

Registrar of Community Housing

1. The Regulatory Framework



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1. Introduction

This document outlines the main components of the regulatory framework for the Registrar of Community Housing's office. For more detail on selected components please refer to the series of guides available on the Registrar's website www.rch.nsw.gov.au

In 2007, the NSW Government launched *Planning for the Future: New directions for community housing in New South Wales 2007/08 – 2012/13*. This strategy aims to support the growth of the sector and to build the capacity of, and confidence in, community housing. The five themes of the strategy are:

- 1. Growth:** Facilitate the growth and continued innovation in the community housing sector to assist more people in need
- 2. Diverse and flexible responses:** Support diverse and flexible responses to meet individual and local needs using local opportunities
- 3. Stronger communities:** Support individuals and their local communities to become more sustainable, self-sufficient and resilient
- 4. Capacity and confidence:** Build the capacity of and confidence in community housing to ensure sector growth and the delivery of quality tenant outcomes
- 5. Viability and sustainability:** Putting in place financing and structural arrangements that achieve long-term business sustainability for community housing providers

The strategy signals the government's intention to invest in the growth of community housing by building on the good results achieved by the community housing sector in providing housing and associated support services for people in need.

To facilitate growth and ensure the viability and sustainability of the community housing sector, the NSW Government introduced amendments to the *Housing Act 2001* (NSW) in 2007.

The implementation of the *Housing Amendment (Community Housing Providers) Act 2007* (NSW) and its supporting regulations is designed to improve the capacity of community housing providers to deliver quality outcomes for tenants and provide confidence to investors and partners. Specifically, the amendments make provision for:

- the appointment of a Registrar of Community Housing
- the registration of community housing providers
- assistance to registered community housing providers to support the provision of housing for people on very low, low or moderate income
- powers to enforce the Regulatory Code in the event of non-compliance, including cancelling the registration of a community housing provider

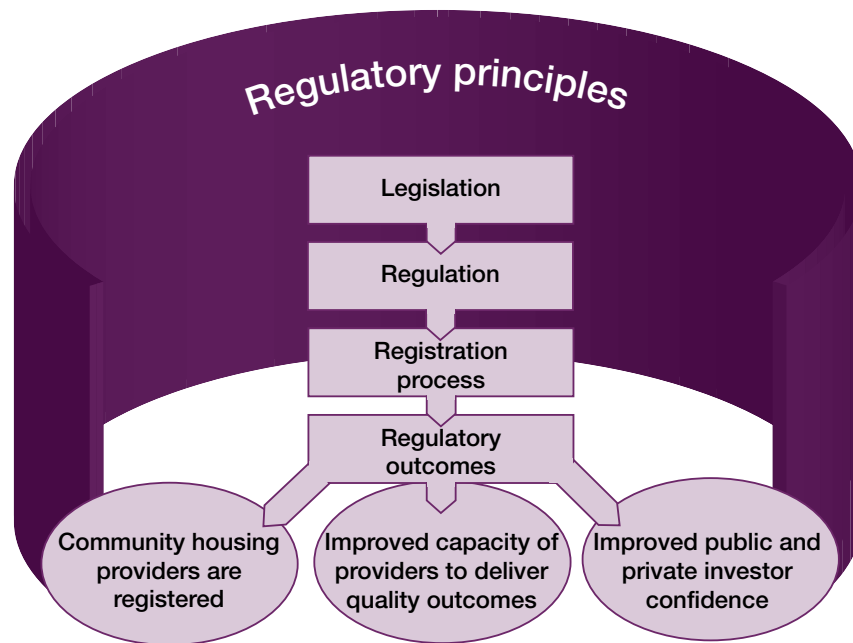
Only organisations that are registered as a community housing provider will receive assistance from Housing NSW (as the Land and Housing Corporation)¹. Organisations that currently receive assistance will be invited to apply for registration over a statutory two year period in accordance with the provisions of the Act.

1. Assistance is defined as (but not limited to) funding, land, property and partnership arrangements.

2. Legislation

The Housing Act and Housing Regulation 2009 provide the legislative framework for the Registrar's regulation of community housing providers.

The Regulatory Framework



The Act

The Housing Act, as amended in 2007, provides for the establishment of the Registrar of Community Housing as well as the registration and regulation of community housing providers.

The Regulation

The Housing Regulation 2009 prescribes a regulatory code for community housing providers which sets out the requirements for registered community housing providers. The requirements focus on key areas of risk in community housing, including tenancy management, asset management, financial management, organisational governance and housing development.

The National Regulatory Framework

A National Regulatory Framework for community housing providers was endorsed by Commonwealth, State and Territory Housing Ministers in 2008. The National Regulatory Framework is a system of legislative and administrative controls to regulate community housing providers involved in growth activities which make it easier for them to operate across State and Territory boundaries. The administration of the Regulatory Code is aligned with the National Regulatory Framework.

3. The Registrar of Community Housing's office

The Registrar is the independent arbiter of the regulation of registered community housing providers and is subject to the direction and control of the Minister for Housing. The role of the Registrar of Community Housing's office is to regulate for a sustainable community housing sector in NSW. The office's regulatory platform is determined by the Housing Act and Housing Regulation 2009. The legislation requires the Registrar to:

- maintain a register of community housing providers
- assess the suitability of organisations to be registered as community housing providers
- register suitable community housing providers
- investigate complaints and other matters involving registered community housing providers
- provide information in relation to community housing
- provide advice to the Minister in relation to community housing and any regulation
- advise on the matters to be included in a regulatory code for registered community housing providers
- undertake any other function conferred or imposed on the Registrar by legislation

The Registrar has the power to conduct investigations in response to complaints made about a provider where there may have been non-compliance with the Regulatory Code.

4. Regulatory outcomes

The Registrar of Community Housing's office has identified three major result areas of its regulatory work.

Result 1: Community housing providers are registered

- Establish a risk based regulatory process for community housing providers
- Engage providers in the establishment and process of regulation
- Support the development and implementation of the National Regulatory Framework

Result 2: Improved capacity of providers to deliver quality outcomes

- Encourage providers to proactively manage services, assets and risks
- Stimulate the sector so the capacity to undertake needs-based housing development is built
- Support the sector to comply with the Regulatory Code

Result 3: Improved public and private investor confidence

- Identify and respond to risk using a clear and widely understood intervention process
- Provide reliable and valid information on the community housing sector including a register of community housing providers
- Identify and pursue positive outcomes for residents/tenants and communities through the regulatory process.

The Registrar monitors the achievements of its planned results through a performance reporting framework which includes a structured program evaluation process. Information on the Registrar's achievements is also published in the Registrar's Annual Statement of Performance.

5. Regulatory principles

The Registrar's regulation of the community housing sector is based on five key principles:

1. Transparency

Clear regulatory processes are established and communicated

The Registrar is open about objectives and decisions

2. Proportionality

The Registrar only intervenes when necessary

Monitoring and interventions are appropriate to the risk

Activities likely to pose the greatest risk are the focus

3. Accountability

The Registrar explains decisions and is open about practices and policies

Clear registration standards and criteria are established and communicated

The Registrar takes responsibility for its actions and reports on its performance

4. Consistency

Regulatory processes and evidence guidelines are coherent and consistently applied

The Registrar works across government to ensure a consistent regulatory approach

5. Co-regulation

The Registrar actively engages providers in the regulatory process and encourages self assessment where appropriate

Importantly, the Registrar has a risk based approach to regulation which targets areas of greatest risk and sets requirements based on key service delivery outcomes for community housing.

6. Registration

6.1 Introduction

Under the Housing Act a community housing provider must be registered to receive assistance from Housing NSW. To attain registration a provider must satisfy the Registrar that it demonstrates a commitment to providing community housing consistently with the Housing Act and Regulatory Code. The areas and outcomes of the Regulatory Code can be summarised as follows:

Performance Area 1: Fairness and Resident Satisfaction

Outcome 1: Residents and applicants are treated fairly by community housing providers

Performance Area 2: Sustainable Tenancies and Communities

Outcome 2: Community housing services contribute to sustainable tenancies and communities

Performance Area 3: Asset Management

Outcome 3: Community housing providers engage in strategic asset management to meet residents' housing needs and preferences at present and in the future

Performance Area 4: Sound Governance

Outcome 4: Community housing providers have sound governance that supports confidence in the community housing industry

Performance Area 5: Standards of Probity

Outcome 5: Community housing providers maintain high standards of probity

Performance Area 6: Protection of Government Investment

Outcome 6: To ensure the protection of government investment in community housing

Performance Area 7: Efficient and Competitive Delivery of Community Housing

Outcome 7: To ensure that community housing providers deliver community housing services with government assistance in an efficient and competitive manner

Performance Area 8: Development Projects

Outcome 8: Timely and on-budget completion of community housing developments; and community housing projects deliver appropriate and affordable housing

For each performance area there are requirements that a provider must meet. The level of requirements for each performance area is proportionate to the risk associated with the registration class of a provider. Importantly, not all classes of provider are required to meet every requirement.

6.2 Assessment

The Registrar of Community Housing will assess the suitability of organisations against the Housing Regulation 2009. The Housing Regulation 2009 prescribes the Regulatory Code which sets out the requirements for registered community housing providers.

Registration will be completed by self assessment and validated through information or evidence. On-site inspections by staff from the Registrar's office may also be conducted to gather further information.

A provider's application will be assessed according to the Evidence Guidelines which are aligned with the requirements in the Regulatory Code.

The Evidence Guidelines detail the range of evidence sources that must be provided to the Registrar to demonstrate compliance with the requirements.

6.3 On-site inspections

An on-site inspection involves a visit by a staff member from the Registrar's office to obtain more information for assessment purposes, investigate a complaint or for a registered community housing providers' ongoing compliance with the Regulatory Code. The inspection could include interviews with organisation managers, governing body members and staff, and discussions with residents/tenants and other stakeholders (such as partner agencies that provide tenant support) as well as examination of records, processes and systems.

A community housing provider will be contacted before an on-site inspection is conducted.

6.4 Registration class

Four registration classes have been established to reflect the scale and type of activities that providers are engaged in.

This distinction is needed due to the higher level of risk to stakeholders from providers which have a large housing portfolio, deliver a number of different housing services with complex financial arrangements or are undertaking development.

For example, providers applying to be registered in Class 1 undergo the most complex and intensive assessment. Class 4 applicants have a less intensive assessment due to the lower level of risk associated with this type of provider.

The classes of registration are as follows:

- 1 Growth provider:** typically, organisations managing a large portfolio of properties (400 or more) and undertaking community housing development projects utilising private sector funds and investment. Organisations registered in this class are subject to the highest level of regulatory requirements which reflects the greater level of resources committed by government to these providers and the increased level of risk involved in borrowing and community housing development projects.
- 2 Housing provider:** typically, organisations managing a large portfolio of properties (200 or more) and undertaking small scale projects to develop community housing. Organisations registered in this class are subject to medium to high levels of regulatory requirements dependant on the scale of their community housing operations and their level of involvement, if any, in community housing development projects.
- 3 Housing manager:** typically, organisations managing a small to medium sized portfolio of properties (30 or more) focused on property and tenancy management. Organisations registered in this class are subject to regulatory requirements that are proportionate to the scale of their community housing operations.
- 4 Small housing manager:** typically, organisations managing a small portfolio of properties (one or more) focused on tenancy management. Organisations registered in this class are subject to regulatory requirements that are proportionate to small scale community housing operations.

The criteria for decisions about a provider's registration class is indicative and in some cases may need to be negotiated with the Registrar's office to ensure the class best reflects the provider's current housing portfolio and business structure.

6.5 Changing registration class over time

Regardless of the initial decision about which registration class best reflects the scope and complexity of housing products and services delivered by a community housing provider, mobility between classes will always be available. For example, a Class 2 organisation that undertakes development through private investment could move to Class 1. The organisation would then be subject to the more stringent accountability requirements associated with Class 1 providers.

A change in registration class must be negotiated with the Registrar who will make the determination of a provider's registration class. To change registration class, additional performance information and supporting evidence may be required.

7. The Provider Register

The Registrar is required by the Housing Act to maintain a Register of registered community housing providers. Registered community housing providers will be placed on the Registrar of Community Housing's Provider Register, located on the Registrar's website. The details that will be published include:

- Registration number
- Incorporated name of organisation
- Registered business address
- Date of registration (or registration period if limited)
- Registration class

8. Ongoing compliance monitoring

After initial registration, a provider must continue to comply with the Regulatory Code in order to remain registered. This will involve providing relevant records and information to the Registrar of Community Housing upon request, and allowing the analysts from the Registrar's office to inspect premises or records.

The Registrar will conduct ongoing reviews to monitor a provider's compliance with the Regulatory Code. This will involve a registered community housing provider updating and submitting their Financial Performance Report.

9. Reviews and appeals of registration decisions

If a community housing provider is dissatisfied with the Registrar's determination to either refuse to register or cancel a provider's registration, they can request that the decision is reviewed by the Registrar's office.

If the community housing provider would not like an internal review of the determination, or remains dissatisfied at the conclusion of the internal review, it may choose to have the determination reviewed externally via an application to the Administrative Appeals Tribunal (ADT). Information about the ADT can be found at <http://www.lawlink.nsw.gov.au/adt>.

10. Privacy and confidentiality

In undertaking its regulatory activities, including when assessing applications for registration, the Registrar's office will gain access to a variety of information about the provider and its operations, some of which might be considered confidential or commercially sensitive in nature. The Registrar's office will not normally release information concerning community housing providers. Exceptions may be made where there is a lawful reason for releasing the information, and this would depend on individual circumstances.

In the exercise of its functions, the Registrar's office will also abide by the *Protection of Privacy and Personal Information Act 1998* (NSW) and other relevant legislative provisions. Any personal information given to the Registrar's office by a board member, staff member, tenant or other person in the course of regulating a community housing provider will not be disclosed and will be kept confidential.

Confidential and personal information may be passed between Registrar's office staff where required in the normal course of their duties.

Further information about confidentiality and privacy are available on the Registrar of Community Housing's website.

The Registrar will require, on occasion, alternative information to be sourced from Housing NSW, or another source, in order to determine whether a community housing provider complies with the Regulatory Code. Consent to source this information from Housing NSW will be sought from the governing body. Consent to source information from other agencies will be sought as the need arises.

Further information about confidentiality and privacy is available on the Registrar of Community Housing's website.

11. Freedom of Information

Members of the public can request documents held by Housing NSW under the *Freedom of Information Act 1989* (NSW). A Freedom of Information request can be made by completing the Freedom of Information Application Form on the Registrar of Community Housing's website.

12. Complaints

The Registrar of Community Housing respects the right of clients to complain about poor service from the Registrar's office or if they have a serious concern about the conduct of a community housing provider. The Registrar also welcomes compliments and suggestions and will use this feedback to improve services.

Complaints may be made to the Registrar's office about any of the following:

- The Registrar of Community Housing's office, its policies or administrative practices
- The conduct of the Registrar
- The conduct of a Registrar's office staff member
- A registered community housing provider in relation to its responsibilities set out in the Regulatory Code under the *Housing Regulation 2009* and the *Housing Act 2001* (NSW).

For more information, please refer to the other guides in this series:

2. The Registration Process
3. The Evidence Guidelines
4. Application Guide
5. Financial Viability





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