



New South Wales

# Housing Amendment (Community Housing Providers) Bill 2009

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Housing Act 2001* (*the Principal Act*):

- (a) to enable the Governor to vest land owned by the New South Wales Land and Housing Corporation (*the Corporation*) in a registered community housing provider that is also a company registered under the *Corporations Act 2001* of the Commonwealth, and
- (b) to provide for the registration by the Corporation of an interest in certain land such as land that has been so vested or the purchase of which was funded by the Corporation, and
- (c) to prevent certain dealings with land in which the Corporation has an interest without the consent of the Corporation, and
- (d) to provide other measures for the protection of the Corporation's interest in certain land.

## Outline of provisions

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

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**Clause 2** provides for the commencement of the proposed Act on the date of assent to the proposed Act.

## **Schedule 1      Amendment of Housing Act 2001 No 52**

**Schedule 1 [1]** makes an amendment by way of statute law revision.

**Schedule 1 [2]** inserts proposed section 67AA into the Principal Act which defines certain terms used in the amendments made by the proposed Act.

**Schedule 1 [3]** amends section 67C of the Principal Act to require the Registrar of Community Housing (*the Registrar*) to include in the register of community housing providers a copy of each notice of intent to cancel the registration of a community housing provider issued under section 67F of the Principal Act.

**Schedule 1 [4]** substitutes section 67F of the Principal Act which currently enables the Registrar to notify a registered community housing provider if it is failing to comply with the Principal Act or the regulations. The Registrar may then issue a notice of intent to cancel the provider's registration if the relevant matters are not rectified within a specified time. The Registrar may take action to cancel the registration without waiting for the relevant periods to expire if the failure to comply is serious and requires urgent action.

The amendments enable the Registrar to issue a notice of intent to cancel registration that allows a further period to address compliance matters if the community housing provider appoints a special adviser with specified qualifications in accordance with proposed section 67FA to assist it in addressing those matters. The amendments also enable the Registrar to issue a notice of intent to cancel registration without giving a prior notice if the failure to comply concerned is serious and requires urgent action.

**Schedule 1 [5]** inserts proposed section 67FA into the Principal Act which deals with the appointment of a special adviser by a community housing provider. The person appointed must be independent of the community housing provider.

**Schedule 1 [6]** amends section 67G of the Principal Act to enable the Registrar to cancel the registration of a community housing provider if the provider has not appointed a special adviser within the time specified in a notice of intent to cancel registration issued to the provider.

**Schedule 1 [7]** inserts proposed section 67GA into the Principal Act to require the Registrar to give to the Corporation copies of certain documents relating to action taken by the Registrar in respect of community housing providers, such as each notice of intent to cancel registration.

**Schedule 1 [8]** inserts proposed section 67HA into the Principal Act which sets out the circumstances in which the Corporation is taken to have an interest in land of a community housing provider for the purposes of Part 9A (Community housing) of the Principal Act. Those circumstances are where land owned by the Corporation has been vested in the community housing provider under the Principal Act, where land

has been acquired by the community housing provider using funds of the Corporation, where the Corporation makes improvements on the land or where a community housing agreement identifies the land as being land in which the Corporation has an interest.

**Schedule 1 [9]** amends section 67J of the Principal Act to provide that the Corporation may enter into a community housing agreement with a registered community housing provider for the purposes of providing assistance (as is currently the case under section 67I of the Principal Act) and with respect to land that has been vested or transferred by order, or in accordance with an instruction given, under Part 9A of the Principal Act.

**Schedule 1 [10]** inserts proposed sections 67K–67N into the Principal Act.

**Proposed section 67K** enables a community housing agreement to contain conditions relating to land in which the Corporation has an interest and specifies some examples of the types of conditions that may be included.

**Proposed section 67L** prevents a community housing provider from transferring or otherwise dealing with land in which the Corporation has an interest without the Corporation's consent.

The Corporation may register its interest in the land on the Register kept under the *Real Property Act 1900* and, if the interest is registered, the Registrar-General is not to register any dealing with the land unless the consent of the Corporation has been obtained to the dealing.

**Proposed section 67M** 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.

**Proposed section 67N** states that a community housing agreement is binding on the community housing provider that is a party to the agreement and enables the Corporation to monitor the activities of a community housing provider to determine whether it is complying with the terms of the agreement.

**Schedule 1 [11]** inserts proposed Divisions 4–6 into Part 9A of the Principal Act.

**Proposed Division 4** consists of the following proposed sections:

**Proposed section 67O** enables the Governor, by order published in the Gazette, to vest land owned by the Corporation in a registered community housing provider that is also a registered company under the *Corporations Act 2001* of the Commonwealth.

**Proposed section 67P** states the effect of the vesting, including that the rights and liabilities of the Corporation in relation to the land become the rights and liabilities of the community housing provider in which the land is vested.

**Proposed Division 5** contains the following proposed sections:

**Proposed section 67Q** enables the Director-General of the Department of Human Services to require, by notice in writing, a registered community housing provider or an officer of the 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.

**Proposed section 67R** enables the Corporation to give instructions to a community housing provider that holds land in which the Corporation has registered an interest under proposed section 67L, or an officer of such a community housing provider, if the Corporation cancels the registration of the provider, the provider becomes insolvent or the land has been vested in or transferred to the provider under Part 9A of the Principal Act and the provider has failed to enter into a community housing agreement with the Corporation in respect of the land within a specified period. The instructions may require the transfer of the land to the Corporation 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.

**Proposed section 67S** declares proposed sections 67Q and 67R 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.

**Proposed Division 6** consists of the following proposed sections:

**Proposed section 67T** contains provisions relating to the operation of proposed Divisions 4 and 5 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.

**Proposed section 67U** provides that no duty is payable under the *Duties Act 1997* in relation to vestings or transfers of land under proposed Division 4 or 5.

**Proposed section 67V** provides that no compensation is payable by the Crown in connection with the operation of Part 9A of the Principal Act.

**Schedule 1 [12]** amends Schedule 3 to the Principal Act to enable regulations of a savings or transitional nature to be made consequent on the enactment of the proposed Act.