Housing Registrar

Information sheet

Corporate groups and the Victorian regulatory framework

Purpose

A primary function of the Registrar of Housing Agencies (the Registrar) is to ensure that registered agencies can meet the Victorian regulatory requirements contained in Part VIII of the *Housing Act 1983* (the Act), including Gazetted Performance Standards and Evidence Guidelines. The corporate group structure that the agency operates within may impact the agency's ability to comply with Performance Standards and the Registrar must consider whether appropriate governance and inter-entity arrangements are in place. The Registrar must also be satisfied that operating in a corporate group will not adversely affect the ability of the registered agency to carry out its function of providing affordable housing to people on low incomes.

Section 3(4) of Schedule 7 of the Act requires a registered agency's constitution to provide that 'the assets and income of the registered agency must be applied solely for the purposes for which the agency is incorporated'. This supports the Victorian Government's policy intent; that a registered agency has control over its assets and should use those assets and income in favour of its objects, and not for the benefit of another entity in the corporate group to the detriment of the registered agency. This also helps to protect the Victorian Government's significant investment in the sector, encouraging growth and value for money outcomes for Victorians in need.

In practice, the Housing Registrar will work with registered agencies to understand their regulatory risk profile and support the development of appropriate mitigation strategies, where required, to facilitate regulatory compliance.

The purpose of this document is to provide guidance for registered agencies on regulatory risks which may arise operating under corporate group structures and identify options for mitigating these risks. This information may assist agencies operating within the National Regulatory Scheme for Community Housing, or in Western Australia, that wish to operate in Victoria.

Background

This guidance supersedes the previous corporate groups guidance document (released in 2015), which was prepared following feedback from the sector and enquiries from interstate providers on Victorian registration requirements. It is not intended that the guidance will identify all potential regulatory risks associated with corporate groups, and the strategies for addressing these risks are indicative only. It is not intended to encourage or discourage any particular corporate group structures, rather the aim is to highlight potential regulatory risks that may arise from corporate group structures and to identify high-level mitigation strategies available to address these risks.

This document does not in any way limit, or otherwise affect, the operation of all laws including the Act, the *Corporations Act 2001* (Cth) (the Corporations Act) and the duties and obligations of any directors, subsidiaries and other body corporates captured by the Corporations Act.

This guidance should be read in conjunction with:

- The Act;
- Gazetted Performance Standards and related Evidence Guidelines; and
- Intervention Guidelines.

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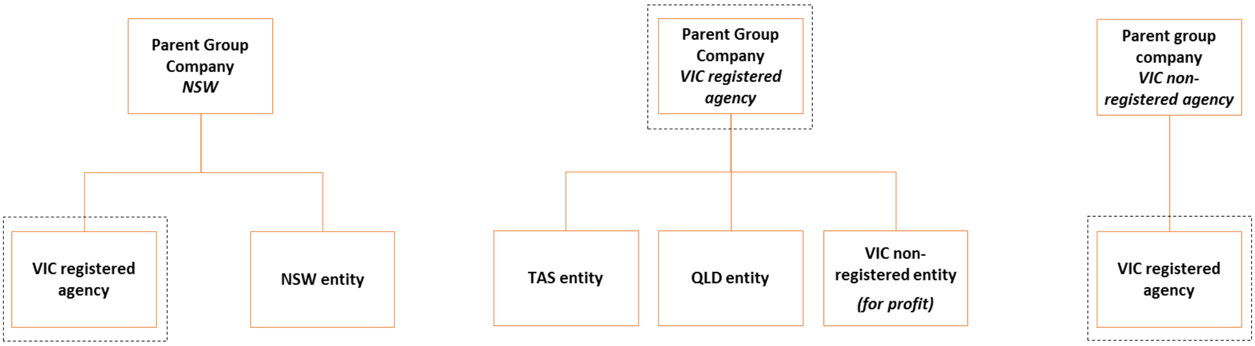
Operating in a corporate group in Victoria

Corporate groups may be established for a variety of reasons, including to create operational efficiencies or as part of risk mitigation strategies. The Registrar's interest in corporate group arrangements is primarily to ensure that the registered agency can comply with Victorian regulatory requirements and Performance Standards whilst operating in the corporate group. The Housing Registrar may seek information to ensure that the registered agency is not unduly influenced by the parent or other group entities to the extent its performance suffers.

Figure 1 shows various corporate group scenarios and the different ways registered agencies may fit within a wider corporate group.

Figure 1 – Examples of corporate groups



In Victoria, registered agencies must seek approval from the Registrar to operate in a corporate group where the parent is not a registered agency. The Registrar's approval must be obtained:

- when seeking registration to operate in Victoria1 (for agencies already operating under corporate groups); or
- when proposing changes to the corporate structure to become a subsidiary of a body other than a registered agency[2].

In assessing these applications, the Registrar may request information about the role and relationship of the rental housing agency to the wider corporate group to ensure that the registered agency's performance is not unduly influenced by the parent or other group entities. Annexure 1 summarises the types of information that may be requested to support an application.

Following registration, the Registrar may continue to monitor relevant inter-entity arrangements (including through annual performance reviews), especially if arrangements in the corporate group materially change and impact compliance with Performance Standards.

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[1] See section 81 of the Act
[2] See sections 82 (2) and 103 (b) (2) of the Act

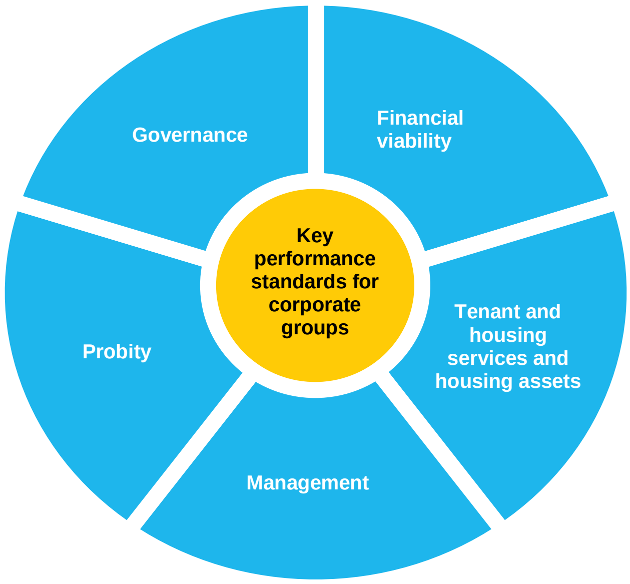
Performance Standards

Under section 95 of the Act, registered agencies are obliged to comply with seven Performance Standards.

Figure 2 outlines the Performance Standards where certain corporate group arrangements may present increased compliance risks.

The remainder of this document focuses on how corporate group arrangements may give rise to increased compliance risks and the mitigation strategies that can be adopted to mitigate these risks.

Figure 2 – Performance Standards with increased regulatory risks for corporate groups



Governance

To comply with the *Governance Performance Standard,* a registered agency must demonstrate that it is well governed to support the aims and intended outcomes of its business.

Board structures and composition

The Governance standard requires a registered agency to have a code of governance that manages conflicts of interest. For an agency operating within a corporate group, this includes having appropriate board arrangements in place to effectively manage conflicts that may arise between group entities and to ensure board members are clear on which entity they are making decisions for. The governance arrangements of the corporate group should facilitate transparent and accountable decision-making for the registered agency and between group entities.

Corporate group structures with shared board arrangements across group entities can create additional regulatory risks and the Registrar must be satisfied that good governance practices are employed to minimise actual, potential and perceived conflicts of interest. Governance and board composition strategies should be tailored to the specific requirements of the registered agency. Typically, the board composition of a registered agency operating within a corporate group should:

1. enable autonomous decision making on behalf of the registered agency;
2. include an appropriate mix of relevant skills and experience (including community housing experience); and
3. provide an understanding of the strategy, vision and operations of the wider group to leverage efficiencies where possible.

Boards consisting of a majority of non-executive directors, who are independent of other group entities, can reduce the potential for conflicts of interest to arise. However, the operational, resourcing and strategic efficiencies of utilising shared board arrangements results in some registered agency's choosing to mitigate potential conflicts of interest in other ways. If a registered agency with a shared board is approved for registration, the Registrar will work closely with the agency to ensure appropriate arrangements are in place to manage conflicts of interest.

Table 1 outlines examples of governance risks and potential mitigation strategies:

Table 1 – Example governance risks and mitigation strategies

Governance risks	Mitigation strategies
• Actual, potential or perceived conflicts of interest that impact the registered agency, both at the board and organisational level are not managed effectively within the corporate group. • A lack of clear and transparent policies, procedures and practices that communicate the responsibilities and relationships between each group entity. • For shared board arrangements, are: – board decisions made in the best interests of the registered agency; – board appointments to the registered agency made in its best interests; and – board members clear on which entity they are making decisions for, and why?	• Develop clear policies and procedures for managing actual, potential and perceived conflicts at both a registered agency and group level. • Develop transparent intragroup agreements that outline the roles, responsibilities and level of control for entities within the group. • The parent and subsidiary boards are constituted with independent[3] chairs. • The registered agency board includes a sufficient number of independent directors to form a majority[4]. • Independent directors are represented on each board committee. • The registered agency has its own process for appointments to its board. • The registered agency board includes skills, expertise and understanding of the Victorian housing sector and regulatory framework. • The registered agency can prepare and approve its own board policies that are specific to its operations. • Different boards within the group meet separately (not concurrently) and are separately minuted.

The *ASX Corporate Governance Principles* provide further examples of good governance practices.

Financial viability

To comply with the *Financial Viability Performance Standard*, registered agencies must remain financially viable and effectively manage financial risk exposure. Registered agencies operating within corporate groups may be able to leverage intragroup support to improve financial performance but may also be exposed to increased regulatory risks.

Table 2 provides examples of these regulatory risks and potential mitigation strategies:

Table 2 – Example financial viability risks and mitigation strategies

Financial viability risks	Mitigation strategies
• The financial viability of the registered agency cannot be assessed in isolation of the wider group. • In instances where intragroup financial arrangements have been made, the risk profile of the registered agency has materially increased due to interaction with other entities in the group. • A misalignment between the registered agency and the wider groups' financial policies.	• The terms and management of any intragroup financial transactions are clearly identified in both individual and group financial reports. • Financial arrangements are formalised and fully documented on reasonable commercial terms with appropriate monitoring and control mechanisms. • When considering financial support across group entities, the registered agency adopts a risk-based approach and is satisfied that doing so is in its best interests and aligns with intragroup transactions policy.

[3] independent in this context meaning a non-executive director that is not an employee of the registered agency or affiliated entities
[4] independent in this context meaning a non-executive director that is not an employee of the registered agency or affiliated entities, and who is not shared with other boards in the corporate group

Tenant and Housing Services and Housing Assets

The *Tenant and Housing Services* and *Housing Assets Performance Standards* require fair, transparent and responsive delivery of services and effective management of the registered agency's asset base to ensure suitable properties are available now and into the future. Operating within a corporate group can present increased regulatory risk as outlined in Table 3.

Table 3 Example tenant and housing services and housing assets risks and mitigation strategies

Tenant and Housing Services and Housing Assets risks	Mitigation strategies
• Intragroup service agreements do not reflect value for money and/or impact the registered agency's ability to meet their obligations under the Act. • Wider corporate group operations impact the registered agency's ability to deliver appropriate tenant satisfaction outcomes. • Complaints and appeal processes are dealt with at the corporate group level and not tailored to the needs of the registered agency. • Group level operations adversely impact the strategic asset management, maintenance or development strategies of the registered agency.	• Agreements for procured services between entities are transparent, commercial and contain clear termination and amendment conditions. • Operational policies and processes are implemented to reflect the registered agency's specific requirements, such as: – tenancy management, tenancy engagement and tenant surveys; – complaints policy and register; and – business, asset management and maintenance plans. • Development pipeline planning reflects the needs of the registered agency, and where relevant, clearly identifies the role and responsibility of the wider group in these activities.

Management

The *Management Performance Standard* requires registered agencies to manage their resources to achieve their intended business outcomes in a cost-effective manner. Accordingly, management arrangements including structures, systems, policies and procedures should reflect the best interests of the registered agency. A registered agency operating in a corporate group setting can experience increased regulatory risk if the policies and procedures that it operates under serve the interests of the broader group rather than the registered agency.

Table 4 outlines examples of these increased management risks and potential mitigation strategies:

Table 4 – Example management risks and mitigation strategies

Management risks	Mitigation strategies
• Group administrative policies and procedures prevent the registered agency from meeting its regulatory obligations. • Administrative policies and procedures developed from another group entity may not meet the registered agency's needs. • Shares services with the wider group such as Human Resources, Information Technology, and Legal may not serve the agency's specific functions and services.	• Policies and procedures that are adopted across the corporate group are signed off by the appropriate decision makers within each separate group entity. • Undertake regular reviews of policies and procedures to ensure they align with the specific requirements of each group entity. • The registered agency's business plan clearly articulates the extent of, and benefit derived from, sharing resources with the wider corporate group.

Probity

Registered agencies are required to maintain high standards of probity throughout their business to comply with the *Probity Performance Standard.* Importantly, this includes establishing a code of conduct and protecting the reputation of the registered agency. Where there are wider group operations outside of the housing sector (including for-profit operations) this increases the potential incidents that impact the reputation of the registered agency.

Table 5 outlines an example of corporate group probity risks and mitigation strategies.

Table 5 Example probity risks and mitigation strategies

Probity risks	Mitigation strategies
• The operations or actions of other entities in the corporate group result in an incident that adversely impacts the reputation of the registered agency and/or the community housing sector.	• To the extent possible, the registered agency maintains a separate profile from the parent entity. • The registered agency maintains appropriate reportable event notification processes and procedures. • Appropriate ethics, anticorruption, investment, procurement and anti-bribery policies are in place.

Process for engaging with the Registrar

When registering as, or applying to become, a subsidiary of a non-registered agency under a corporate group structure, early engagement with the Registrar is recommended to ensure that the proposed corporate structure does not present any regulatory risks. The Registrar will need to consider the implications of the proposal and the agency's ability to retain ongoing compliance with the Act and Performance Standards. Once approved, the agency is required to demonstrate compliance with all regulatory requirements on an ongoing basis.

Key steps in the approval process include:

- Early notification to the Registrar of any registration request or proposed changes to the corporate group structure requiring approval under the Act;
- Provision of any preliminary information for review by the Registrar;
- Meeting with the Registrar and representatives from the Housing Registrar if required to discuss the application;
- Provide any further information sought by the Registrar (this may include the information listed in Annexure 1, noting that the Registrar may require any further information that is considered appropriate to the application and may refuse an application if that information is not provided under section 82 of the Act);
- Obtaining appropriate professional advice where necessary, and the development of a comprehensive risk analysis with mitigation strategies; and
- Where appropriate, development and implementation of a stakeholder engagement strategy to support the process.

Annexure 1

Evidence sources

Information the Registrar may request to determine an application for an agency to operate in a corporate group where the parent is not a registered agency, or as a part of its ongoing assessments (including annual performance review processes), include:

- Constitution;
- Company structure including board structure and CEO arrangements;
- Details of all group entities (i.e. registered name, place of incorporation, board composition, nature of business etc.);
- Governance policies and procedures;
- Board charter that clearly sets out the respective roles, responsibilities and authorities of the board in setting the direction, management and control of the organisation;
- Board and committee terms of reference;
- Affiliated entities policy;
- Conflicts of interest policy and procedures for managing actual and perceived conflicts;
- Group organisational chart;
- Business plans and supporting documents demonstrating the strategic decision-making process;
- Management structure of the group, including key reporting lines;
- Policies and procedures that are aligned with the specific needs of the agency;
- Intra-group agreements that outline the roles, responsibilities and level of control for agencies within the group;
- Risk register and management plan;
- Intra-group financial exposures;
- Overview of bank accounts;
- Debt financing arrangements and covenants;
- Intercompany related transactions;
- Schedule of delegations;
- Finance management policies and processes; and
- Business case with supporting rationale for the establishment of, or changes to, the group structure.