

# New South Wales Local Scheme

## Tier Guidelines



Published by the NSW Registrar of Community Housing

Publication date: February 2020

This work is copyright. It may be produced in whole or in part for study or training purposes subject to the inclusion of an acknowledgement of the source. It may not be reproduced for commercial sale.

# Content

1. About the New South Wales Local Scheme	4
2. Purpose of this Document	5
3. Registration Tiers and Eligibility	6
4. Registration Decisions about Tiers	8
5. Tier Attributes	10

# 1. About the New South Wales Local Scheme



**The New South Wales Local Scheme is a regulatory system designed to contribute to a well governed and managed community housing sector, and provide a platform for the ongoing development and viability of the community housing sector across New South Wales.**

Community housing providers are organisations that deliver social or affordable housing and associated services to people on very low, low or moderate incomes. These services are covered by the social and affordable housing policies of NSW Government (policy/funding) agencies.

The key objectives of the NSW Local Scheme are to:

- provide a NSW local system of registration, monitoring and regulation of entities that provide community housing but are unable to be registered under the National Regulatory System for Community Housing (NRSCH)
- provide a regulatory environment to support the growth and development of the community housing sector
- pave the way for future housing product development
- protect Government investment in the community housing sector.

## 2. Purpose of this Document

**These guidelines are published by the New South Wales Registrar of Community Housing (the Registrar) in accordance with the *Community Housing Providers (Adoption of National Law) Act 2012 (NSW)*.**

### Registration tiers

The guidelines help interpret the categories of registration under the National Law (NSW).

The guides should be read in conjunction with the NSW Local Scheme Charter, NSW Local Scheme Regulatory Framework and other NSW Local Scheme guidelines available on the Registrar's website.

The intent of these guidelines is to ensure proportionality through the use of a tiered registration system based on risk – whereby different levels of regulatory monitoring apply to providers based on the scale and scope of their community housing activities.

For example, organisations involved in activities that require management of a higher level of risk (e.g. property development) will be subject to a higher level of regulatory scrutiny and engagement than organisations involved in activities that require them to manage lower-level risks (e.g. small-scale tenancy management).

Registration in any particular tier is therefore determined by an organisation's level of risk due to the scale and scope of its activities.

It is important to note that the Registrar's decision about the appropriate tier of registration of an entity is different from the Registrar's assessment of the risks associated with the provider's capacity and compliance with National Law (NSW).

Within any tier, the Registrar will vary the amount of regulatory engagement depending on actual compliance and the risks of non-compliance.

### Additional conditions

Where necessary, the Registrar may choose to apply additional standard conditions of registration in accordance with National Law (NSW). Unique circumstances warranting additional conditions will be discussed with the provider before any conditions are applied.

Conditions may be applied:

- when determining a provider's NSW Local Scheme registration
- at any other time by notice in writing to the provider.

A provider can request that an additional standard condition of registration be reviewed by the Registrar. The Registrar may revoke any additional standard condition at any time by notice in writing to the provider.

### 3. Registration Tiers and Eligibility

The NSW Local Scheme Regulatory Framework sets out the performance outcomes that must be demonstrated by all tiers of registration.

To be registered in a particular tier, an entity must:

- meet the incorporation requirements for the particular tier
- demonstrate it meets the evidence requirements for the particular tier
- demonstrate that if it has affiliated entity arrangements it maintains control over activities and decisions that impact on its compliance with the National Law (NSW).

The registration tier is determined by a community housing provider's level of assessed risk, by reference to the scale and scope of the provider's community housing activities. The tier of registration in turn determines the performance requirements and intensity of regulatory engagement. Risk is not static and may change over time; this in turn may lead to a change in registration tier.

The registration tier is the first level of risk stratification to support a risk-based approach to regulating community housing providers. It predominantly deals with the consequences of risk associated with the scale and scope of a provider's community housing business.

Assessing performance data is the second level of risk stratification, which predominantly deals with the nature and intensity of regulatory engagement and, where necessary, action. This engagement will be regularly reviewed in light of changing business focus and complexity and performance.

#### Tier 1

The Registrar may only place an entity in registration category Tier 1 if the entity:

- is incorporated as either a company limited by shares or a company limited by guarantee under the Corporations Act
- demonstrates that if it has affiliated entity arrangements it maintains control over activities and decisions that impact on its compliance with the National Law (NSW) (see Affiliated Entity Arrangements available on the [RCH website](#))
- demonstrates it meets the evidence requirements for a Tier 1 provider as specified in the Evidence Guidelines (available on the [RCH website](#)).

Tier 1 providers face the highest level of performance requirements and regulatory engagement, reflecting the fact that Tier 1 providers are involved in activities that mean they manage a higher level of risk based on:

- operating at large scale, meaning any serious noncompliance has the potential to impact on a large number of tenants and assets
- ongoing development activities at scale, meaning any serious non-compliance has the potential to affect the viability of the provider.

#### Tier 2

The Registrar may only place a community housing provider in registration category Tier 2 if the entity:

- is a body corporate created through State or Australian government legislation, which are:
  - companies limited by shares under the Corporations Act
  - companies limited by guarantee under the Corporations Act

- corporations incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)
- co-operatives or incorporated associations under NSW legislation
- other bodies corporate created through other State or National legislation (e.g. a Local Aboriginal Land Council created through other NSW legislation)
- demonstrates that if it has affiliated entity arrangements it maintains control over activities and decisions that impact on its compliance with the Act
- demonstrates it meets the evidence requirements for a Tier 2 provider – as specified in the Evidence Guidelines.

Tier 2 providers face an intermediate level of performance requirements and regulatory engagement, reflecting the fact that Tier 2 providers are involved in activities that mean they manage a level of risk that is lower than Tier 1 providers but higher than Tier 3 providers based on:

- operating at moderate scale, meaning any serious noncompliance has the potential to impact on a moderate number of tenants and assets
- small-scale development activities, meaning any serious non-compliance has the potential to affect the viability of the provider.

### Tier 3

A Registrar may only place a community housing provider in registration category Tier 3 if the entity:

- is a body corporate created through State or Australian government legislation, which are:
  - companies limited by shares under the Corporations Act
  - companies limited by guarantee under the Corporations Act

- corporations incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 (Cth)
- co-operatives or incorporated associations under State or National legislation
- other bodies corporate (e.g. a Local Aboriginal Land Council created through other NSW legislation)
- demonstrates that if it has affiliated entity arrangements it maintains control over activities and decisions that impact on its compliance with the Act
- demonstrates it meets the evidence requirements for a Tier 3 provider as specified in the Evidence Guidelines.

Tier 3 providers face a lower level of performance requirements and engagement, reflecting the fact that Tier 3 providers are involved in activities that means they manage a lower level of risk based on:

- operating at smaller scale, meaning any serious noncompliance has the potential to impact on a smaller numbers of tenants and assets
- no ongoing development activities or one-off and/or very small scale development activities.

## 4. Registration

### Decisions about Tiers

**An entity or a registered community housing provider may apply to be registered in any tier, regardless of its past, current or planned scale and type of community housing activities.**

However, the onus will be on the applicant to be able to fully demonstrate that it meets the requirements for that particular tier of registration both on application and as part of ongoing compliance assessments.

In assessing an application for registration or a change to registration, the Registrar will make an assessment of the overall level of risk in the entity's delivery of community housing activities and make a determination of the required level of regulatory oversight.

The Registrar will develop and apply common definitions to ensure consistent determinations are made regarding the required level of regulatory oversight. The framework underpinning these determinations is presented in Table A (below) and additional information as set out in the NSW Local Scheme Registration Return Guide.

Within each tier, the Registrar will also make an assessment of the actual risks associated with a provider's compliance with National Law (NSW) and will use this assessment to determine the required level of regulatory engagement appropriate to these risks. This is separate to decisions about registration tiers that relate to eligibility criteria and the scale and scope of community housing activities.

The Registrar may reject an application for Tier 3 registration if the Registrar makes a determination that Tier 1 or 2 regulatory oversight is required based on the entity's community housing activities. The Registrar may reject an application for Tier 2 registration if the

Registrar makes a determination that Tier 1 regulatory oversight is required based on the entity's community housing activities.

If an application for registration is approved, the Registrar's determination about the registration tier of an entity under the National Law (NSW) will be based on:

- evidence provided by the entity about its incorporation status
- evidence provided by the entity about affiliated entity arrangements and its ability to maintain control over activities and decisions that impact on its compliance with the National Law (NSW)
- evidence provided by the entity to demonstrate that it meets the evidence requirements for a particular registration tier.

As the Evidence Guidelines are cumulative (i.e. Tier 1 evidence requirements encompass Tier 2 and 3 requirements; Tier 2 evidence requirements encompass Tier 3 requirements), the Registrar can determine that an entity should be registered in a lower tier than it applied for as long as this is consistent with the Registrar's determination of the appropriate level of regulatory oversight. For example, an entity applying for Tier 2 registration may be registered as a Tier 3 provider as long as the Registrar determines that its activities only require Tier 3 regulatory oversight.

A change to the registration tier of a registered community housing provider may be initiated by either:

- an application from the provider to change tiers
- a compliance assessment by the Registrar that identifies a change to the scale or scope of operations of the provider, or



- advice or a notification to the Registrar that indicates a change in scale or scope of operations of the provider.

When making a determination to change the registration tier of an entity under the National Law (NSW), the Registrar will:

- provide a notice in writing to the entity stating the reasons for the change and any requirements that will need to be met for a different registration tier
- give the entity the opportunity to submit additional information or documents to demonstrate that the requirements for the new tier have been fully met.

In determining the registration tier as part of an application for registration or varying an existing registration under requirements of the National Law (NSW), the Registrar will consider:

- information or documents the entity submits with the application form and further information or documents requested by the Registrar for the purposes of determining the application
- whether the information or documents submitted or requested unambiguously demonstrate that the requirements for a particular tier have been fully met.

The Registrar is not obliged to change the registration tier of an entity under the National Law (NSW) if a provider becomes non-compliant; that is, the Registrar may proceed to use other enforcement powers including issuing a notice of non-compliance.

The Registrar's decision to change a provider's registration tier or to refuse a provider's application to change its registration tier is an appealable decision.

A NSW Government agency may make it a requirement of receiving and keeping housing assistance (funding or assets) that an entity is registered in a particular registration tier.

For the purposes of these tier guidelines, any affiliated entity arrangements of an entity refer to:

- a body corporate that controls the entity (e.g. parent company) or
- a body corporate that controls or partly controls the community housing assets and activities of the entity (e.g. special purpose vehicle or joint venture company) or
- a body corporate that undertakes community housing or other activities and is controlled or partly controlled by the entity (e.g. community housing subsidiaries; other subsidiaries) or
- a body corporate or unincorporated body that undertakes community housing activities under contract or agreement on behalf of the entity (e.g. service agreements), or
- other arrangements that affect the ability of the entity to maintain control over activities and decisions that impact on complying with the National Law (NSW).

The Registrar is required to consider the affiliated entity arrangements of an entity in making a determination of the registration tier.

An applicant for registration must make an initial disclosure of affiliated entity arrangements and must make ongoing disclosures under the National Law (NSW).

If a provider fails to disclose any affiliated entity arrangements, this could be grounds for rejecting an application. If a registered community housing provider fails to disclose any affiliated entity arrangements, the provider has not complied with the conditions of its registration with the National Law (NSW).

In order to be registered, an entity with affiliated entity arrangements must demonstrate that it can maintain control over activities that impact on its compliance with the National Law (NSW).

## 5. Tier Attributes

**The description of registration tiers refers to attributes of community housing activities such as operating at scale, involvement in development activities and finance and leverage arrangements.**

To assist community housing providers to understand the likely registration tier under which they would need to seek registration, a matrix has been prepared (Table A) to provide examples of registration tiers. In practice, a provider may choose to seek registration in a higher tier (if the provider can demonstrate that the provider meets the requirements) or the Registrar may require registration in a higher tier (if the Registrar assesses there is a higher level of regulatory oversight required).

### **Scale of community housing tenancy and property management activities**

The scale of community housing tenancy and property management activities is typically classified as:

- small-scale or lower risk if the provider has responsibility for managing fewer than 100 tenancies/residencies
- moderate-scale or moderate risk if the provider has responsibility for managing between 50 and 500 tenancies/residencies
- large-scale or higher risk if the provider has responsibility for managing more than 350 tenancies/residences.

The definitions are deliberately presented as a range to highlight that provider 'scale' is always considered relative to other attributes such as development activities and finance arrangements. In addition, it is recognised that a new entrant may initially have a zero base but with a specific plan to operate at a certain scale.

The Registration Return Guide provides additional information about how tenancy and property management scale is defined. The numbers quoted in the document reflect sector characteristics at January 2018 and will be revised if and when necessary.

### **Development activities**

Community housing development activities refer to property development involving the construction or major refurbishment of community housing assets. Development activities are classified as:

- lower risk if the provider is involved in no development activities or one-off and very small scale development activity
- moderate risk if the provider is involved in ongoing small-scale development activities
- higher risk if the provider is involved in ongoing development activities at scale.

Development scale is set relative to the national market, the size of which will be influenced by a range of factors, notably the economic outlook and funding opportunities. The assessment of development activity by the Registrar will take into account the number of units involved, the costs, financing arrangements and complexity of the development(s) in the tier assessment.

The Registrar will also take into account whether a provider's development program is 'ongoing'. This refers to the existence of a committed forward program. It does not necessarily require that particular schemes are 'shovel ready', but that for example:

- there is a contract or agreement to meet development targets
- there are well advanced plans for sites that have been acquired possibly with development approvals.

Finally, in coming to a decision about an appropriate tier, the Registrar will also consider the scope of a provider's affiliated entity arrangements.

Providers engaged in complex relationships and interdependencies with parent or subsidiary entities, contractual partnerships or some form of cross-guarantee may be determined to be in a different tier to another with the same number of tenancies, assets and development.

The Registration Return Guide provides additional information about how development activities are defined and how affiliated entity arrangements are applied in determining tier.

**Table A: Example of the typical registration tier for different community housing activities**

Scope						
Ongoing development activities at scale	Tier 1	Tier 1	Tier 1	Tier 1	Tier 1	Tier 1
Ongoing small- scale development activities	Tier 2	Tier 2	Tier 2	Tier 2	Tier 2	Tier 1 or 2
One-off and/or very small scale development activities	Tier 3	Tier 2 or 3	Tier 2	Tier 2	Tier 2	Tier 2
No development activities	Tier 3	Tier 3	Tier 2 or 3	Tier 2	Tier 2	Tier 2
	0	50	100	300	500	2000
<b>Scale of community housing tenancy and property management activities</b> Number of community housing tenancies / Number of community housing properties (whichever is larger)						



NSW Registrar of Community Housing  
Locked Bag 4001, Ashfield BC 1800  
P: 1800 330 940 F: (02) 8741 2522  
E: [registrar@facs.nsw.gov.au](mailto:registrar@facs.nsw.gov.au)  
W: [www.rch.nsw.gov.au](http://www.rch.nsw.gov.au)