Registrar of Community Housing

1. The Regulatory Framework

Version 2.0
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1. Introduction

This document outlines the main components of the regulatory framework for the Registrar of Community Housing. 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. 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.

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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

The Registrar is a statutory appointment under Part 9A of the Housing Act which reports directly to the Minister for Housing and registers community housing providers independently of Housing NSW.

While this reporting structure guarantees the Registrar’s independence, the Registrar’s office operates as a business unit of Housing NSW.

The Registrar of Community Housing’s office is responsible for the registration and regulation of community housing providers in NSW. The objective of the Registrar’s office is to provide assurance for a viable and sustainable community housing sector which ensures quality housing for residents. The 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 and other matters about a provider where there may have been non-compliance with the Regulatory Code.
4. Regulatory outcomes

The Registrar 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 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 assessment is done at the whole of organisational level. The Registrar needs to be confident that the organisation is viable and sound, and will request information relating to the whole organisation, not individual services.

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 Application and Evidence Guidelines which are aligned with the requirements in the Regulatory Code.

The Application and 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 staff 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 required 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.

There are four classes of registration and regulatory requirements are proportional. Organisations applying for registration as a Class 1 provider undergo the most complex and intense assessment. Organisations applying for registration as a Class 4 provider have the most basic assessment as they are considered to be of lower risk.
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 determinations about a provider's registration class are indicative and in some cases may be negotiated with the Registrar to ensure the class best reflects an organisation’s current housing portfolio and business structure.

6.5 Changing registration class over time

Mobility between classes is possible. For example, a Class 2 provider 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.

Changes in registration class must be negotiated with the Registrar. 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.

The Registrar maintains a public Provider Register on its website.

When an organisation achieves registration as a community housing provider, their details are published on the Provider Register. Details published on the Register include the community housing provider’s:

- Name
- Address
- Registration status
- Registration start date
- Registration class

8. Compliance

After initial registration, community housing providers must continue to comply with the Regulatory Code in order to maintain registration.

The Registrar’s office will undertake a program of regular compliance assessments to provide assurance as to whether each registered community housing provider is meeting its responsibilities, on an on-going basis, under the Act, Housing Regulation 2009 and Regulatory Code. The framework for the compliance assessment program is currently under development, and will set the principles, procedures and timeframes for scheduling compliance assessments.

The Registrar’s office will give the community housing provider reasonable notice of the specific date and process for its compliance assessment.

As part of this, registered community housing providers must update and submit their Financial Performance Report.

A compliance assessment may also be conducted if there are major changes to the provider’s operations, substantiated complaints or referral of other matters about its operations, or as a result of a notifiable incident.

9. Reviews and appeals

If an organisation is not satisfied with the Registrar’s decision on its application for registration as a community housing provider, it can apply for an internal or external review.

9.1 Internal review

Application for an internal review must be in writing within 21 days of the Registrar’s decision.

Where an application for review of a decision is made, the decision will be reviewed afresh and determined by an officer who was not substantially involved in making the decision being reviewed.
The outcome of the internal review will be advised in writing with reasons given to affirm, vary or set aside the original decision and substitute a new decision if appropriate.

The internal review will be conducted generally in accordance with the procedural requirements of the Administrative Decisions Tribunal Act 1997 (NSW).

Completing an internal review of a reviewable decision is a threshold requirement that must precede the organisation making an application for an external review to be conducted within the Administrative Decisions Tribunal.

9.2 External review

Section 67H of the Housing Act provides that a body corporate may apply to the Administrative Decisions Tribunal for a review of any of the following decisions of the Registrar:

(a) a decision to refuse to register the body corporate as a registered community housing provider or
(b) a decision to cancel the registration of the body corporate as a registered community housing provider

Application to the Administrative Decisions Tribunal for a review of a reviewable decision must be made in writing within 21 days of the decision on the internal review.

Information about the Administrative Decisions Tribunal and how to make an application for review can be found at [HTTPWWWLAWLINKNSWGOVAUAD](http://www.lawlink.nsw.gov.au/adt).

Any other decision made by the Registrar under Part 9A, Division 2, of the Housing Act is final and not subject to review.

The Registrar will inform Housing NSW if an organisation receives a refusal to register or has had their registration cancelled.

The Housing Act requires Housing NSW to withdraw assistance, as far as is reasonably practicable, from a community housing provider that ceases to be registered

10. Privacy and confidentiality

In undertaking its regulatory activities, including when assessing applications for registration, the Registrar 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 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 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 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.

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’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’s website.

12. Complaints

The Registrar has a responsibility to investigate information, including complaints, to ensure registered community housing providers meet their responsibilities set out in the Regulatory Code under the Housing Regulation 2009 and the Housing Act.

The Registrar’s office only investigates complaints about community housing providers that have been registered under the Housing Act.

The Registrar has a staff member designated for receiving and documenting all enquiries, notifications and complaints received.

Enquiries, notifications and complaints can be provided in writing, verbally or via the online form.

Further information about complaints is available on the Registrar’s website.
Appendix A - Glossary of terms

Capital Property
A property asset owned by the Land and Housing Corporation and leased by Housing NSW to a community housing organisation for them to manage and sub-let to a resident as subsidised rental housing.

Properties owned jointly in a partnership arrangement between the Land and Housing Corporation and a community housing provider are capital properties when they are sub-let to a resident as community housing.

Properties owned by the community housing organisation either solely or in a partnership arrangement with another organisation such as a local council, church organisation or another community organisation are capital properties when they are sub-let to a resident as subsidised rental housing.

Community housing
Community housing is subsidised rental housing for very low to moderate income households managed by community housing providers. Community housing can include crisis accommodation for people who are homeless or at risk of homelessness, social housing for households eligible for public housing and affordable housing for very low to moderate income households.

Community Housing Agreement/Assistance
May include, but is not limited to, funding, land, lease and partnership agreements.

Community housing providers
Community housing providers are organisations (either non-government, local government or religious organisations) who receive assistance (in the form of leased capital properties, recurrent funding or capital funding grants) from Housing NSW to provide community housing. Community housing providers manage tenancy agreements for social and affordable housing under the Residential Tenancy Act 1987 and/or management agreements covering boarders and lodgers for crisis accommodation.

Community Housing Division
The division of Housing NSW that is responsible for the state-wide and regional administration of the community housing sector.

Community Lease
Is generally a lease, funding agreement or contract with Housing NSW (as the Land and Housing Corporation).

Co-operative
An organisation that is owned, controlled and used by their members. They are distinguished from other forms of incorporation by their participative ownership, democratic structure and use of capital for mutual rather than individual benefit. Cooperatives are registered under the Co-operatives Act 1992 (NSW).
Crisis Accommodation
Short term (less than three months) accommodation for homeless people or people who are at risk of homelessness.

Development
Refers to properties being developed or redeveloped where the development project is being managed by a community housing provider. A property is under development when funds have been committed to the development project.

Housing NSW
The agency responsible for managing the NSW Government’s housing portfolio and developing broader housing strategies, headed by the Chief Executive and reporting to the Minister for Housing.

Incorporated association
A small non-profit community-based group or club incorporated under the Associations Incorporation Act 1984 (NSW). It provides an easier and relatively inexpensive means of establishing a legal entity compared to forming a co-operative or a company.

Leasing subsidy
A subsidy paid to the community housing organisation under the terms of the Community Housing Leasing Program (CHLP) to lease properties from the private sector. The subsidy amount is the difference between costs paid to landlords (capped at the RBB median for the total portfolio) less rent charged to tenants and allowances for losses due to rental debts written off.

Program evaluation
A structured approach to evaluating the goals, processes and impacts of projects, policies and programs.

Property acquisition
A property may be acquired through Housing NSW’s property transfer or provider funded acquisition.

Public housing
Dwellings owned or leased and managed by state or territory housing authorities to provide affordable rental accommodation.

Regulatory Code
The code set out in Schedule 1 of the Housing Regulation 2009 that establishes the compliance requirements for registered community housing providers in relation to their operations and provision of community housing.

Shared equity agreement
Refers to properties owned jointly in a partnership arrangement between the provider and Housing NSW.
Social housing
Government assisted housing, usually involving the provision of a subsidy, with the objective of household and community well-being. Social housing includes public, community and Aboriginal housing.

Transitional Accommodation
Short to medium term (three to 18 months) social housing available to people exiting or transitioning from crisis accommodation.
For more information, please refer to the other guides in this series:

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