



New South Wales

# Community Housing Providers (Adoption of National Law) Bill 2012

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to enact legislation in relation to the registration of community housing providers that applies in this State as part of a proposed substantively uniform scheme of legislation applying the Community Housing Providers National Law in the States and Territories (the *participating jurisdictions*). The Community Housing Providers National Law is set out in the Appendix to the Bill, which operates as a template for all participating jurisdictions.

In addition to applying the Community Housing Providers National Law, this Bill and the application legislation of other participating jurisdictions would specify local administration details such as the appointment of a Registrar of Community Housing, the persons to whom functions may be delegated and the Appeal Tribunal in relation to various matters.

The Bill also contains provisions for New South Wales purposes only that have been transferred from the *Housing Act 2001* relating to the provision of assistance and the transfer of land to registered community housing providers and makes consequential amendments to various Acts.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** specifies the objects of the proposed Act.

**Clause 4** defines certain words and expressions used in the provisions of the proposed Act other than the *Community Housing Providers National Law (NSW)* (the *applied National Law*). The New South Wales Land and Housing Corporation constituted by the *Housing Act 2001*, the Director-General of the Department of Family and Community Services or a Division Head of a Division of the Government Service or a NSW Government agency prescribed by the regulations, are Housing Agencies.

### Part 2 Application of Community Housing Providers National Law

**Clause 5** applies the Community Housing Providers National Law as a law of this jurisdiction called the *Community Housing Providers National Law (NSW)*.

**Clause 6** declares the Administrative Decisions Tribunal to be the Appeal Tribunal for New South Wales for the purposes of the applied National Law.

**Clause 7** declares Parts 3 and 4 of, and Schedule 1 to, the proposed Act (which substantially re-enact provisions of the *Housing Act 2001*) to be community housing legislation of this jurisdiction.

**Clause 8** declares the Director-General of the Department of Family and Community Services and the New South Wales Land and Housing Corporation constituted by the *Housing Act 2001* to be Housing Agencies for the purposes of certain provisions of the applied National Law.

**Clause 9** declares who is the relevant New South Wales Minister in relation to the applied National Law.

**Clause 10** provides for the appointment of a person as the New South Wales Registrar for the purposes of the applied National Law.

**Clause 11** specifies the persons to whom functions under the applied provisions may be delegated by the Registrar.

**Clause 12** enables regulations to be made by the Governor prescribing fees for the purposes of the applied provisions.

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

### **Division 1 Interpretation**

**Clause 13** defines certain terms for the purposes of the proposed Part.

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

**Clause 14** sets out the circumstances in which a Housing Agency is taken to have an interest in land of a community housing provider for the purposes of the proposed Part. Those circumstances are where land owned by the Housing Agency has been vested in the community housing provider under the proposed Part, where land has been acquired by the community housing provider using funds of the Housing Agency, where the Housing Agency makes improvements on the land or where a community housing agreement identifies the land as being land in which a Housing Agency has an interest. (See existing section 67HA of the *Housing Act 2001*.)

**Clause 15** provides that a Housing Agency may provide assistance to a registered community housing provider by entering into a community housing agreement with the provider. (See existing section 67I of the *Housing Act 2001*.)

**Clause 16** enables a Housing Agency to enter into community housing agreements with registered community housing providers for the purposes of providing assistance under clause 15 or with respect to land transferred to the provider under the proposed Part. (See existing section 67J of the *Housing Act 2001*.)

**Clause 17** enables a community housing agreement to contain conditions relating to land in which a Housing Agency has an interest and specifies some examples of the types of conditions that may be included. (See existing section 67K of the *Housing Act 2001*.)

**Clause 18** prevents a community housing provider from transferring or otherwise dealing with land in which a Housing Agency has an interest without the Housing Agency's consent.

A Housing Agency may register its interest in the land and, if the interest is registered, the Registrar-General is not to register any dealing with the land unless the consent of the Housing Agency has been obtained to the dealing. (See existing section 67L of the *Housing Act 2001*.)

**Clause 19** enables a community housing agreement to provide that land of a community housing provider that is a party to the agreement is to be charged with the payment of money that is or may become payable under the agreement. If the land is land to which the *Real Property Act 1900* applies, the charge over the land is to be registered in accordance with that Act. (See existing section 67M of the *Housing Act 2001*.)

**Clause 20** states that a community housing agreement is binding on the community housing provider that is a party to the agreement and enables a Housing Agency to monitor the activities of a community housing provider to determine whether it is complying with the terms of the agreement. (See existing section 67N of the *Housing Act 2001*.)

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

**Clause 21** enables the Governor, by order published in the Gazette, to vest land owned by a Housing Agency in a registered community housing provider that is also a registered company under the *Corporations Act 2001* of the Commonwealth. (See existing section 67O of the *Housing Act 2001*.)

**Clause 22** states the effect of the vesting, including that the rights and liabilities of a Housing Agency in relation to the land become the rights and liabilities of the community housing provider in which the land is vested. (See existing section 67P of the *Housing Act 2001*.)

### **Division 4 Provisions to protect Housing Agency's interest in land**

**Clause 23** enables the Director-General of the Department of Family and Community Services to require, by notice in writing, a registered community housing provider or an officer of a registered community housing provider to provide specified information and records relating to the assets and liabilities of the community housing provider or any financial matter relating to the community housing provider or to take specified measures to facilitate the Director-General's access to such information. (See existing section 67Q of the *Housing Act 2001*.)

**Clause 24** enables a Housing Agency to give instructions to a community housing provider that holds land in which the Housing Agency has registered an interest under the proposed Part, or an officer of such a community housing provider, if the Housing Agency cancels the registration of the provider, the provider becomes insolvent or the land has been vested in or transferred to the provider under the proposed Part and the provider has failed to enter into a community housing agreement with the Housing Agency in respect of the land within a specified period. The instructions may require the transfer of the land to the Housing Agency or a specified registered community housing provider or compliance with a term or condition of a community housing agreement that is binding on the community housing provider. An officer of a community housing provider includes a receiver, liquidator or administrator of the community housing provider. (See existing section 67R of the *Housing Act 2001*.)

**Clause 25** declares proposed sections 23 and 24 to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth. The effect of the declaration is to enable those proposed sections to prevail despite any inconsistencies with the Commonwealth Act. (See existing section 67S of the *Housing Act 2001*.)

## **Division 5      Miscellaneous**

**Clause 26** contains provisions relating to the operation of proposed Divisions 3 and 4 including provisions that ensure that the operation of those proposed Divisions will not give rise to any claim for compensation or be taken as a breach of contract. (See existing section 67T of the *Housing Act 2001*.)

**Clause 27** provides that no duty is payable under the *Duties Act 1997* in relation to vestings or transfers of land under proposed Division 3 or 4. (See existing section 67U of the *Housing Act 2001*.)

## **Part 4      Miscellaneous**

**Clause 28** provides for offences under the proposed Act to be dealt with summarily before the Local Court.

**Clause 29** enables the Governor to make regulations for the purposes of the proposed Act.

**Clause 30** repeals the *Housing Regulation 2009* as a consequence of the proposed Act.

**Clause 31** provides for the review of the proposed Act in 5 years.

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

**Schedule 1** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

## **Schedule 2      Consequential amendments to other legislation**

**Schedule 2** contains consequential amendments to the Acts specified in the Schedule.

## **Appendix**

The Appendix sets out the Community Housing Providers National Law.

## **Part 1      Preliminary**

**Clause 1** sets out the name (also called the short title) of the National Law.

**Clause 2** provides for the commencement of the National Law in a participating jurisdiction to be as provided for by an Act of that jurisdiction.

**Clause 3** provides for the objects of the National Law.

**Clause 4** defines certain terms for the purposes of the National Law, including *community housing* which 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. *Primary Registrar*, in relation to a particular unregistered entity or registered community housing provider, is defined as the Registrar for the primary jurisdiction of the entity or provider.

**Clause 5** defines *primary jurisdiction* in relation to an unregistered entity or a registered community housing provider. Generally, this will be the participating jurisdiction in which the unregistered entity or registered community housing provider provides (or intends to provide) the majority of its community housing. The Registrars of the participating jurisdictions may agree to a different primary jurisdiction in relation to a particular unregistered entity or registered community housing provider.

**Clause 6** provides for the Register established under the National Law to operate as a single National Register.

**Clause 7** provides for the extraterritorial operation of the National Law.

**Clause 8** provides that the National Law binds the Crown in right of a participating jurisdiction.

## **Part 2 The Registrar**

**Clause 9** requires there to be a Registrar appointed for each participating jurisdiction.

**Clause 10** sets out the functions of the Registrar which include maintaining the Register of community housing providers, registering entities as community housing providers and monitoring compliance of registered community housing providers with the National Law and the other provisions of the jurisdiction declared to be community housing legislation.

**Clause 11** enables the Registrar of a jurisdiction to delegate the Registrar's functions under the National Law to other Registrars or to persons specified in the community housing legislation of the jurisdiction.

## **Part 3 Registration**

**Clause 12** establishes the National Register of Community Housing Providers and specifies the information that is to be recorded on it.

**Clause 13** enables an entity that provides or intends to provide community housing to apply to the primary Registrar for registration as a community housing provider under the National Law or a variation of registration. If the application is made to a Registrar who is not the primary Registrar, the Registrar to whom the application has been made must refer it to the primary Registrar.

**Clause 14** requires the primary Registrar to approve an application for registration if satisfied that the application has been duly made and the requirements of the National Law and the community housing legislation of participating jurisdictions (including the conditions of registration) will be complied with.

**Clause 15** requires a registered community housing provider to comply with the conditions of registration and sets out those conditions. The conditions include that 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 and that 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 assets are located. There are also conditions relating to the provision of information to a Registrar, compliance with certain provisions of the National Regulatory Code set out in Schedule 1 to the National Law and the keeping of a list of all of the community housing provider's community housing assets.

**Clause 16** enables the primary Registrar for a registered community housing provider to cancel the provider's registration if the provider applies for cancellation or it has been wound up or has otherwise ceased to exist. The primary Registrar may also cancel the registration of a registered community housing provider if the primary Registrar has issued a notice of intent to cancel registration, has not been satisfied by the provider that the registration should not be cancelled and has notified the provider of the proposed cancellation.

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

**Clause 17** provides that action may be taken under the proposed Part by a primary Registrar for a registered community housing provider if the Registrar reasonably believes that the provider is not complying with the community housing legislation of a participating jurisdiction.

**Clause 18** enables the primary Registrar for a registered community housing provider to issue a notice of non-compliance to the provider identifying the matters that are to be addressed and the period for doing so to avoid cancellation of the provider's registration.

**Clause 19** enables the primary Registrar for a registered community housing provider to issue written instructions to the provider specifying the manner in which the provider is to address any matters that are the subject of a notice of non-compliance.

**Clause 20** enables the primary Registrar for a registered community housing provider to issue a notice of intent to cancel registration if the provider has not addressed the matters identified in a notice of non-compliance or in the written instructions within the required period or if the failure to comply is serious and requires urgent action.

**Clause 21** provides that the primary Registrar may appoint a statutory manager of a registered community housing provider to conduct specified affairs and activities of the provider that relate to the community housing assets of the provider. That action may be taken only after the issue of a notice of intent to cancel registration or if the Registrar forms the opinion that the failure to comply is serious and requires urgent action.

**Clause 22** contains provisions relating to the appointment of, and exercise of functions by, a statutory manager.

**Clause 23** declares proposed sections 19 and 21 to be Corporations legislation displacement provisions for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth. The effect of the declaration is to enable those proposed sections to prevail despite any inconsistencies with the Commonwealth Act.

**Clause 24** provides that there is no compensation payable by or on behalf of a State (which includes the Crown in right of a participating jurisdiction) in connection with the operation of the proposed Part.

## **Part 5 Miscellaneous**

**Clause 25** provides a right of appeal against certain decisions of a Registrar under the National Law.

**Clause 26** imposes a duty on a Registrar and any delegate of a Registrar not to disclose information obtained in the course of the administration of the National Law except in specified circumstances.

## **Schedule 1 National Regulatory Code**

**Schedule 1** contains certain requirements relating to the conduct and management of the affairs of a registered community housing provider.