



Family &
Community Services

NSW Community Housing Asset Ownership Policy



Document approval

The NSW Community Housing Asset Ownership Policy has been endorsed and approved by:

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1 Introduction

The NSW Department of Family and Community Services (FACS), through FACS Housing NSW and FACS NSW Land and Housing Corporation, provides assistance to community housing providers to supply subsidised rental accommodation to people on very low to moderate incomes. Specifically, assistance is provided for the following types of accommodation: social housing, affordable housing, co-operative housing, transitional housing and crisis accommodation.

Community housing providers that receive assistance are required to manage that assistance in accordance with policy guidance set by FACS Housing NSW. The contractual arrangement with community housing providers (a community housing agreement) requires community housing providers to use their best endeavours to comply with policies listed in the community housing agreement.

To continue to receive assistance community housing providers are also required to maintain registration under either the NSW Regulatory Code as set out in the *Housing Act 2001* (NSW), or the National Regulatory System for Community Housing, as prescribed in the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW), which commenced on 1 January 2014. Failure by a community housing provider to comply with a community housing agreement may be cause for a review of their registration status.

2 Purpose of this policy

The NSW Community Housing Asset Ownership Policy sets out the requirements relating to community housing provider ownership of assets wholly or partly funded by government.

3 Coverage of this policy

This policy applies to all assets owned by community housing providers that were wholly or partly funded by government, and where the community housing provider is responsible for all costs associated with the assets.

These assets can be in the form of land and housing that has been vested to a community housing provider by the Housing Agency¹, or capital grants that have been made by government to a community housing provider for the purpose of funding the procurement of housing.

¹ Housing Agency means FACS NSW Land and Housing Corporation and/or FACS Housing NSW.

This policy covers housing and land in which the Housing Agency holds a statutory interest under Section 14 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW), including:

- if the land was owned by the Housing Agency immediately before being vested in the community housing provider by an order under Part 3 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW)
- if the land was transferred to the community housing provider in accordance with an instruction given under Part 3 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW)
- if the land is acquired by the community housing provider wholly or partly with funding provided by the Housing Agency
- if the Housing Agency constructs housing or makes other improvements on the land
- if a community housing agreement with the community housing provider identifies the land as being land in which the Housing Agency has an interest.

The policy does not cover social and affordable housing owned by community housing providers where the assistance has been provided under the Debt Equity Control Framework.

4 Pre-requisites for asset ownership

To be eligible to own government funded housing a community housing provider must have the following characteristics:

- the organisation is not for profit
- the organisation is a company (limited by guarantee) registered under the *Corporations Act 2001*² (Commonwealth)
- the organisation is a registered community housing provider within the meaning of the National Law or the *Housing Act 2001* (NSW)
- the constitution or rules of the organisation must include a provision that states in the event of the organisation being wound up, all its remaining community housing assets must be transferred to another registered community housing provider, or to the Housing Agency
- when community housing assets are transferred to a registered community housing provider, the provider must be a registered community housing provider within the meaning of the National Law with an equivalent or higher registration tier, and is of similar purpose, which is not carried on for the purposes of profit or gain to its members

² An organisation that is a company (limited by shares) will only be acceptable in specific circumstances.

- the constitution or rules of the organisation must include a provision that the constitution or rules may only be amended by special resolution in accordance with the *Corporations Act 2001* (Commonwealth)
- any amendment to the required wind up provision must have prior consent from FACS Housing NSW.

5 Maintain the supply of social housing

Following provision of assistance in the form of asset ownership, community housing providers must ensure that there is no net loss in the level of social housing provided. Any social housing properties transferred to the ownership of a community housing provider that are lost through sale or redevelopment, must be replaced.

Community housing providers must manage transferred properties, and properties acquired through capital grants, in accordance with applicable FACS Housing NSW's community housing policies, in particular those for eligibility, access, asset management and rent.

6 Using surplus funds

Community housing providers are required to deliver agreed targets from funds leveraged as a result of the transfer of ownership of assets, or the provision of capital grants from procurement of new properties. These targets will be stipulated in the applicable schedule to the community housing agreement.

If the target is to deliver additional affordable housing by community housing providers through the leveraging of private finance, all of this housing must be managed in accordance with the *NSW Affordable Housing Guidelines*, and at least 30 percent of the additional housing must be allocated to clients from the NSW Housing Register.

7 Meeting affordable housing leverage targets

A community housing provider receiving the transfer of asset ownership and/or capital funding for the procurement of capital assets from the government must enter into a community housing agreement.

The agreement will stipulate specific requirements associated with the assets including any requirement to deliver additional units through the leveraging of private finance.

8 Portfolio targets

The community housing agreement between FACS Housing NSW and a community housing provider may also set out agreed portfolio targets for housing under management and ownership, including targets relating to priority household groups.

9 Ongoing costs

As the asset owner, the community housing provider is responsible for all costs associated with management, modification, and maintenance (including structural maintenance) of the assets transferred to them, or acquired using government funding.

This requirement also applies to any affordable housing acquired through funds borrowed by the community housing provider, against NSW government assets or under a community housing agreement.

The asset owner is also responsible for replacing housing stock at the end of its economic life.

10 Statutory Interest

In accordance with Section 14 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW), the Housing Agency will retain a statutory interest in land vested in a community housing provider or procured by them wholly or in part with funding from the Housing Agency. The interest will be registered on the land title register administered by Land and Property Information NSW and recorded on the Certificate of Title.

The Housing Agency will also hold an interest in land acquired using the proceeds of sale or disposal of land in which the Housing Agency has an interest.

11 Dealings in land

Under Section 18 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) a community housing provider must not transfer or otherwise deal in land in which the Housing Agency holds an interest unless the Housing Agency consents.

Dealings in land involve any matter that requires the registering of a plan or other instrument relating to the land under the *Real Property Act 1900* (NSW), or the *Conveyancing Act 1919* (NSW). Some dealings are exempt from Section 18 of the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW), and these are stipulated in community housing agreements.

Community housing providers must submit an application for consent to the Housing Agency for all dealings. The Housing Agency cannot unreasonably withhold its consent in relation to any application for a dealing.

12 Notification requirements

Where consent to dealing in land is not required from the Housing Agency, community housing providers must advise the Housing Agency of its intentions so that the Housing Agency can advise Land and Property Information NSW accordingly.

Community housing providers are also required to notify the Housing Agency and the Registrar of Community Housing if a first priority mortgage or security interest over a property in which the Housing Agency holds an interest, is enforced or becomes enforceable.

13 Withdrawal of assistance

Under the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW), the Housing Agency will issue instruction to the community housing provider if their registration is cancelled, it has become insolvent, or it has failed to enter into a community housing agreement for land vested in its ownership.

In these circumstances the Housing Agency can instruct the community housing provider, or an officer of the community housing provider, to transfer land in which the Housing Agency holds an interest to another registered community housing provider, or back to the Housing Agency. In undertaking any such action the Housing Agency will consider the interests of tenants or creditors that may be affected.

14 Interpretation

Where this policy needs further interpretation, the statutory provisions in the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) will prevail over any inconsistency.

15 Glossary

Affordable Housing

Subsidised rental accommodation for people on very low, low or moderate incomes managed in accordance with the *NSW Affordable Housing Guidelines*.

Community Housing Provider

An organisation that provides housing for people on very low, low and moderate incomes.

Community Housing Agreement

The contractual arrangement between FACS and a registered community housing provider setting out the terms and conditions related to each form of assistance provided to a community housing provider for the provision of subsidised rental accommodation. This includes assistance provided under the National Rental Affordability Scheme A (NRAS A).

Deal or Dealing

Includes any agreement, or attempt to agree, to sell, assign, transfer, dispose or part with possession of, lease, licence, redevelop, sub-divide, the granting of a mortgage or charge or easement, or otherwise deal with, any of the vested properties.

Exempt Transaction

The following dealings are exempt transactions:

- where a dealing is the granting of a lease not exceeding five years for the purpose of providing community housing over one or part of one or more vested properties
- where a dealing, other than as defined above, is directly for the purpose of providing community housing. A dealing is not for the purpose of providing community housing if it is for the purpose of:
 - procuring non-residential premises
 - withdrawing from the provision of community housing in a particular location.

National Regulatory System for Community Housing

The National Regulatory System for Community Housing sets out a consistent regulatory framework for community housing providers across Australia. From 1 January 2014, it replaces the NSW Regulatory System and over an 18 month period all organisations that receive housing assistance from the NSW

Government will need to be registered under the National System. For more information please refer to:

<http://www.nrsch.gov.au>

Social Housing

Subsidised rental accommodation for people on very low or low incomes that meet the required eligibility criteria.