

NRSCH Investigation Policy

1 Purpose

This policy is designed to ensure a consistent approach to the investigative function conferred on the Primary Registrar under the provisions of S10 (1) (e) of the National Law.

Registrars view investigations as outlined in the policy to be a higher order more intensive activity than the processes adopted to deal with compliance issues generally.

This policy contemplates investigations being undertaken where a level of formality in evidence collection is deemed necessary or beneficial after careful consideration of other, less intensive forms of intervention.

2 Background

This policy directs management of the Registrars' function *"to investigate complaints about the compliance of registered community housing providers with community housing legislation."* S10(1)(e).

It conforms to best practice standards in the Australian Government Investigations Standards which requires a public policy on the conduct of investigations.

3 Definitions

The table below is a list of terms, keywords and/or abbreviations used throughout this document.

Term	Definition
Investigation	A formal response to a complex matter requiring a balance of probabilities assessment against variable opinion and evidence. The process is guided by AGIS 2011. Investigations must be specifically initiated by the Registrar under an instrument of authority to an appointed

Term	Definition
	investigator.
Complaints assessment	<p>The process undertaken in the Registrars' office to receive, review and assess complaints. This may involve interviews and accessing information relevant to complaints. Findings support decisions regarding the evaluation and acceptance of investigations in accordance with AGIS 2011.</p> <p>All complaints are assessed for responses in accordance with complaints policy and the engagement policy.</p>

4 Scope

Registrars agree that most complaints about non-compliance of community housing providers with the requirements of the National Law are managed through compliance monitoring mechanisms. These mechanisms are outlined in other documents: see NRSCH Regulatory Engagement policy and Assessment policy.

Registrars acknowledge that on rare occasions there are some complaints or circumstances where the matters at stake are complex or extraordinary and should be dealt with through a formal investigation process.

Registrars have varied State/Territory obligations to comply with Australian Government Investigation Standards (AGIS 2011). Noting that Registrars have only administrative offence provisions, Registrars have agreed to follow AGIS best practice investigation standards to:

- Offer a clear and unambiguous response to the most egregious of allegations allowing all affected parties a professional and objective response service including natural justice.
- Provide Registrars a comprehensive view of the facts in complex matters on a 'balance of probabilities'.
- Assist work force planning and performance standards of regulators including improved connections with other investigative bodies with jurisdictional interests.

This policy is to be followed by Registrars and regulatory officers in NRSCH participating jurisdictions.

5 Legislation

At Section 10 the National Law sets out the functions of the Registrar. The two functions relevant to this policy are:

- “to monitor compliance by registered community housing providers with community housing legislation and to exercise enforcement and intervention functions under that legislation” S10(1)(d)
- “to investigate complaints about the compliance of registered community housing providers with community housing legislation” S10(1)(e)

It is noted that each participating jurisdiction’s own adoption legislation may also affect certain aspects of the way this policy is administered. However, Registrars agree to follow the framework of the AGIS 2011 in initiating and managing an investigation.

Each participating jurisdiction is responsible for identifying and developing methods to monitor its adherence with this policy.

6 Policy statement

The NRSCH is designed to identify, monitor and respond to risks that have serious consequences for tenants, funders and investors, community housing assets and the reputation of the sector.

Each Primary Registrar is responsible for both promoting a culture of compliance, detecting and addressing non-compliance at the earliest opportunity to protect the integrity of the community housing sector, and the continuous improvements of the sector.

In doing so each Primary Registrar of a participating jurisdiction when using their investigative function should ensure that investigation practices contribute to fairness, integrity and good public administration.

When deciding to conduct an investigation Registrars will be guided by the following principles of good regulation:

- **Proportionate** – investigation functions will be used only when necessary and considering the assessed level of risk
- **Accountable** – able to justify regulatory decisions made based on investigation outcomes and be subject to scrutiny
- **Consistent** – investigation approaches will be consistent regardless of the jurisdiction in which the provider operates
- **Transparent** – there will be clear and open communication with all relevant parties regarding investigative processes and investigation decisions
- **Flexible** – investigations will avoid unnecessary rules about the evidence providers use to demonstrate compliance

- **Targeted** – investigations will be focused on finding the facts relating to an issue and will target those areas which indicate potential non-compliance with the relevant community housing legislation of a jurisdiction

In addition to these principles Registrars and their officers will comply with the service standards noted below.

Procedural Fairness

The rules of procedural fairness will be applied throughout the investigation in order to safeguard the organisation or individual whose rights or interests may be affected and ensure that decision making is fair and reasonable.

This will include:

- informing people or organisations against whose interests a decision may be made, of the substance of any allegations against them or grounds for adverse comment in respect of them;
- provide people and organisations with a reasonable opportunity to put their case, whether in writing, at a meeting or otherwise;
- hear all parties to a matter and consider submissions;
- ensure that no person decides a case in which they have a direct interest;
- act fairly and without bias;
- maintain contact throughout the investigation with impacted parties; and
- conduct the investigation without undue delay.

Complying with confidentiality requirements

The identity of people making complaints will be protected where this is practical and appropriate.

Personal information that identifies individuals will only be disclosed or used with the permission of that individual unless there are possible findings of noncompliance tied to an individual's actions. In such cases, Registrars may necessarily use the individual names in background checks with other regulators and law enforcement, in subsequent proceedings or in referring the case to other bodies; without the permission of the individual.

The conduct and findings of investigations are subject to strictly controlled disclosure processes under the public sector special handling caveat of 'sensitive-investigations'. This means investigation reports will not be made publically available; however, components may be redacted for public release

or under freedom of information requirements. Providers are expected to brief their members, Boards and staff on investigation processes, findings and enforcement outcomes. Providers may seek the public release of an investigation report with permission of the Registrar.

Allegations or findings related to individuals or providers may be disclosed to other authorities where they relate to other jurisdictional interests. In addition, enforcement action arising from the investigation may be published on the Register of registered community housing providers in line with the provisions of the National Law.

Recording and storing information obtained during an investigation

All information that is collected during an investigation will be handled in accordance with applicable information and privacy laws. Evidence will be contained and treated as 'discoverable' in any later appeals process.

Investigative powers

Investigations are targeted at components of a provider's conditions of registration as outlined under S15 of the National law. As such powers to collect information and require attendance for interview are enacted under S15(2)(d)(e)(f)(g). Registrars' will as a norm seek voluntary information disclosure before enforcing disclosure.

Skills and experience

Persons appointed under delegation by a Registrar to undertake an investigation are expected to have:

- completed a CERT IV in Government Investigation or equivalent CERT IV;
- have four or more years experience undertaking investigations; or
- be completing a CERT IV and acting under the supervision of a person with the above qualifications or experience. (See AGIS 2011)

Registrars can also use a range of people to assist in investigations based on their skill set and experience. These may include other regulatory staff, consultant/contract staff, and/or staff seconded from other agencies.

7 Deciding to Investigate

Registrars have in place a formal assessment of complaints process; see NRSCH Complaints Management policy and AGIS 2011.

Decisions to initiate an investigation are formally documented and are not taken lightly by Registrars. They are guided by:

- A complaints assessment summary of the allegations including the information reviewed, the history of the provider, and, if relevant, the functional impact on the tenant experience if allegations are found to be true;

- Political or public sensitivities;
- Registrar's investigative and overall priorities;
- State/Territory Legislative requirements;
- Risks associated with the probable outcome of continued noncompliance, including the effect on agency programs and reputation
- Experience of similar cases or case law – especially across other jurisdictions;
- The effect of any other relevant advice;
- Whether an investigation by the Registrar would create a conflict of interest if undertaken by the Registrar and/or investigative staff;
- Whether or not another investigative body is better placed to conduct the investigation – remotely, in parallel or jointly with the Registrar's Office.

8 Investigation Reports

Investigation reports are to be concise and include:

- Key findings – including judgements against allegations and whether enforcement action appears warranted;
- Recommendations – usually related to the level of ongoing monitoring required, and/or the merits of the types of enforcement action relevant to any noncompliance identified;
- Scope – including details of investigating officers, the directed shape of the investigation and any adjustments made during the investigation (this may include an explicit statement of matters that sit outside the scope of the investigation);
- Evidence considered;
- Analysis; and
- Any relevant attachments.

9 Deciding to Close

Once initiated, an investigation can only be closed on the provision of an investigation report by the investigator. This policy requirement mitigates any sense of capture or pressure on the investigative process.

Decisions to close investigations (and any subsequent enforcement decision) are to be formally captured, made visible to affected parties, and subject to disclosure. Closure should include an assessment of allegations against a balance of probabilities of whether they are proven, unsubstantiated, warranting further investigation, or not warranting further investigation. In addition, the investigation may find on other issues impacting compliance with National Law uncovered during the investigation and assess the level of

proportional harm (by tenant and/or by organisational viability) and potential remedial actions for consideration by the Registrar.

Enforcement decisions arising from investigations are subject to the NRSCH Manage Enforcement Action Policy provisions.

Case closure meetings establish information disclosure processes relevant to the investigation. This includes how and in what form the investigation findings are put to the Provider. In addition, complainant/s should be notified of the closure of the investigation. Closure case meetings should also discuss and agree broader information sharing avenues including to: other Registrars; other pertinent enforcement/regulatory bodies; funding managers; shareholders; public statements; and Ministers.

10 Roles and responsibilities

The main roles and responsibilities for the implementation of this policy are as follows:

- Registrars of each participating jurisdiction will initiate and close investigations. Registrars are to brief the nature and scope of investigations to funding managers, other Registrars and other investigative bodies as appropriate.
- Senior staff in the Registrar's Office (regulation managers) will act as case managers for investigations – ensuring: the Registrar is kept informed; there is appropriate planning and guidance for investigators; that investigative staff are appropriately skilled and duly appointed under State/Territory arrangements; investigative probity; coordination with other investigative bodies; and quality assurance of findings.
- Experience officers in the Registrar's Office will be investigators for the case and be responsible for: preparation, conduct and closure of case; adherence to best practice procedures and the principles of regulation noted above; forming judgments based on the balance of probability; and providing an investigations report to close the case.

11 Sharing investigators

Registrars can provide investigation trained staff to support other Registrar's investigations on a formal request for support and if investigative resources are available. In such cases, inter-state investigators will be considered members of the office of the requesting Registrar for the conduct of that investigation. Such arrangements may be subject to cost-recovery between states/territories.

12 Review rights

The conduct of an investigation should allow all parties to voice their views on issues relating to noncompliance through an objective medium.

However, there may be occasions where affected parties (including the provider) disagree with findings of an investigation or believe the investigation did not accord with the principles noted under Section 6 above. In such circumstances, the affected party can seek internal review by request in writing to the primary Registrar. Where concerns are complex, the primary Registrar may seek the review services of another Registrar to review the investigation or another objective source.

13 Monitoring and evaluation

To assist national consistency, Registrars will brief other participating Registrars on the broad nature of ongoing investigations and any resulting enforcement action. In addition, Registrars will brief other Registrars on closure and lessons learnt from investigations. Investigations may be used to inform compliance assessment processes. Trends may be reported by Registrars in public reports and directly with Peaks and Funding bodies.

NRSCH policies will be reviewed regularly and updated as required. Following any reviews and approval this policy will be uploaded to the NRSCH website and all previous versions archived.

14 Legislation and compliance

:

- Community Housing Providers National Law(the National Law)
- Australian Government Investigations Standards (AGIS), 2011

15 Related documents

- NRSCH Complaints Management Policy
- [NRSCH Manage Enforcement Action Policy](#)
- NRSCH Assessment Policy

Document Control

The NRSCH Investigation Policy has been reviewed and endorsed at the following forums:

Progress meeting	24 May 2017
Registrars Forum	3 August 2017
Regulatory Advisory Group	28 November 2017

Document version control

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NRSCH operational policy will be reviewed annually or if there is a change in participating jurisdiction membership.