

Frequently asked questions

For investors and financiers

January 2014

This FAQ sheet presents questions and answers for investors and financiers about the proposed National Regulatory System for community housing providers.

Policy Intent

1. Who is covered by the National Regulatory System?

The National Regulatory System covers providers of community housing, which includes social and affordable housing.

2. Is registration mandatory for housing providers?

No. There is no obligation for housing providers to be registered under the national system. However, State and Territory government policy agencies and funding agencies may make registration a precondition for housing providers to receive funding and to deliver funded housing services.

3. Does national registration entitle a provider to government funding?

No. Decisions about funding will continue to be made by States and Territories on the basis of competitive and transparent processes that match available resources to government policy objectives and evidence of housing need.

4. How will the National Regulatory System affect the ability of a housing provider to obtain finance?

It will not. The National Regulatory System does not place any restrictions on how a housing provider might choose to secure its present or future obligations to its financiers. Any restrictions imposed by individual State or Territories will need to be taken into account by housing providers when obtaining finance.

5. What does national regulation mean for housing providers operating across multiple jurisdictions?

Housing providers that operate in multiple States and Territories will no longer have to be registered separately in each State and Territory, and will be assigned a single Primary Registrar, typically from the jurisdiction in which the provider was first registered.

6. Will housing providers operating across multiple jurisdictions be able to offer as security the entity's consolidated trading resources?

The National Regulatory System does not place any restrictions on how they choose to secure their obligations to financiers, so long as they are consistent with their legal and contractual obligations.

7. What does national regulation offer new entrants?

The national system is designed to provide a level playing field for providers seeking to enter new jurisdictions and to avoid unnecessary restrictions on new entrants. While registration does not offer any entitlement to funding, it provides new entrants with a status that is immediately recognised by government and is expected to be increasingly recognised by investors and financiers.

Operation

8. What do the tiers signify about housing providers and how will providers be assigned to them?

The registration tier allocated to a housing provider reflects the provider's size and scale of operation at the time of application and after taking into account its corporate structure. The registration tiers are not intended to be a measure of housing providers' systems or credit worthiness nor be a qualitative ranking. Investors/financiers must continue to undertake their own due diligence.

Over time, the registration tier of a housing provider may change. Detailed guidance notes on the registration tiers - containing expectations of housing providers' systems, policies and practices to appropriately mitigate risk - are available on the NRSCH website.

9. What information will Registrars be permitted to provide to investors/financiers about individual providers or the overall state of the industry?

The Registrars intend to make available aggregated, de-identified data about the sector and its performance. Investors/financiers can search the public register maintained by the Registrars. Data about individual housing providers that is held by Registrars that is not on the public register (and therefore not in the public domain) is not available to investors/financiers.

10. What are the intervention powers of the Registrars?

The intervention powers available to the Registrars are intended to provide for staged, proportionate intervention that reflects the seriousness and potential consequences of a registered housing provider's failure to meet its obligations.

The powers include:

- Issuing a notice of non-compliance
- Issuing mandatory instructions, including directing the housing provider to strengthen governance arrangements and/or the skills and expertise of its board or other governing body
- Issuing a notice of intent to cancel registration
- Appointing a statutory manager to take control of a housing provider and carry on its business while bringing the provider to compliance, before returning control to the housing provider's board or other governing body (or facilitating deregistration).

All intervention powers are subject to legislated procedural fairness and appeal provisions. Intervention protocols will be published to guide Registrar actions.

11. What is the Statutory Manager?

The appointment of a statutory manager is an intervention available to Registrars. It will be applied as an intervention of last resort to protect the welfare of tenants and/or to protect and preserve the housing provider's assets.

These protections are not effectively afforded through current structures such as voluntary administration. A precedent for the appointment of a statutory manager (or equivalent interim manager or special administrator) exists under existing Queensland housing legislation and under the Corporations (Aboriginal and Torres Strait Islander) Act.

The role of the statutory manager will be to return the housing provider to full compliance with relevant laws. During the period of the appointment, the statutory manager will displace the directors and have control over the housing provider. The appointment of a statutory manager will not affect the rights of secured creditors.

12. How does the national regulatory system affect the winding up of a housing provider?

It is not. The Registrar cannot wind up a housing provider. Winding up continues to be governed by existing applicable law, such as the Corporations Act.

13. Can investors/financiers be prejudiced by the mandatory "winding up" provisions required in a housing provider's constitution?

No. Those provisions, which are intended to allow the preservation and transfer or merger of social and affordable housing assets (including on cancellation of registration) either back to government or to another registered housing provider, only apply after the payment and satisfaction of all of the housing provider's liabilities.

Implementation

14. When did the national system commence?

The new system began on 1 January 2014. Individual states and territories are transitioning to the NRSCH according to their own timetables. Please visit the state and territory pages of the NRSCH website for more information.