

Serial 48
Community Housing Providers (National Uniform Legislation) Bill 2013
Mr Conlan

A Bill for an Act to provide for a national law relating to the registration of
community housing providers and to make other provision for community
housing providers

NORTHERN TERRITORY OF AUSTRALIA

COMMUNITY HOUSING PROVIDERS (NATIONAL UNIFORM
LEGISLATION) ACT 2013

Act No. [] of 2013

Table of provisions

| | | |
|-------------------|---|---|
| Part 1 | Preliminary matters | |
| 1 | Short title | 1 |
| 2 | Commencement | 1 |
| 3 | Interpretation | 1 |
| Part 2 | Adoption of National Law | |
| Division 1 | Provisions for adoption of National Law | |
| 4 | Adoption of Community Housing Providers National Law | 2 |
| 5 | Uniform adoption of nationally approved amendments to Community Housing Providers National Law | 2 |
| 6 | Exclusion of legislation of this jurisdiction | 3 |
| 7 | Relationship with other legislation | 3 |
| 8 | Registrar | 3 |
| 9 | Delegation of Registrar's functions | 3 |
| 10 | Fees | 3 |
| Division 2 | Provisions for interpretation of National Law as adopted | |
| 11 | Meaning of generic terms | 3 |
| 12 | Meaning of other terms | 4 |
| 13 | References to State | 4 |
| Part 3 | Interest in land of registered community housing provider | |
| 14 | Chief Executive Officer (Housing) has interest in certain land | 4 |
| 15 | No dealings with certain land without consent of Chief Executive Officer (Housing) | 5 |
| 16 | Registrar-General to make recording in land register | 5 |

| | | |
|-----------------|---|----|
| Part 4 | Miscellaneous matters | |
| 17 | Acquisition on just terms | 6 |
| 18 | Regulations..... | 6 |
| Appendix | Community Housing Providers National Law | |
| Part 1 | Preliminary | |
| 1 | Short title | 7 |
| 2 | Commencement..... | 7 |
| 3 | Object..... | 7 |
| 4 | Definitions..... | 7 |
| 5 | Primary jurisdiction | 10 |
| 6 | Single national register | 11 |
| 7 | Extraterritorial operation of Law | 11 |
| 8 | Law binds the State | 11 |
| Part 2 | The Registrar | |
| 9 | The Registrar | 11 |
| 10 | Functions of Registrar..... | 12 |
| 11 | Delegation of functions by Registrar | 13 |
| Part 3 | Registration | |
| 12 | National Register of Community Housing Providers | 13 |
| 13 | Application for registration or variation of registration | 14 |
| 14 | Determination of application..... | 15 |
| 15 | Conditions of registration | 15 |
| 16 | Cancellation of registration..... | 18 |
| Part 4 | Enforcement powers of Registrar | |
| 17 | When action may be taken under Part | 19 |
| 18 | Notice of non-compliance..... | 19 |
| 19 | Binding instructions to rectify non-compliance | 19 |
| 20 | Notice of intent to cancel registration | 20 |
| 21 | Statutory managers | 20 |
| 22 | Other provisions relating to exercise of functions by statutory manager | 22 |
| 23 | Displacement of <i>Corporations Act 2001</i> (Cth) | 23 |
| 24 | No compensation payable by State..... | 23 |
| Part 5 | Miscellaneous | |
| 25 | Appeals to Appeal Tribunal | 24 |
| 26 | Disclosure of information..... | 25 |

Schedule 1 National Regulatory Code

| | | |
|---|----------------------------------|----|
| 1 | Tenant and housing services..... | 26 |
| 2 | Housing assets | 26 |
| 3 | Community engagement | 27 |
| 4 | Governance | 27 |
| 5 | Probity | 27 |
| 6 | Management..... | 28 |
| 7 | Financial viability | 28 |



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2013

An Act to provide for a national law relating to the registration of community housing providers and to make other provision for community housing providers

[Assented to [] 2013]
[Second reading [] 2013]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Community Housing Providers (National Uniform Legislation) Act 2013*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Interpretation

- (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 set out in the Appendix to this Act.
- (2) In the local application provisions of this Act:

Chief Executive Officer (Housing) means the entity established under section 6 of the *Housing Act*.

Community Housing Providers National Law (NT) means the provisions applying in this jurisdiction because of section 4.

land register means the land register kept under section 6 of the *Land Title Act*.

- (3) Terms used in the local application provisions of this Act and also in the Community Housing Providers National Law set out in the Appendix to this Act have the same meanings in those provisions as they have in that Law.

Part 2 Adoption of National Law

Division 1 Provisions for adoption of National Law

4 Adoption of Community Housing Providers National Law

The Community Housing Providers National Law 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 (NT)*; and
- (c) as so applying, is a part of this Act.

5 Uniform adoption of nationally approved amendments to Community Housing Providers National Law

- (1) The Administrator may, by regulation, amend the Community Housing Providers National Law set out in the Appendix to this Act to give effect in this jurisdiction to any nationally approved amendment.

- (2) In this section:

amend includes insert, omit and repeal a provision.

nationally approved amendment means an amendment of the Community Housing Providers National Law set out in the Appendix to the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) that is of a kind that has been approved by the Ministerial Council.

6 Exclusion of legislation of this jurisdiction

- (1) Even though the *Interpretation Act* applies to the local application provisions of this Act, it does not apply to the *Community Housing Providers National Law (NT)* or to instruments made under that Law other than as prescribed by regulation for this subsection.
- (2) An Act prescribed by regulation does not apply to the *Community Housing Providers National Law (NT)* or to instruments made under that Law.

7 Relationship with other legislation

If there is an inconsistency between the *Community Housing Providers National Law (NT)* and Part 6, 7, 8, 9 or 10 of the *Associations Act* or Part 12 of the *Cooperatives Act*, the *Community Housing Providers National Law (NT)* prevails to the extent of the inconsistency.

8 Registrar

- (1) For section 9(2) of the *Community Housing Providers National Law (NT)*, the Registrar is declared to be the individual appointed as the Registrar under this section.
- (2) The Chief Executive Officer may appoint a person in writing to be the Registrar for the *Community Housing Providers National Law (NT)*.

9 Delegation of Registrar's functions

For section 11 of the *Community Housing Providers National Law (NT)*, functions may be delegated under that section to public sector employees.

10 Fees

For section 13(4) of the *Community Housing Providers National Law (NT)*, the fee payable for an application for registration or the variation of an existing registration is the prescribed fee.

Division 2 Provisions for interpretation of National Law as adopted

11 Meaning of generic terms

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

Appeal Tribunal means the Local Court.

Parliament of this jurisdiction means the Legislative Assembly.

this jurisdiction means the Territory.

12 Meaning of other terms

- (1) For the definition **community housing legislation** in section 4(1) of the *Community Housing Providers National Law (NT)*, the provisions of Parts 3 and 4 of this Act are community housing legislation of this jurisdiction.
- (2) For the definition **Housing Agency** in section 4(1) of the *Community Housing Providers National Law (NT)*, the Agency is the Housing Agency.
- (3) For the definition **relevant Minister** in section 4(1) of the *Community Housing Providers National Law (NT)*, the Minister is the relevant Minister.

13 References to State

A reference to the State in the *Community Housing Providers National Law (NT)* is a reference to the Territory.

Part 3 Interest in land of registered community housing provider

14 Chief Executive Officer (Housing) has interest in certain land

The Chief Executive Officer (Housing) has an interest in the land of a registered community housing provider if:

- (a) the land was transferred by the Territory to the registered community housing provider subject to an agreement; or
- (b) the land was acquired by the registered community housing provider wholly or partly with funding provided by the Housing Agency; or
- (c) the Housing Agency constructs housing or makes other improvements on the land; or
- (d) an agreement between the registered community housing provider identifies the land as being land in which the Chief Executive Officer (Housing) has an interest.

15 No dealings with certain land without consent of Chief Executive Officer (Housing)

- (1) A registered community housing provider must not transfer or otherwise deal with land in which the Chief Executive Officer (Housing) has an interest unless:
 - (a) the Chief Executive Officer (Housing) 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 an agreement between the Housing Agency and the registered community housing provider; or
 - (c) an agreement between the Housing Agency and the registered community housing provider provides that this section does not apply to the land concerned.
- (2) The Chief Executive Officer (Housing) must not unreasonably withhold consent under subsection (1)(a).

16 Registrar-General to make recording in land register

- (1) The Registrar-General must, on application by the Chief Executive Officer (Housing), make a record in the land register to indicate that the land specified in the application is subject to this Part.
- (2) The Chief Executive Officer (Housing) must provide details of any exempt transactions in the application.
- (3) If the Registrar-General makes a recording under subsection (1), the Registrar-General must not register a transfer of the land or any other dealing with the land that is otherwise registrable under the *Land Title Act* unless:
 - (a) the Chief Executive Officer (Housing) has given consent to the transfer or other dealing; or
 - (b) the transfer or other dealing is an exempt transaction; or
 - (c) the record has been removed under subsection (4).
- (4) The Registrar-General must, on application by the Chief Executive Officer (Housing), remove the record in the land register.
- (5) An application by the Chief Executive Officer (Housing) under this section must:
 - (a) be made in the approved form under the *Land Title Act*, and

(b) be accompanied by the appropriate fee.

(6) In this section:

exempt transaction means a transfer or dealing mentioned in section 15(1)(b).

Part 4 Miscellaneous matters

17 Acquisition on just terms

If the operation of the *Community Housing Providers National Law (NT)* would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

18 Regulations

The Administrator may make regulations under this Act.

Appendix Community Housing Providers National Law

section 4

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.