Registrar for a registered community housing provider may issue a **notice of intent to cancel registration** to the 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, or
  - (b) the provider has not complied with binding instructions issued to the provider within the period specified in the instructions, or
  - (c) the provider's failure to comply with the community housing legislation is serious and requires urgent action.
- (2) A notice of intent to cancel registration is a notice in writing that identifies the matters that the Registrar considers warrant cancellation of the registered community housing provider's registration and states 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.
- (3) Any period specified in a notice of intent to cancel registration may be extended in writing by the Registrar at the request of the registered community housing provider concerned if the Registrar is satisfied that there are good reasons for extending the period.
- (4) The Registrar is to provide a copy of the notice to the Registrar and Housing Agency for each participating jurisdiction.

## 21 Statutory managers

- (1) The primary Registrar for a registered community housing provider may, by instrument in writing, appoint a statutory manager to conduct such of the affairs and activities of the provider as relate to the community housing assets of the provider.
- (2) The primary Registrar may appoint a person as a statutory manager of the provider only if either of the following occurs:

- (a) a notice of intent to cancel registration has been issued to the provider,
  - (b) the Registrar forms the opinion that the provider has failed to comply with community housing legislation or binding instructions issued to the provider and the provider's failure to comply is serious and requires urgent action.
- (3) The instrument of appointment of a person as a statutory manager of a registered community housing provider must specify the following:
- (a) the person's name,
  - (b) details of the provider,
  - (c) details of the person's functions as a statutory manager,
  - (d) any limitations on the person's functions as a statutory manager,
  - (e) the date on which the appointment takes effect,
  - (f) the period of appointment (which may be expressed as continuing until further written notice from the primary Registrar),
  - (g) any conditions of the appointment,
  - (h) any other matter the primary Registrar considers appropriate.
- (4) A copy of the instrument of appointment must be served on the registered community housing provider.
- (5) The primary Registrar may amend or revoke an instrument of appointment at any time.
- (6) A statutory manager has the functions specified in the instrument of appointment (subject to any limitations specified in the instrument) and is to comply with any conditions specified in the instrument.
- (7) While a statutory manager is appointed to exercise functions of a registered community housing provider, the governing body of the provider may not exercise any of those functions without the consent of the statutory manager.
- (8) The primary Registrar must revoke a person's appointment as statutory manager if the primary Registrar is satisfied that:
- (a) the registered community housing provider will no longer fail to comply with community housing legislation or any binding instructions, or
  - (b) the provider no longer has any functions with respect to community housing in participating jurisdictions, or

(c) the provider has been wound up.

## **22 Other provisions relating to exercise of functions by statutory manager**

- (1) The expenses of and incidental to the conduct of the affairs and activities of a registered community housing provider by a statutory manager appointed under this Law are payable by the provider.
- (2) Those expenses include:
  - (a) in the case of a statutory manager who is not an employee of the State, the remuneration of the statutory manager (being a rate of remuneration that may be fixed by the relevant Minister), or
  - (b) in the case of a statutory manager who is an employee of the State, the reimbursement of the State of an amount certified by the relevant Minister in respect of the remuneration of that employee (being an amount that is recoverable from the registered community housing provider concerned in a court of competent jurisdiction as a debt due to the State).
- (3) A statutory manager appointed under this Law for a registered community housing provider is not liable for any loss incurred by the provider during the statutory manager's term of office unless the loss was attributable to:
  - (a) wilful misconduct of the statutory manager, or
  - (b) gross negligence of the statutory manager, or
  - (c) wilful failure of the statutory manager to comply with community housing legislation or with any other law regulating the conduct of members of the governing body of the provider.

## **23 Displacement of [Corporations Act 2001 \(Cth\)](#)**

Sections 19 and 21 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.

## **24 No compensation payable by State**

- (1) Compensation is not payable by or on behalf of a State in connection with the operation of this Part.

- (2) Without limiting subsection (1), compensation is not payable by or on behalf of a State arising directly or indirectly from any of the following:
- (a) the cancellation of an entity's registration or the imposition of conditions on any such registration,
  - (b) the publication of any notice of intent to cancel registration,
  - (c) the issuing of binding instructions,
  - (d) the appointment of a statutory manager,
  - (e) the exercise by any person of any function of a statutory manager or a failure by any person to exercise any such function or any loss incurred by an entity during the term of office of a statutory manager for the entity.

- (3) In this section:

**compensation** includes damages or any other form of monetary compensation.

## **Part 5 Miscellaneous**

### **25 Appeals to Appeal Tribunal**

- (1) An entity may appeal to the Appeal Tribunal of the primary jurisdiction of the entity in relation to any of the following decisions of a Registrar:
- (a) a decision to refuse an application for registration or for the variation of a registration of the entity,
  - (b) a decision to impose or revoke any additional standard condition of registration of the entity,
  - (c) a decision to issue binding instructions to the entity,
  - (d) a decision to vary the category of the entity's registration,
  - (e) a decision to cancel the entity's registration,
  - (f) a decision to refuse an application made by or on behalf of the entity for the cancellation of its registration,
  - (g) a decision to appoint a statutory manager.
- (2) An appeal is to be made within the relevant appeal period after the Registrar provides the entity with written notice of the decision, being a notice that specifies:
- (a) the reasons for the decision, and
  - (b) the right of the entity to appeal to the Appeal Tribunal within the relevant appeal

period after the entity is provided with the notice, and

(c) the manner in which the entity may make any such appeal, and

(d) whether the decision is to be stayed pending the determination of the appeal.

(3) A decision of the Registrar is not stayed unless:

(a) the Registrar notifies the entity under subsection (2) that the decision is to be stayed, or

(b) the Appeal Tribunal orders the decision to be stayed.

(4) In this section:

**Appeal Tribunal**, in respect of an entity, has the same meaning as it has in the community housing legislation for the primary jurisdiction of the entity.

**relevant appeal period** means the period of 14 days or such longer period as the community housing legislation for the primary jurisdiction allows for the making of appeals under this section.

## 26 Disclosure of information

A Registrar, and any delegate of the Registrar, who has obtained information in the exercise of his or her functions under this Law or any other law has a duty not to disclose that information unless the disclosure is made:

(a) in connection with the administration or execution of this Law or the other law, or

(b) with the consent of the person from whom the information was obtained, or

(c) in accordance with an authority provided by the guidelines under section 10 (2), or

(d) with other lawful excuse.

## Schedule 1 National Regulatory Code

(Section 15 (2) (a))

### 1 Tenant and housing services

The community housing provider is fair, transparent and responsive in delivering housing assistance to tenants, residents and other clients particularly in relation to the following:

(a) determining and managing eligibility, allocation, and termination of housing assistance,

(b) determining and managing rents,

(c) setting and meeting relevant housing service standards,

- (d) supporting tenant and resident engagement,
- (e) facilitating access to support for social housing applicants and tenants with complex needs,
- (f) managing and addressing complaints and appeals relating to the provision of housing services,
- (g) maintaining satisfaction with the overall quality of housing services.

## **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, particularly in relation to the following:

- (a) determining changing housing needs and planning asset acquisitions, disposals and reconfiguration to respond (strategic asset management),
- (b) setting and meeting relevant property condition standards,
- (c) planning and undertaking responsive, cyclical and life-cycle maintenance to maintain property conditions (asset maintenance),
- (d) planning and delivering its housing development program (asset development).

## **3 Community engagement**

The community housing provider works in partnership with relevant organisations to promote community housing and to contribute to socially inclusive communities, specifically in relation to:

- (a) promoting community housing to local organisations that work with potential residents, tenants or clients, and
- (b) contributing to place renewal and social inclusion partnerships and planning relevant to the provider's community housing activities.

## **4 Governance**

The community housing provider is well-governed to support the aims and intended outcomes of its business, specifically in relation to the following:

- (a) ensuring coherent and robust strategic, operational, financial and risk planning,
- (b) ensuring effective, transparent and accountable arrangements and controls are in place for decision making to give effect to strategic, operational, financial and risk plans,
- (c) complying with legal requirements and relevant government policies,



- (d) ensuring that the governing body has members with appropriate expertise or that such expertise is available to the governing body.

## **5 Probity**

The community housing provider maintains high standards of probity relating to the business of the provider, specifically in relation to the following:

- (a) establishing and administering a code of conduct,
- (b) establishing and administering a system of employment and appointment checks,
- (c) establishing and administering a system for preventing, detecting, reporting on and responding to, instances of fraud, corruption and criminal conduct,
- (d) maintaining the reputation of the community housing sector.

## **6 Management**

The community housing provider manages its resources to achieve the intended outcomes of its business in a cost effective manner, specifically in relation to the following:

- (a) demonstrating it utilises its assets and funding to meet business goals,
- (b) implementing appropriate management structures, systems, policies and procedures to ensure the operational needs of its business can be met (including having people with the right skills and experience and the systems and resources to achieve the intended outcomes of its business).

## **7 Financial viability**

The community housing provider is financially viable at all times, specifically in relation to the following:

- (a) ensuring a viable capital structure,
- (b) maintaining appropriate financial performance,
- (c) managing financial risk exposure.