



Wind up clause for Incorporated Associations Guidance Note

Community Housing Regulatory Framework

This guidance note provides information for community housing providers (CHP) incorporated under the *Associations Incorporation Act 2015* (the Act) regarding the wind up clause requirements, including the distribution of community housing assets and surpluses, to satisfy the requirements of the Act as well as the Community Housing Regulatory Framework (Framework).

Three Requisite Clauses

Housing Providers incorporated under the Act will require three separate clauses in their Constitutions to satisfy the requirements of both the Act and also the Framework. These clauses are as follows:

1. A definition of Community Housing assets as per the Framework,
2. A winding up clause specifying the distribution of those community housing assets and which complies with the Framework and Appendix C (b),
3. A winding up clause covering the distribution of surplus assets as per the Act.

1. Required Definitions as per the Community Housing Regulatory Framework

Community housing assets are defined within the Framework as:

- (a) land and/or premises transferred to the CHP by the Housing Authority, but does not include land or land and premises that the Housing Authority sells at market value to the CHP
- (b) land and/or premises acquired by the CHP wholly or partly with funding provided by the Housing Authority, including but not limited to where such funding is comprised of:
 - i. funding provided directly by the Housing Authority
 - ii. GST input tax credits claimed by the CHP in connection with any supplies which are funded wholly or in part by the Housing Authority
- (c) a legal interest in land and/or premises acquired by the CHP wholly or partly with funding provided or where the acquisition is facilitated by the Housing Authority
- (d) land and/or premises acquired by the CHP wholly or in part with borrowings leveraged off or cash flow generated from any assets in the CHP's portfolio in which the Housing Authority has or had an interest
- (e) land and/or premises where the Housing Authority is identified as having an interest in any legal agreement
- (f) land and/or premises procured with the proceeds of sale of land and/or premises in which the Housing Authority has previously had an interest
- (g) housing constructed by the Housing Authority or improvements made on land and/or premises by the Housing Authority.



A **Community Housing Provider** (CHP) is defined within the Framework as an organisation that provides community housing.

Registered is defined within the Framework as a Community Housing Provider that has successfully achieved registration under the Framework as a tier 1, 2 or 3 provider.

2. Wind up requirements of the Community Housing Regulatory Framework

To be eligible for registration under the Framework, CHP's are required to satisfy the Conditions of Registration under Appendix C (b).

Appendix C (b) - Constitutional wind up provision

“the community housing provider must have provision in its constitution for all its remaining community housing assets on its winding up to be transferred to another registered community housing provider in Western Australia or to the Housing Authority”.

3. Wind up requirements of the Associations Incorporation Act 2015

For Incorporated Associations, the requirements of the Act also apply in regards to the distribution of surplus assets. Under section 24(1) of the Act surplus property can only be distributed to one or more of the following —

- (a) an incorporated association;
- (b) a company limited by guarantee that is registered as mentioned in the *Corporations Act* section 150;
- (c) a company holding a licence that continues in force under the *Corporations Act* section 151;
- (d) a body corporate that at the time of the distribution is the holder of a licence under the *Charitable Collections Act 1946*;
- (e) a body corporate that —
 - i. is a member or former member of the incorporated association; and
 - ii. at the time of the distribution of surplus property, has rules that prevent the distribution of property to its members;
- (f) a trustee for a body corporate referred to in paragraph (e);
- (g) a co-operative registered under the *Co-operatives Act 2009* that, at the time of the distribution of surplus property, is a non-distributing co-operative as defined in that Act.



Suggested clause for distribution of surplus property

Surplus property, in relation to the Association, means property remaining after satisfaction of –

- (a) the debts and liabilities of the Association; and
- (b) the costs, charges and expenses of winding up or cancelling the incorporation of the Association,

but **does not include** books relating to the management of the Association or **Community Housing Assets**.

On the cancellation of the incorporation or the winding up of the Association:

- all Community Housing Assets are to be returned to the Housing Authority or transferred to another registered CHP in Western Australia ; and
- its surplus property must be distributed as determined by special resolution by reference to the persons mentioned in section 24(1) of the Act.

For Community Housing Providers also registered under the Australian Charities and Not-for-Profits Commission (ACNC)

Community Housing Providers who hold charity tax concessions or other tax exemptions may be required to include additional information in their rules. If this applies to your organisation please refer to the Commissioners Interpretation Statement: Provision of housing by charities (2014/02). Further information can be obtained from the ACNC on 13 22 62 and at www.acnc.gov.au.

For more information

Community Housing Regulatory Framework

For more information on the requirements of the Framework, please visit the Department of Communities website at: [Housing investors and partners - Community Housing Organisations \(www.wa.gov.au\)](http://www.wa.gov.au) or contact the Community Housing Registration Office via e-mail registrar@communities.wa.gov.au.

Associations Incorporation Act 2015

Any alteration to the rules of an incorporated association must be passed by special resolution and lodged with the Associations and Charities branch of the Department of Mines, Industry Regulation and Safety, Consumer Protection Division.

For more information regarding the requirements of the Act, please visit the Associations Branch website at www.dmirs.wa.gov.au/associations or contact their offices on telephone number 1300 30 40 74 or (08) 6552 9300 or by e-mail associations@dmirs.wa.gov.