



OFFICE OF REGISTRAR – NOT FOR PROFIT HOUSING PROVIDERS

PRACTICE MANUAL

**Written and published by the ACT Office of Registrar –
Not for Profit Housing Providers**

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INTRODUCTION

The purpose of this manual is to provide affordable and community housing providers with information on how to apply to register as a not for profit housing provider in the ACT. There are six main parts:

- Part 1 - The Regulatory Framework
- Part 2 - Eligibility
- Part 3 - Registration Process
- Part 4 - Application Guidelines
- Part 5 - Monitoring Guidelines
- Part 6 - Intervention Guidelines

The manual will be updated from time to time, to reflect updates in practice.

PART 1 – THE REGULATORY FRAMEWORK

On 19 August 2008 amendments to the *Housing Assistance Act 2007* (the Act) were passed, introducing a Regulatory Framework for Not-for-Profit Housing Providers in the ACT. Under the amended Act the Commissioner for Social Housing is empowered to register, monitor, and de-register not for profit housing providers.

There are four disallowable instruments associated with the Act. The requirements for achieving registration and maintaining compliance are contained within these instruments. The Instruments describe the registration process, performance standards, as well as provide monitoring and intervention guidelines. The Commissioner for Social Housing has powers to intervene in the operations of a non compliant provider, however, this power will only be exercised as a last resort.

The Act and the disallowable instruments provide the legislative framework for the regulation of the not for profit housing sector in the ACT.

A copy of the Act and the subordinate legislation can be obtained at www.legislation.act.gov.au.

Entities to be aware of under the Regulatory Framework

The Act recognises the Commissioner for Social Housing and the ACT Civil and Administrative Appeals Tribunal (ACAT).

The Registrar of Not for Profit Housing Providers (the Registrar), has delegated functions and powers under *Housing Assistance Delegation 2009 (No1)*. The Delegation establishes the Registrar as the delegate of the Commissioner for Social Housing with powers and responsibilities to register not for profit housing providers, monitor their ongoing compliance with eligibility criteria and maintain the public register.

The ACAT can review a decision to refuse an application for registration as an affordable or community or community housing provider, a decision to intervene in the activities of a non compliant provider (under section 31A of the Act) and a refusal to approve a change to the rules of an organisation.

Further information on the appeals process available to organisations is in **Part 6** of the manual.

Why Regulate?

The Australian Government has communicated its wish for an expanded role for the not for profit housing sector in the development and management of additional rental and affordable housing in Australia

Initiatives at the national level towards meeting this objective have included a special focus on community housing providers delivering packages through the Nation Building and Jobs Package. It has also included a targeting of the not for profit sector in the National Rental Affordability Scheme.

The Council of Australian Governments acknowledges the important role the not for profit housing sector has in relation to delivering housing options to diverse clients. Accordingly, the National Affordable Housing Agreement (NAHA), which commenced on 1 January 2009, makes specific reference to this role. The NAHA commits governments to “enhancing the capacity and growth of the not-for-profit housing sector, supported by a nationally consistent provider and regulatory framework”.

On 14 March 2008, the Housing Minister’s Conference approved a National Regulatory Framework for Not-for-Profit Housing Providers. It requires states and territories to:

- establish a multi-tiered registration system;
- appoint a Registrar (or equivalent) and maintain a registered list of providers;
- consider recognition of registration decisions in other jurisdictions; and
- adopt a National Regulatory Code as the basis of registration.

Some States are in the process of developing their own regulatory systems. NSW and Victoria have already enacted legislation and established Registrars, and implemented processes to register providers and monitor compliance.

A central goal of regulating the not for profit housing sector in the ACT is to enable the sector to grow sustainably. There is substantial government investment in the sector which needs protection. So does the image of affordable and community housing as viable providers for potential investors. Because private investment will be an important factor in the sector’s growth, it is important that investors are assured that risk mitigation measures are in place.

The ACT Regulatory Framework will give investors confidence that growth providers have sophisticated and effective risk management systems in place. It will also ensure that the rights of tenants are protected and community housing providers are meeting minimum performance standards.

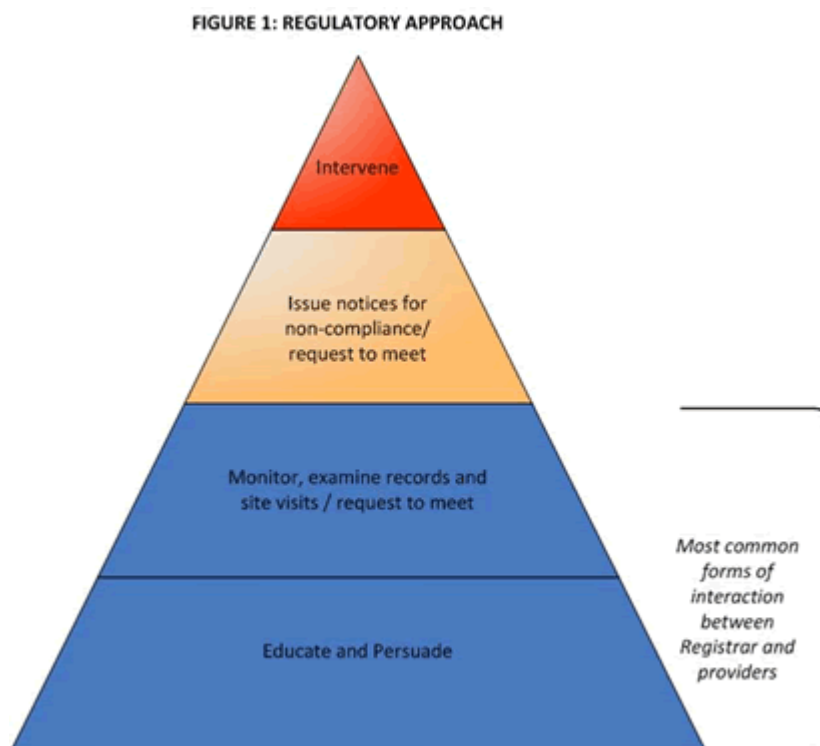
How will we Regulate?

The Regulatory Framework was established to ensure that not for profit housing providers comply with eligibility criteria, operate within acceptable levels of risk and meet minimum performance standards.

The Commissioner for Social Housing (the Commissioner) or her/his Delegate will use “light-touch” regulatory oversight, assessing a provider’s eligibility and monitoring their ongoing compliance.

The Commissioner will take a risk based approach to regulation, targeting areas of greatest risk. The assessment and monitoring of a provider’s compliance will be proportionate to the level of risk involved to the organisation, to tenants and to the ACT Government.

Figure 1 below illustrates the escalating levels of regulation that will be exercised. Actions will escalate to respond appropriately to meet the different degree of risk involved, with intervention and winding-up the actions of last resort, when no other form of engagement can remedy the exposure to risk.



Education and Persuade – The Registrar will educate providers about what requirements they must meet under the regulatory framework including the eligibility criteria set out in the *Housing Assistance Act 2007*, provide ongoing assistance and support to providers with meeting the requirements, and promote the benefits to government, the sector and tenants, of an achieving community housing sector that is sustainable, manages risk and is responsive to tenant needs.

Monitoring, examine records and site visits – The Registrar will monitor providers' ongoing compliance with the eligibility criteria. This may take the form of examining records and requesting site-visits to speak to staff about how compliance is being met or look at records or processes more closely. Compliance checks will formally occur at least once per year and may also occur randomly throughout the year.

Issue notice for non-compliance / request to meet – When a compliance check alerts the Registrar of a likely or actual instance of non-compliance, the Registrar, in most instances, will send a notice of non-compliance to the provider describing what has occurred to make the provider seem non-compliant, seek a meeting to discuss the issues and to discuss ways to bring the provider back into a position of operating within the eligibility criteria.

Intervene - In situations where a provider does not comply with the eligibility criteria, the Commissioner for Social Housing has powers to intervene. This power will only be exercised as a last resort where there is no other satisfactory alternative means of remedying issues of non-compliance. Intervention may involve appointing members to the board of the provider, appointing an administrator to direct the activities of the business, or winding-up an organisation to mitigate the immediate risks posed to government, to the organisation and to protect tenant interests and the sector more broadly.

The Commissioner for Social Housing may choose not to intervene, but instead de-register a provider.

Six Regulatory Principles underpinning the regulatory approach

1. Independence of housing providers

Housing providers are the entities responsible for the delivery of housing according to the objects of their constitution, and therefore will make decisions regarding the operation of their organisation based on their best judgement.

2. Proportionality

The assessment and monitoring of a provider's compliance will be proportionate to the level of risk involved to the organisation, to tenants and to the ACT Government.

3. Onus on housing providers to keep the Registrar informed

The Registrar will work in partnership with housing providers to support best possible service delivery. Part of partnership is open communication and provision of information.

4. Flexible range of evidence sources

The Registrar will work with each provider to establish the best means of obtaining required information, with the aim of minimising the burden on providers. Where possible, information provided to the ACT Government for other purposes will be used. This will necessitate information sharing with the funding/contracting arms of ACT Government.

5. Use of ongoing performance information

Information will be required at least annually for ongoing monitoring.

6. Procedural fairness

Decisions of the Commissioner or the Commissioner's delegates will be provided with reasons for the decision and an opportunity to respond.

PART 2 – ELIGIBILITY

The ACT Regulatory Framework has two tiers and the *Housing Assistance Act 2007* (S 25A) specifies what organisations are eligible for registration as affordable or community housing providers. The Registrar is responsible, on behalf of the Commissioner, for assessing the suitability of organisations against the eligibility criteria set out in the Act.

The onus for demonstrating eligibility and ongoing compliance with the eligibility criteria is on the organisation. The Registrar may request an on-site visit to access records or to speak to staff or management committee/Board of an organisation to gather more information.

Further information on the evidence an organisation must provide to achieve and maintain registration is available in **Part 4** of the manual.

Affordable housing provider—eligibility criteria

An organisation is eligible to be registered as an affordable housing provider if it is either:

- an incorporated body under the *Corporations Act 2001* as company limited by guarantee or a company limited by shares; or
- incorporated under the *Cooperatives Act 2002*.

It must operate on a not-for-profit basis and be registered as an exempt charity or public benevolent institution under the Income Tax Assessment Act 1997 (Cwth).

It must have a constitution, with an objective of providing community or affordable housing that allows the board to approve financing of housing projects. The constitution must also have a winding up clause worded so that surplus assets are distributed to another registered provider approved by the Commissioner for Social Housing.

Finally, the organisation must be operating within an acceptable level of risk. What this means is set out in the Disallowable Instrument on registration.

Further information is also available in **Part 4** of the manual.

Community housing provider—eligibility criteria

An organisation is eligible to be registered as a community housing provider if it is an incorporated body and operates on a not-for-profit basis.

It must have a constitution, with an objective of providing tenancy or asset management services for affordable or community housing. The constitution must also have a winding up clause so that surplus assets are distributed to another registered provider approved by the Commissioner for Social Housing.

It must manage a minimum of 10 residential housing properties.

The organisation must also satisfy the standards under section 25I of the *Housing Assistance Act 2007* which are set out in the Disallowable Instrument DI2009 – *Housing Assistance (Affordable and Community Housing Providers) Standards 2009 (No1)*.

Further information of this requirement is available in **Part 4** of the manual.

Trustees and subsidiaries

An organisation that acts as a trustee may apply to register as an affordable or community housing provider. The Registrar must be satisfied however, that the role of the trustee does not adversely affect the organisation's ability to comply with the corresponding eligibility criteria.

Additionally, an organisation that is a subsidiary of a body other than an eligible organisation may apply to register as an affordable housing or community housing provider, provided the Registrar is assured that that the organisation's status as a subsidiary does not adversely affect its ability to comply with the eligibility criteria. It remains the discretion of the Registrar to determine what types of subsidiaries may apply to register.

PART 3 – REGISTRATION

Registration is permanent, subject to ongoing compliance with the eligibility criteria. There are two registration tiers to reflect the scale and type of activities providers are engaged in.

Tier 1 - Affordable Housing Providers. Providers undertake innovative and entrepreneurial property development for low to moderate income earners — at arm's length from government.

Tier 2 - Community Housing Providers. Providers that manage properties as the head lessee, utilising government owned or other organisations' assets which they rent to low to moderate income tenants.

The level of regulatory oversight that applies to providers in each tier is proportionate to the types of activities they are involved in, and the risks that these present. The Registrar will work closely with individual providers to determine the tier they best fit.

Providers operating in other States or the Northern Territory may apply to be registered to operate in the ACT, provided they have appropriate incorporation.

A request to change tiers must be negotiated with the Registrar. A new application may be required, and additional evidence to demonstrate compliance with the corresponding eligibility criteria would be needed.

How and where to lodge an application

All known providers already operating in the ACT and seeking to register will be contacted by the Registrar who will meet to discuss an organisation's eligibility to apply for registration and determine the tier they would best align to.

The Registrar will discuss with eligible providers a registration timeframe for each organisation, which then will be asked to complete and submit an Application to Register Form.

Other providers not already operating in the ACT may apply to register, but are asked to contact the Registrar in the first instance to discuss their eligibility.

An **application** must be made on the appropriate form and either be lodged by mail addressed to: Office of Registrar – Not for Profit Housing Providers, Locked Bag 3000, Belconnen ACT 2616, or scanned and lodged electronically at Housing.RegistrarNFP@act.gov.au.

The application must specify what tier the organisation is seeking to register under, details of a nominated contact officer, and information to demonstrate the organisation's compliance with the eligibility criteria.

Further information for organisations on how to complete an application to register and what evidence is required, is contained in **Part 4** of the manual.

How applications are assessed

Following receipt of a valid application, the Registrar will provide written notice to the applicant to confirm that the application has been received.

The Registrar will undertake an initial assessment of the information submitted by the applicant entity. The Registrar assesses each application against the eligibility requirements of the Act, as well as the criteria specific to affordable and community housing providers set out in sections 25F and 25G of the Act.

Further information on the type of information that applicants may choose to use as evidence that they comply with the criteria, can be found in **Part 4** of the manual.

To clarify aspects of the application, the Registrar may request a meeting, an on site visit, or to meet with representatives of the organisation. This includes members of the board, senior employees and other employees. Arrangements for an on-site visit will be made in advance and in consultation with the applicant. All requests to clarify aspects of the application will be made directly to the nominated contact officer.

Any other information the Registrar considers to be reasonably required in order to assess an application for registration will be requested.

A registration report will be prepared specifying the Commissioner's determination and will be sent to the nominated contact officer.

An organisation that is successful in its application for registration will receive a Certificate of Registration and have its details listed on the public Register (S25A (6) of the Act). The register will be located on the Department of Disability, Housing and Community Service's website. Details that will be published include:

- Name and address of the provider;
- Name of a contact person for the housing provider;
- Telephone and fax numbers, and email address, of the contact person;
- Date the housing provider is registered;
- Whether the housing provider is registered as an affordable housing provider or community housing provider;
- Registration number; and
- The conditions (if any) of the registration.

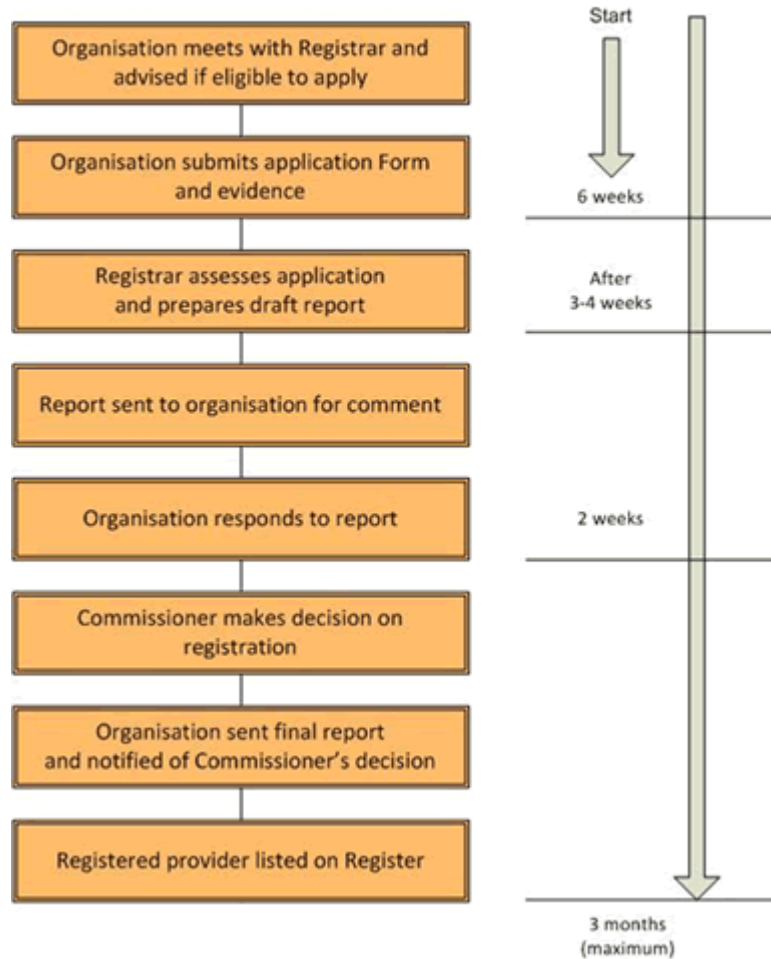
Notification of the registration will also be lodged on the ACT Legislation Register.

Should a provider have its application for registration refused by the Commissioner, the nominated contact officer will receive information on how the provider may appeal the decision with the ACT Civil and Administrative Appeals Tribunal (ACAT) (S 31A of the Act).

Further information on ACAT is available from its website: www.acat.act.gov.au/

The Registration Process

FIGURE 2: REGISTRATION PROCESS



PART 4 – APPLICATION GUIDELINES

This section of the manual will provide organisations with further information on how they can demonstrate compliance with the *Housing Assistance Act 2007* and the associated disallowable instruments that regulate their operations. The Application Form provides some prompts to help provide the responses to questions and examples of evidence an organisation may wish to supply to strengthen the application.

Even though providers are given examples of evidence they may wish to supply, the Registrar will negotiate with individual providers about the type of evidence that would most usefully reflect the practices of their organisation and how these are consistent with eligibility requirements under the Act.

The onus remains with all providers to adequately demonstrate their compliance with the requirements set out under the Act and Disallowable Instruments.

Completing and submitting the Application Form

The Registrar will contact existing not for profit housing providers in the ACT and inviting these organisations to apply. The nominated contact officer within the organisation will be contacted to arrange a time to meet with the Registrar. This meeting will be an opportunity to discuss how the provider might proceed with gathering the required evidence they will need to tender as part of their application.

Following this meeting, the provider will need to access and complete an [Application to Register](#) Form.

Applications must be made using the approved form and can either be lodged by mail addressed to: Office of Registrar – Not for Profit Housing Providers, Locked Bag 8000, Canberra ACT 2601, or scanned and lodged electronically to Housing.RegistrarNFP@act.gov.au.

The application must specify what tier the organisation is seeking to register under, details of a nominated contact officer, and include all documents to demonstrate the organisation's compliance with the eligibility criteria.

For an application to be complete, it needs to consist of an Application Form, a Financial Report (see below), and have documentary evidence attached.

The Registrar will accept hard copy applications as well as those sent in electronic form provided that the Application Form has signatures of the Board Chair and Treasurer.

If possible, providers are requested to email electronic copies of all the documents they attach to their hardcopy application to: Housing.RegistrarNFP@act.gov.au.

Further information for organisations on how to complete an application to register and what evidence is required, is contained in **Part 4** of the manual.

Completing the Financial Report

Completing the Financial Report is mandatory for all providers. A Financial Report spreadsheet is available for download from www.dhcs.act.gov.au/hcs/office_of_registrar

The Registrar will use this spreadsheet to assess the financial solvency, capital structure and viability of affordable and community housing providers.

The spreadsheet has easy to follow instructions on how to input data into the Front Sheet, Trend Analysis Sheet (comments), Assumptions and Financials worksheets. The rest of the spreadsheet includes charts and reports that are generated automatically from the inputted information. The spreadsheet can be saved before it is completed and accessed again at a later date. This will assist organisations to complete it over a number of days. It should take an organisation a maximum of approximately two hours to complete the information.

Affordable Housing Providers – demonstrating eligibility and compliance

An organisation seeking to register as an affordable housing provider must demonstrate in its application that it is operating within an acceptable level of risk. This requires the organisation to provide evidence to satisfy the Registrar that its' operations are sound and take into consideration the level of risk the operation exposes the organisation in relation to:

- business planning;
- financial and risk management;
- service quality;
- portfolio planning;
- procurement of properties; and
- land, housing development and property management.

This requirement means that the provider must submit to the Registrar a Risk Management Plan with reference to each of the above areas. The Plan must meet Australian Standard AS/NZS 4360:2004 (or any standard that may replace it).

Following receipt of the Risk Management Plan an assessment will be made, considering whether or not, based on the plan and other information provided, the provider's operations are sound for the purposes of registration. The Commissioner may at this point confirm that the provider meets the eligibility requirements for an affordable housing provider. The Registrar will give the provider an interim assessment in the form of a report.

If the Commissioner is not satisfied that a provider meets the eligibility requirements, the Registrar may request a meeting and give the entity the opportunity to supply additional information within a timeframe specified by the Commissioner.

Community Housing Providers – demonstrating eligibility and compliance

The Performance Standards represent the standard of operation required for community housing providers to adequately mitigate the risks involved in the operation of an organisation engaged in the provision of community housing. Compliance at all times with all standards is mandatory in order to register and to maintain registration under the *Housing Assistance Act 2007* (the Act).

The Standards aim to assist community housing providers to demonstrate they are: managing viable organisations well; achieving quality outcomes for clients; and contributing to the maintenance of housing assets.

While it is the responsibility of the community housing provider to supply supporting evidence to show that each of the standards has been satisfied, the form which that evidence takes can be negotiated with the Registrar. The evidence may be provided by attaching supporting papers to the application or reporting documentation, or discussed at a meeting with the Registrar, a combination of these or by some other means.

A policy manual from an organisation may be attached to its application for registration as the first level of evidence that it meets the standards. The Registrar may seek to meet with representatives of an organisation's Board or Management Committee and/or seek a site visit to obtain more information.

Questions to help determine what evidence to provide (community housing providers)

An organisation may also choose to provide responses to the following questions as some evidence of compliance with the standards. The questions are in sections that correspond to each of the standards. The questions may change from year to year.

Organisations are asked to answer the following questions with appropriate reference to their policy manual. Organisations may also attach copies of other documents, such as tenancy or occupancy agreements and information provided to tenants and Board/Committee members. Relevant indicators sourced directly from the Standards are also provided after each set of questions.

Standard 1 - The agency must provide effective tenancy management

Tenancy Management

1. *Describe the allocation process used by your organisation, including*
 - *information provided to potential tenants*
 - *tenant selection process*
 - *eligibility criteria*
2. *Provide a copy of your tenancy and/or occupancy agreement*
3. *Describe the process followed when dealing with a complaint about rent calculations*
4. *Attach a copy of the policy information that is provided to tenants.*

Relevant Indicators:

- The organisation has policies and strategies to deliver housing services in a fair and equitable manner to its tenants.
- Tenant rights are protected through formal tenancy agreements or, where appropriate, occupancy agreements consistent with the *ACT Residential Tenancies Act 1997*.
- The organisation has developed and promotes its internal dispute resolution processes in relation to:
 - applications and transfers;
 - rental rebates;
 - tenant rights; and
 - tenancy management decisions.
- The organisation has, and regularly maintains, written information on all its policies in a way that is readily accessible to tenants.

Standard 2 - The organisation has appropriate participation processes for all tenants

Tenant Rights and Participation

1. *Describe the organisation's most recent participation/consultation opportunity for tenants, including:*
 - *purpose*
 - *mechanism/s*
 - *outcome*
 - *impact on service delivery*
2. *Describe the organisation's plan for future consultation*

Relevant Indicators:

- The organisation has mechanisms to regularly consult with tenants on issues that affect their housing, including development and monitoring of its policies on tenancy management, access, allocation of housing and asset management.

Standard 3 - Clear arrangements exist for internal control and transparent decision making, which are appropriate to the scale and scope of the operations of the community housing provider

Governance and Organisational Management

1. *Attach a copy of your organisation's Constitution/Rules*
2. *Attach a copy of the information provided to Board/Committee members regarding their roles and responsibilities*
3. *Describe activities to recruit appropriately skilled Board/Committee members for your most recent AGM*
4. *Provide a list of Board/Committee members and their areas of expertise*
5. *Describe the mechanisms for identifying and addressing a potential conflict of interest*
6. *Describe the process for Board/Committee members to endorse the organisation's policies and procedures*
7. *Attach a copy of your organisation's strategic plan or similar document*

Relevant Indicators

- The organisation's core purpose, mission and values in relation to its housing program are aligned with the provision of community housing and/or the management of affordable housing and the organisation acts at all times in accordance with its core purpose.

- The Constitution/Rules contain a clause relating to the distribution of surplus assets in the event of winding up with wording similar to the following:

An association nominated as the recipient of surplus assets must be another registered housing provider registered under Part 4A of the Housing Assistance Act 2007, approved by the Commissioner for Social Housing under that Act, with similar purposes and that is not carried on for the purposes of profit or gain to its members, and that is also endorsed by the Commissioner of Taxation as a public benevolent institution under Item 4.1.1 of section 30-45 of the Income Tax Assessment Act 1997 (Cth).

- The organisation has policies to secure a sufficient number of appropriately qualified or experienced persons to participate as members of the board and ensures that vacancies are filled in a timely manner.
- The roles and responsibilities of members of the board are communicated to each member in writing on their appointment and re-appointment and there is an appropriate induction process.
- The organisation has developed strategies to identify, declare and manage potential and actual conflicts of interest.
- The organisation has board approved policies and procedures covering all relevant areas under the *National Community Housing Standards* or any other standards that may be nominated from time to time.
- The board has clear objectives contained within its Strategic Plan or other corporate planning documents and monitors progress and achievements against them

Standard 4 - The organisation must remain financially viable and solvent at all times

Finance

1. Download and complete the financial assessment tool at http://www.dhcs.act.gov.au/hcs/office_of_registrar and email to Housing.RegistrarNFP@act.gov.au or provide on disk or zip drive to the Registrar
2. Describe the processes for approval of expenditure
3. Describe the frequency of financial reporting at Board/Committee Meetings
4. Provide an example of a financial report to a Board/Committee meeting

Relevant Indicators:

- The organisation has sufficient non-restricted assets to cover its liability obligations and is able to cover unforeseen but serious financial risks.
- The organisation is building adequate restricted cash reserves to meet its employee entitlement provisions (if required)
- The organisation manages rental collections to ensure that arrears do not exceed four per cent of collectable rental income.
- The organisation has policies and strategies to minimise prolonged vacancies in housing stock and loss of income.

- The organisation has policies and strategies to monitor and control variances between actual to budgeted income and expenditure.
- The organisation has policies and strategies to limit income lost through rental bad debts, other bad debts and vacancies/voids.
- If relevant, the organisation has an appropriately budgeted responsive maintenance program that is updated annually.
- Financial records certified by the board as representing a true and fair view of the organisation's financial condition and operational results are reviewed by the board not less than quarterly and are independently audited not less than annually.

Standard 5 – The organisation must be managed effectively at all times.

Provide a description of the organisation's risk management process and copy of any risk management plan/s

Management Systems

1. *Provide a description of the organisation's risk management process and copy of any risk management plan/s*

Property Management

1. *Provide data for the past 2 years on:*
 - *Tenancy rates*
 - *Turnaround times*
 - *Timeframes for repairs*
2. *Describe the organisation's maintenance program*

Relevant Indicators (Property Management):

- The organisation maintains a consistently high tenancy rate for all lettable properties.
- The organisation sets and consistently achieves an appropriate turnaround time for vacant properties.
- If relevant, the organisation has an appropriately budgeted and planned cyclical maintenance program that is adhered to and is updated annually.
- Urgent maintenance repairs on properties are completed as soon as necessary, having regard to the nature of the problem, in accordance with the requirements of the *Residential Tenancies Act 1997*.
- Responsive maintenance repairs on properties are completed within 4 weeks of being notified of the need for the repairs, in accordance with the requirements of the *Residential Tenancies Act 1997*.

HR Systems

1. *Describe a staff selection process, including screening for 'fit and proper persons'*
2. *Provide copies of duty statements and selection criteria*
3. *Describe your organisation's basis for setting remuneration levels*

Relevant Indicators (Staffing):

- The organisation maintains appropriate staff levels to ensure it provides a high quality and cost effective housing service.
- The organisation selects staff on the basis of actual/potential skills and experience required to effectively carry out the functions of the organisation.
- The organisation has procedures for the appropriate screening of all persons (whether employees, volunteers or agents) to be involved in any way with children and/or vulnerable adults to ensure they are 'fit and proper persons'.
- The organisation has policies with respect to staff development and training and regularly reviews the staffing of the organisation to ensure the operational needs of the organisation are met.
- Remuneration of staff is commensurate with skills and experience and the scale and complexity of the organisation's operations.
- The relationship between organisational performance, individual performance and remuneration is clearly and appropriately defined

Financial Management

1. *Describe your organisation's financial delegations*

Relevant Indicators (Financial Management):

- The organisation has clear, articulated delegations for the approval of expenditure in its community housing program.
- The organisation has clear records on expenditure in its community housing program and cross-subsidisation between its community housing program and other activities.
- The organisation meets statutory and administrative requirements to submit reports on time.

PART 5 – MONITORING GUIDELINES

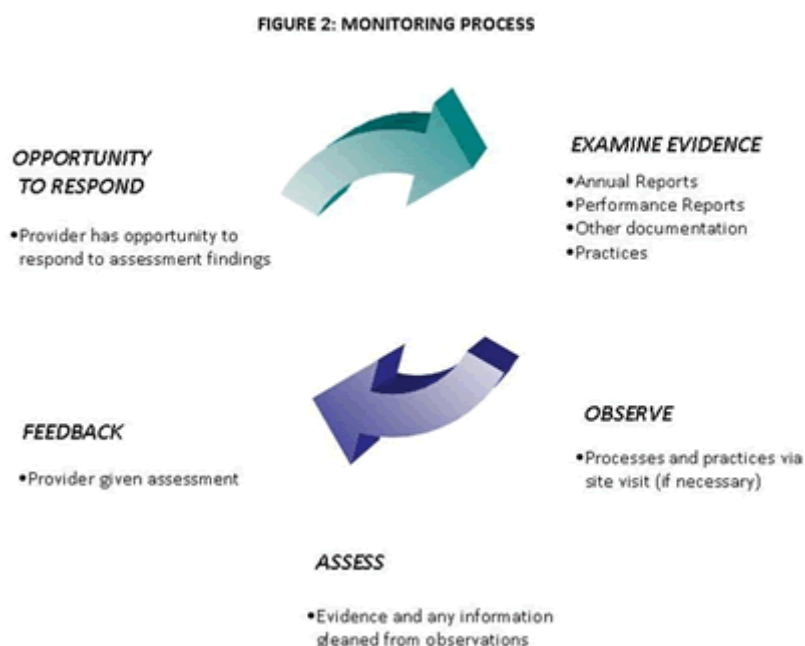
A provider must continue to comply with the eligibility criteria to remain registered.

Ongoing monitoring of compliance will be undertaken by the Registrar, using wherever possible, with the permission of the organisation, records they already provide to the Department of Disability, Housing and Community Services (DHCS) as part of their contractual reporting obligations.

Under the Act, the Registrar can request other information from the provider for the purpose of monitoring a provider's compliance. This may involve the Registrar requesting other relevant records and information, and may also include on site-visits to speak to stakeholders or look at records.

A compliance check may also occur if the Registrar becomes aware of any major changes to the provider's operations, complaints or referral of other matters about its operations.

Figure 2 below illustrates the process from examining evidence tendered at registration and as part of ongoing monitoring, through to assessment of that evidence, feedback provided back to the provider and the provider having the opportunity to respond. It is a cyclical, ongoing process.



PART 6 – INTERVENTION GUIDELINES

Use of Intervention powers

The formal powers of intervention are considered to be powers of **last resort**. These powers will only be used if the situation arises where a registered provider is unwilling or unable to comply with the eligibility criteria set out in the *Housing Assistance Act 2007*, and the nature of the non-compliance presents sufficient risk to either ACT Government investment, the organisation or to tenants.

What can trigger an intervention?

Examples of non-compliance that could lead to intervention (also known as intervention triggers) include any of the following:

- a failure to adequately manage risk;
- failure to comply with another condition of registration;
- failure to comply with an instruction issued by the Commissioner for Social Housing (or instruction from the Registrar who is their delegate); or
- a change to the provider's rules so it no longer complies with the registration requirements.

What the Commissioner for Social Housing takes into account when they consider intervention

- the level of government investment at risk or potentially at risk;
- the nature of the circumstances that lead up to the intervention trigger;
- any action the provider has taken to mitigate or resolve the need to intervene, and the success of such action;
- alternative approaches which would enable the provider to successfully manage and mitigate the specific circumstances of the intervention trigger;
- sources of assistance or support which may be available to the provider to assist it rectify the issue;
- the likelihood of the intervention trigger being swiftly and appropriately remedied; and
- the degree to which the provider has kept the Commissioner for Social Housing informed of the circumstances forming the intervention trigger, and the level of co-operation it displays towards the Commissioner for Social Housing.

The Commissioner for Social Housing will only consider intervening if satisfied on reasonable grounds that the intervention is appropriate in the circumstances and in accordance with Disallowable Instrument DI2009 – *Housing Assistance (Affordable and Community Housing Providers) Intervention Guidelines 2009 (No1)*.

What will happen if an intervention is proposed?

If intervention is proposed, the Commissioner for Social Housing will write to the provider giving a **notice of intervention**, stating reasons for the proposed intervention, the nature of the proposed intervention, and a reasonable timeframe for the provider to respond to the notice.

The Commissioner for Social Housing will consider and respond to any representations from the provider. In a situation where a provider does not agree to the existence of an intervention trigger, the provider will be asked to submit evidence to support its claim.

In situations where the Commissioner for Social Housing is not satisfied with the provider's response and remains of the opinion that a risk still exists, the decision may be made to intervene or de-register the provider.

The Commissioner for Social Housing may intervene in the business of a housing provider at any time if the Commissioner for Social Housing believes that to not do so would increase the risk associated with the intervention trigger.

The Commissioner for Social Housing will decide to de-register a provider in instances where there is no prospect of the provider or an intervention remedying the intervention trigger within a timely manner and in a way that will cause least risk to tenants and assets.

Further information on the de-registration process is available on **page 26**.

Types of Formal Intervention

Three types of intervention are available to the Commissioner for Social Housing:

- appoint people to the board of the housing provider;
- appoint an administrator to control and direct the operation of the housing provider; or
- appoint an administrator to wind-up the provider.

1. Appointing people to the board of the housing provider

The Commissioner for Social Commissioner may recommend the appointment of one or more appropriately qualified persons to the board of the provider. The Board of the provider will be consulted and any alternative nominations put forward by the board will be considered.

The Commissioner for Social Housing may consult with the provider and recommend an appointment when:

- a cause for intervention under the Act exists as outlined in 25S(1) (a)-(d);
- the provider's ability to comply with registration criteria, performance standards or other requirements of the Act is adversely affected by the decision making processes operating within the board;

- it seems likely that the appointment of one or more members to the board would increase the level of expertise and would result in more effective decision making;
- it seems likely that the appointment of one or more individuals with the necessary expertise to the board would enable the provider to achieve compliance with registration criteria, performance standards and the requirements of the Act; and
- the provider's viability will not be compromised by such an approach.

Guidelines regarding the power to appoint board members

- The Commissioner for Social Housing will consider the interests of the provider and its tenants and other stakeholders.
- Provided it will not result in undue delay in resolving the cause for intervention, the board of the provider should be given the opportunity to consult its members about a proposed recommendation via the democratic processes provided by its governing instrument.
- All other things being equal in terms of candidates' skills, experience and ability to achieve the desired outcome of intervention, the Commissioner for Social Housing may agree to recommend any nomination for appointment made by the provider.
- The Commissioner for Social Housing should be satisfied that any nominee (of the provider or of the Commissioner for Social Housing) is available for appointment within an appropriate timeframe and has given informed acceptance of the appointment.

2. Appointing an administrator to control or direct the operation of the housing provider

The Commissioner for Social Housing may consult with the provider and recommend the appointment of an administrator to control or direct the operation of the housing provider, when:

- a cause for intervention trigger under the Act exists as outlined in 25S(1)(a)-(d);
- creditors support this course of action;
- an audit report indicates there is a reasonable prospect that the provider will be able to trade out of difficulty within a reasonable period of time; and
- the Commissioner for Social Housing reasonably believes the interests of government and tenants are best served by this course of action.

Where circumstances allow, the Commissioner for Social Housing will request that the provider undertake an independent financial audit, if one has not been undertaken within the preceding three months.

In addition, the Commissioner for Social Housing will consult with the creditors of the provider to ascertain their intentions with respect to the enforcement of debts. Under the Act the Commissioner for Social Housing can issue an instruction outside of these procedures if there is reason to believe that following the intervention procedures would only increase the risk associated with the cause for intervention.

3. Appointing an administrator to wind up the housing provider and distribute its assets.

The Commissioner for Social Housing may consult with the provider and recommend the appointment of an administrator to wind up the housing provider and distribute its assets to another housing provider, when:

- a cause for intervention under the Act exists as outlined in 25S(1) (a)-(d); and
- the governing body of the provider agrees, or
- the Commissioner for Social Housing reasonably believes that other courses of remedies are undesirable or not cost-effective, taking into account both the interests of tenants and the creditors of the provider.

The Commissioner for Social Housing must approve the community provider or providers to which the balance of assets is to be transferred.

REMOVAL FROM REGISTER

The Registrar may remove a registered affordable or community housing provider from the register if it can be satisfied that the provider has breached a requirement of or a condition of their registration.

The Registrar will formally write to the provider notifying it of a decision to remove it from the register and will provide reasons for the decision.

PRIVACY AND CONFIDENTIALITY

Under the Act, affordable and community housing providers that register and want to retain their registration need to provide a range of information about their operations to the Registrar, which may include commercial in-confidence information that might be considered sensitive to the organisation.

Details of registered providers that will be published on the public Register, under S25A (6) of the Act, include:

- Name and address of the provider;
- Name of a contact person for the housing provider;
- Telephone and fax numbers, and email address, of the contact person;
- Date the housing provider is registered;
- Whether the housing provider is registered as an affordable housing provider or community housing provider;
- Registration number; and
- The conditions (if any) of the registration.

INFORMATION SHARING

The housing funding area of the Department of Disability, Housing and Community Services will share information with the Registrar concerning a provider where that information is deemed to be relevant to the provider's compliance with the eligibility criteria set out in the *Housing Assistance Act 2007*.

If the funding area becomes aware of any changes to a registered provider's details on the public register, the Registrar will be informed. Similarly, if there are any significant changes to the provider's Board/Management Committee or governance arrangements, the Registrar and Housing ACT will share this information with the consent of the provider. Wherever appropriate, provider consent will be sought to have this information shared with another arm of government.

Housing ACT will inform the Registrar when property deeds are transferred to a provider or a recovery of those deeds takes place¹.

The Registrar will inform Housing ACT of whether a decision is made to register a provider or to refuse registration. The Registrar will also inform Housing ACT when a provider will become or has become non-compliant with the eligibility criteria, is about to be de-registered, or if an intervention is proposed by the Commissioner for Social Housing.

The Registrar will immediately advise Housing ACT of appeals lodged by providers regarding the assessment of the application for registration.

The Registrar from time to time will liaise with Social Housing and Homelessness Services (SHHS), a unit within Housing ACT, on issues regarding providers including possible breaches of contracts and on any areas identified by either the Registrar or SHHS as a regulatory priority and ways to achieve these priorities.

The Registrar will also undertake to share information about a provider (or its subsidiary) with a Registrar from another jurisdiction if the provider involved is registered, or seeking to register so they can operate in another jurisdiction and the ACT. This will only occur with the consent of the provider. This would allow Registrars to share information, and reduce the burden on providers to give the same information to multiple recipients. It will also allow Registrars to act with more consistency towards providers.

FREEDOM OF INFORMATION

Under the *ACT Freedom of Information Act 1989*, it is possible for members of the public to request access to information on the functions administered by the Registrar of Not for Profit Housing Providers and the decisions made under those functions.

More information on the process of how to complete a Freedom of Information request, and a copy of the request form, can be found at:

http://www.dhcs.act.gov.au/publications/freedom_of_information

¹ If a provider has fewer than 10 residential properties they are no longer eligible for registration under the Act.

APPEALS

Should a provider have its application for registration refused by the Registrar, it will receive information on how it may appeal the decision with the ACT Civil and Administrative Appeals Tribunal (ACAT) (S 31A of the Act). Under the Act providers may also appeal a decision of the Commissioner for Social Housing to intervene in their activities.

Further information on ACAT is available from their website: www.acat.act.gov.au/

COMPLAINTS

The Registrar does not have the power to investigate complaints about affordable or community housing providers that have been registered under the *Housing Assistance Act 2007*.

The Registrar can not investigate individual complaints nor seek to remedy any individual matters that come to its attention. Its actions are limited to investigating non-compliance with the eligibility criteria, pursuing a response from the provider and securing a course/s of action to remedy any outstanding issues of non-compliance. An example of how this could occur in practice is for the Registrar to request the provider to demonstrate that it has appropriate and effective tenant feedback policies and processes in place and to give examples of how a complaint would be received and addressed in practice.

The Registrar, in the course of his/her duties, will accept any information about any possible non-compliance by a registered provider. This can take the form of information that was tendered to the Registrar from a member of the public on a matter of complaint that directly concerns the provider.

The Registrar will refer any complaints to the funding body (Housing ACT) to be appropriately investigated.

GLOSSARY

Affordable housing	Housing that is affordable for people on low or moderate incomes
Affordable housing provider	Manage a large portfolio of properties and undertake housing development projects, utilising capital investment from government in order to leverage private investment.
Community housing	Rental housing for: <ul style="list-style-type: none">▪ People on low and moderate incomes or with special needs; or▪ Non profit community organisations
Community housing provider	Providers that manage properties as the head lessee, utilising government owned or other organisations' assets which they rent to low to moderate income tenants.
Company limited by guarantee	As defined by <i>Corporations Act 2001 (Cth)</i> , section 9:
Company limited by shares	As defined by <i>Corporations Act 2001 (Cth)</i> , section 9:
Housing	Residential housing and other forms of residential accommodation; and Includes the fences, outbuildings and other improvements and the connections for utilities and other services provided or reasonably required for the accommodation
Commissioner for Social Housing	The Commissioner for Social Housing, established under section 9 of the <i>Housing Assistance Act 2007</i>
Housing provider	An affordable housing provider or community housing provider
Incorporated association	An association incorporated under the <i>Associations Incorporation Act 1991</i> or the <i>Cooperatives Act 2002</i>
Information	Includes a document
Registration Determination	Disallowable Instrument DI2009 – 214 <i>Housing Assistance (Affordable and Community Housing Providers) Registration Determination 2009 (No1)</i> .

Monitoring Guidelines	Disallowable Instrument DI2009 – 216 <i>Housing Assistance (Affordable and Community Housing Providers) Monitoring Guidelines 2009 (No1)</i> .
Standards , for a community housing provider	<p>The standards include, but are not limited to, provisions in relation to the following:</p> <ul style="list-style-type: none"> (a) tenancy management; (b) tenant rights and participation in the general management of community housing provision; (c) governance and organisational management; (d) management systems, including human resource management. <p>Refer - Disallowable Instrument DI2009 – 215 <i>Housing Assistance (Affordable and Community Housing Providers) Standards 2009 (No1)</i>.</p>
Intervention Guidelines	Disallowable Instrument DI2009 – 217 <i>Housing Assistance (Affordable and Community Housing Providers) Intervention Guidelines 2009 (No1)</i> .