

NRSCH Information Access and Sharing – Policy

1. Background

This policy establishes the principles governing access to and dissemination of information created, collected, maintained and managed by the NRSCH.

The information sharing function of Registrars is essential in order to support the objects of the National Law and to accomplish the aims of the NRSCH. That is, to ensure a well governed, well managed and viable community housing sector that meets the housing needs of tenants and provides assurance for government and investors.

The purpose of this policy is to explain the circumstances under which the NRSCH will collect and disclose information about a registered community housing provider or a provider seeking registration under the NRSCH. The document also explains under what circumstances a Registrar will share information with other participating Registrars, housing agencies and third parties.

2. Scope

This policy has been agreed and adopted by all jurisdictions participating in the National Regulatory System for Community Housing (NRSCH)

The policy applies to all data collections stored in electronic and non- electronic formats that are owned, created, collected, managed and stored by the NRSCH.

3. Business rules

- Registrars will manage the sharing of information in accordance with the relevant provisions of the *Community Housing Providers National Law* (the National Law) including Section 10(1) and Section 26 of the National Law

4. Policy statement

Principles

The principles of good regulation that underpin the National Regulatory Code are recognised in the Information Sharing policy.

- **Proportionate** – Sharing of information is an appropriate balance of risk, intent, and the range of legislative instruments related to information disclosure.

- **Accountable** – Community housing providers understand why Registrars share information about entities and the reason for disclosure, and have a means to challenge the rationale.
- **Consistent** – There will be a consistent approach to sharing information across all participating jurisdictions
- **Transparent** – The NRSCH Information Sharing policy and information about the collection and disclosure of information will be accessible
- **Flexible** – Information sharing is not confined to a singular process but is adaptive to needs and reflects the role of Registrars and intelligence and performance monitoring bodies.
- **Targeted** – Information sharing is directed to support the objects of the national law and achieve the charter of the National system. Information sharing on specific entities is decided on a case-by-case basis and subject to disclosure law.

5. Types of information

The following are examples of the types of information that may be owned, created, collected, managed or stored by Registrars participating in the NRSCH:

- Information held on the national register including:
 - The name and identifying details of the entity
 - The category of registration of the entity
 - The primary jurisdiction of the entity
 - Each other participating jurisdiction in which the entity has community housing assets
 - The conditions to which the registration of the entity is subject
 - Details of any regulatory action to which the provider is subject
 - Details of regulatory action to which the provider is subject
 - Any other information about the entity that a registrar considers to be relevant for the purposes of the National Law
- Case studies
- Annual performance/compliance assessments of registered agencies/providers
- Evidence documentation submitted by providers to support their claims for suitability and/or compliance
- Advice from funding bodies, other regulators, or referring entities on the performance of specific providers
- Whistle-blower reports and complaints made against provider performance
- Reports on the performance of the regulator and the regulatory regime
- Key national and jurisdictional statistical data
- Trends and patterns in performance in the sector
- Policy documents and Guidelines

6. Information Access

6.1 Information publicly available

The NRSCH publishes the following information publicly:

- NRSCH Policy documents and Guidelines
- Information held on the national register

- Key national statistical sector data
- Key trends and patterns in the performance of the sector (if available)

6.2 Informal request for information

If the information sought has not been published it may be provided by the participating NRSCH jurisdiction in response to an informal request. These documents include:

- copies of correspondence, sent to us by the requester
- documents that contain only information about the requester
- documents that have already been made public in some other way
- other reasonable requests, as determined by the Registrar, for release of information that would not raise any potential public interest concerns.

The NRSCH may impose conditions in the use or disclosure of information that is released in response to an informal request.

6.3 Disclosure of information under Section 26 of the National Law

If the information sought is not published by the NRSCH or available by informal request, a Registrar may disclose information under the provision of Section 26 of the National Law.

In accordance with Section 26 of the National Law, information obtained by Registrars in the exercise of their functions may be disclosed if it is made:

- in connection with the administration or execution of the National Law or any other law; or
- with the consent of the person/ provider from whom the information was obtained; or
- with other lawful excuse.

Registrars will assess each request for the disclosure of information under Section 26 on a case by case basis.

7. Information Sharing

Registrars have specific statutory requirements under the Community Housing Providers National Law including:

- to provide information about the registration of entities and information about the compliance of registered community housing providers with community housing legislation – *Section 10 (1)(f)*
- to share information and to cooperate with Registrars of other participating jurisdictions for the purposes of community housing legislation – *Section 10 (1)(g)*
- to provide information and advice to the relevant Minister and Housing Agency in relation to the registration of entities and the regulation of registered community housing providers and any other matter under community housing legislation - *Section 10 (1)(h)*

Registrars are also required to collect and share information whilst exercising specific functions under the National Law, including:

- maintaining a Register of NRSCH registered providers jointly with Registrars of other participating jurisdictions assessing suitability of providers for registration
- determining the appropriate tier of registration
- monitoring compliance of providers
- investigating complaints about compliance with relevant legislation
- determining whether to exercise enforcement powers and whether to cancel registration – for example, when enforcement activity has been initiated by a lead registrar that may raise issues regarding compliance in another jurisdiction that need to be assessed

8. Information collection and sharing

Registrars agree to be open and transparent with providers on assessments of their performance, how Registrars are storing and using information, and where Registrars have decided to forward assessment and other information to a third party. This may not be the case in matters relating to criminality, corruption or serious non-compliance.

Registrars have specific legislative requirements to share information with Registrars from participating jurisdictions, Housing Agencies (or equivalent) and the relevant Minister. The sharing and collection of information with third parties administering other statutory functions or with no statutory cover will be considered on a case to case basis taking into consideration whether:

- the community housing provider has consented to the release of the information; or
- other laws permit or require a Registrar to disclose the relevant information in connection with the administration or execution of that law; or
- there are other lawful reasons for providing the information

8.1 Registrars from a participating jurisdiction

Section 10(1) (g) of the National Law supports the sharing of information with other participating jurisdictions for the purposes of the community housing legislation.

Participating registrars share information on the performance of providers based on the following drivers:

- where the provider or associated entities operate across jurisdictions;
- where it is necessary to confirm or build consistency in approach in accordance with the Charter and vision of the National Regulatory System;
- where it is necessary to build comparative pictures of performance necessary to report on the objects of the National law; and
- to reduce the red-tape burden on business.

Registrars may provide the following information to a Registrar participating in the NSRCH in relation to a community housing provider:

- Annual performance/ compliance assessments of registered agencies/ providers including evidence documentation
- Evidence of failure to meet regulatory code/ performance standards

- Changes in registration/ tier status of an organisation
- Current or previous exercise of enforcement powers, for example, issuing of notices of non-compliance
- Details of significant changes to corporate structure or the provider's affairs (restructure, funding withdrawal, termination of major leases)
- Details of major incidents that are likely to mean the provider has failed to comply with regulatory requirements in other jurisdictions, for example, allegation of fraud, serious risk to clients etc.
- Significant complaint investigations where, if allegations are proved, non-compliance with regulatory code/ performance standards are likely

8.2 Housing Agency (or equivalent)

Registrars in the NRSCH jurisdictions have a specific legislative function to share information and to cooperate with Housing agencies (or equivalent) in their jurisdiction.

Registrars provide the relevant housing agency (or equivalent) with the following information in accordance with Section 10(1)(h) of the *National Law*:

- details of registration and regulation of registered entities
- the issue of a Notice of intent to cancel registration
- information regarding providers whose application for Registration has been approved on the National Register, which is publicly available including:
 - Conditions to which registration is subject
 - Copy of any binding instructions
 - Appointment of a statutory manager
- Any other information to which the entity has consented to the release of to the housing agency

Under the provisions of “any other matter under community housing legislation” [S10(1)(h) and S26(a)(d)], Registrars may share the following information with a Housing Agency (or equivalent):

- Registrar's assessment of the “suitability” of a provider assessed under S10(1)(b) including positive and negative attributes related to the objects of the National Law (S3).
- Adverse indicators of performance warranting Registrar intervention into a provider's behaviour – especially related to the Registrar functions under S10(1)(d)(e)(f).
- Trends and patterns in performance in the sector related to funding program areas.
- Reports on the performance of the regulator and the regulatory regime mitigating risk in funding programs.

Housing Agencies (or equivalent) may also share information with Registrars in their jurisdiction on decisions made by them that materially affect the viability, capacity or operations of a registered provider including:

- substantive transfers of property to registered community housing organisations by government housing agencies
- notices of breaches of lease/contract arrangements or provider activity allegedly in breach of contract requirements
- termination of leases/contract
- major funding decisions and awarding of capital projects/allocations.

8.3 Ministers and their Offices

Information shared with Ministers and their staff will normally be confined to intelligence on the performance of community housing providers as a collective or in relevant segments. This may extend to the performance of the Registrar as a regulatory entity and the performance of regulation across the community housing sector.

Matters pertaining to specific commercial entities will be shared with Ministers and their staff where enforcement action has been taken, or an intervention is underway where there is a specific need to know.

8.4 Third parties administering other statutory functions

Registrars may share information on community housing providers in support of the administration or execution of another statutory agency's functions in accordance with Section 26(a) of the National Law. This is especially so in relation to the pursuit of offence provisions under another Act or licensing/registration decisions pertaining to other commercial arrangements.

Where a Registrar does not have the consent of the community housing provider the Registrar may share information under Section 26(a) of the National Law. A Registrar may:

- Share information with non-participating Registrars where there are providers of mutual interest information assisting with mutual recognition, red-tape reduction, and national consistency.
- Share information with other investigative bodies where the Registrar has commenced an investigation or complex intervention in order to establish the interests of other investigative bodies and reduce red-tape in investigation matters.
- Establish or verify information offered by a provider where the Registrar has some doubt as to the quality of information provided and/or the program risks associated with the performance of the provider so warrant.

Third parties may also have information that is relevant to Registrars' statutory functions. Examples could include another regulator taking enforcement action against, or deregistering, a provider. In addition where the Registrar is taking enforcement action there may be financial institutions with a legitimate interest and the Registrar may wish to share information with them about the enforcement action under way, for example the appointment of a statutory manager.

8.5 Third parties with no statutory cover

There are a range of third parties who are interested in the performance of community housing providers. These include peak bodies, representative groups and financial institutions.

Registrars share de-identified performance data and patterns on national trends for public, advocacy and research use.

Registrars will only share information on specific providers with such bodies with the permission of the provider. Registrars will also share information on patterns and

trends where that information supports broader understanding pertaining to the objects of the National Law and where they have the resources to do so.

9. Legislation and compliance

- National Law

Document Control

The NRSCH Information Sharing Policy was reviewed and endorsed at the following forums:

| Forum | Date |
|------------------------------|------------------|
| 1. Regulatory Advisory Group | 28 November 2017 |

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