



**SHELTER**  
because housing matters

## Wind Up Clause Information

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Most community housing providers will have a wind up clause in their constitution that states assets should be passed over to a likeminded organisation should the entity cease to exist. This is to protect assets that have been accrued through a not for profit entity are not passed on to benefit an individual or a for profit company.

It is a condition of registration that providers must have a wind up clause in their constitution or equivalent document that is consistent with the wording in the National Law or corresponding law (the Housing Act 2003 in Queensland) or must demonstrate that it uses suitable alternative wording.

In March 2014 the Office of the Registrar updated their example of a compliant wind up clause. This is that example:

1. National Regulatory System for Community Housing winding-up requirements
  - 1.1 In this clause 'Community Housing Asset', 'Corresponding Law', 'Housing Agency', 'Participating Jurisdiction' and 'Registered Provider' have the same meanings as in the Housing Act 2003 (Qld).
  - 1.2 Despite clause [cross-reference to general winding-up clause], each Community Housing Asset remaining after satisfaction of the Company's liabilities must be transferred as follows:
    - (a) each remaining Community Housing Asset of the Company in Queensland must be transferred under s 37H(2)(a) of the Housing Act 2003 (Qld); and
    - (b) each remaining Community Housing Asset of the Company located in a Participating Jurisdiction must be transferred under the Corresponding Law of that Participating Jurisdiction to:
      - (i) the Housing Agency in the Participating Jurisdiction;
      - (ii) another Registered Provider in the Participating Jurisdiction; or
      - (iii) another entity as prescribed under the Corresponding Law.

### **Alternative wording**

A provider may choose to use suitable alternative wording, rather than the above example. It is the responsibility of providers who choose to draft alternative wording to ensure that the wording is legally consistent with the Act and the National Law. Providers must seek appropriate and sound legal advice. This will be provided to the Registrar to demonstrate that the alternative wording is appropriate and compliant with this condition of registration.

The Registrar will examine the evidence and reach a final decision, which may or may not concur with the legal advice sought by the provider.



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### **Time considerations**

Your constitution or the Legislation that your organisation is established through will identify the process that needs to be followed to change your constitution. The process is most likely to require the support of your members. You may want to consider these processes so any changes are ready to be presented to your members whilst they are gathered for your Annual General Meeting.

At the ETF stage, not having an appropriate wind up clause is not a barrier to progressing an application to the next stage. Providers can progress to the application for registration stage, with the understanding that if a change to the constitution or equivalent document is required, it can be processed through this time.

The organisation must have the relevant clause, or have demonstrated that the clause is legally consistent before a registration decision can be made. Please note that you do not have to delay your application for registration until your constitution is amended, it just needs to be completed before a registration decision can be made.

If you have any questions please contact your Analyst, or by emailing the Registrar's mailbox at [registrar@housing.qld.gov.au](mailto:registrar@housing.qld.gov.au) or seek information from Q Shelter through QS Connect on 3831 5900 <http://www.qshelter.asn.au/webform/contact-us>