

## **NRSCH Manage Enforcement Action – Policy**

### **1. Background**

Registrars have enforcement powers to ensure tenants and community housing property is protected in the event that a provider does not comply with the National Law (including the National Regulatory Code).

Registrars participating in the National Regulatory System for Community Housing (NRSCH) may take enforcement action if the Registrar believes a registered provider is not complying with the community housing legislation of a participating jurisdiction (section 17 of the National Law).

The purpose of this policy is to explain possible action where the provider has not demonstrated compliance with the National Law or the Regulatory Code following a compliance assessment or investigation.

### **2. Scope**

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

### **3. Business rules**

- Registrars will manage enforcement action in accordance with the provisions of the Community Housing Providers National Law
- All enforcement decisions and the rationale (to close and open) are to be captured in the national community housing regulatory information system (CHRIS)
- Registrars will ensure all information is collected and handled in accordance with applicable information and privacy laws

### **4. Policy statement**

Enforcement action is designed to achieve one of a number of outcomes. The outcome should be clear in pursuing action. Some of these outcomes maybe to:

- Maintain standards
- Reduce commercially corrupt influences
- Create a sense of justice
- Change behaviours and return a registered provider to a more compliant position
- Protect tenants and community housing property

## ***Principles***

Where there are issues of non compliance, the National Law gives Registrars a range of enforcement powers based on the following principles of good regulation:

- **Proportionate** – enforcement powers will be used only when necessary and in a way that is appropriate to the assessed level of breach or non-compliance
- **Accountable** – be taken by dually appointed decision makers, based on natural justice principles, and satisfying scrutiny and review
- **Consistent** – enforcement will be consistent regardless of the jurisdiction in which the provider operates
- **Transparent** – there will be clear and open communication with providers about enforcement processes and decisions
- **Flexible** – adopt the most appropriate tool in the escalation model pertinent to the desired outcome
- **Targeted** – enforcement will be focused on the core purposes of improving tenant outcomes and protecting vulnerable tenants, protecting government funding and equity, and ensuring investor and partner confidence.

## **5. Service delivery commitment**

- Registrars will not require information that identifies anyone who lives in residential premises, or require entry to residential premises occupied by a person, unless that person consents
- Registrars will ensure that requests to a provider to supply information, or inspect records or premises, relate to its assessment of whether the provider is complying with the National Law
- In making such requests, Registrars will document or refer to published reasons as to why the Registrar needs the information to make an assessment of compliance
- Registrars will not take enforcement action that materially damages the interests of tenants, the business of the provider or contractual or statutory interests of secured creditors and government housing agencies, unless the risk of non compliance is serious and urgent and all reasonable steps are taken to mitigate that damage

## **6. Approach to non-compliance**

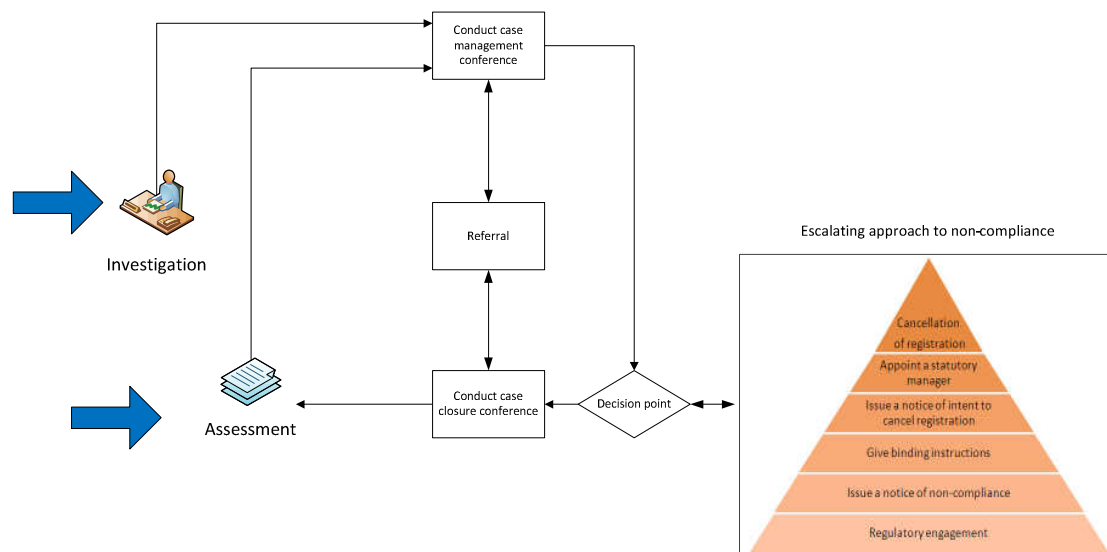
Performance and assessment data is used to inform a risk-based assessment of all registered providers to determine compliance with the National Law and the National Regulatory Code. This determines the nature of regulatory engagement and, where necessary, action.

The preferred approach to non-compliance is for a Registrar to choose the most appropriate enforcement tool from within an escalating tool set. In some cases this may mean a sequence of escalating responses depending on the outcome sought

and the level of egregious behaviour. Whilst a staged and escalated approach is the preferred response, a Registrar may move to any level of enforcement response permitted by the National Law, if circumstances warrant it. For instance, the appointment of a statutory manager can occur before the Notice of intent to cancel registration has been issued (Section 21.2 of the National Law).

If the matter is not serious or urgent, the Registrar will endeavour to work cooperatively to encourage the provider to remedy non-compliance before a Registrar takes enforcement action. The enforcement action and escalating approach is depicted in Figure 1.

**Figure 1: Approach to non-compliance**



## 6.1 Assessment

This is a review that seeks to ensure ongoing compliance with the National Regulatory Code and constitutes the minimum level of oversight that will be applied. The Registrar may also seek input from other relevant parties, such as the housing agency for the relevant jurisdiction or other Registrars in the case of a multi-jurisdictional provider. The Registrar uses the information in the compliance return and in the supporting documents to prepare a compliance assessment report. This report sets out the outcome of the assessment on tier and compliance, findings on performance and the reasons for the determination.

The compliance determination report will state whether the provider is compliant or non-compliant overall with the National Regulatory Code.

## 6.2 Investigation

An investigation may be initiated in response to new information received from the provider or other individuals or agencies that indicate that the provider may no longer be compliant. An investigation can be a useful enforcement action in its own right; however is often a necessary foundation process to taking more significant enforcement action.

## 7. The decision to take enforcement action

Before taking enforcement action, the Registrar will consider:

1. The public interest including the interests of tenants, the providers, secured creditors and government housing agencies (where appropriate);
2. The history and attributes of the entity;
3. The principles noted above.

### 7.1 Determining the appropriate level of enforcement action

There are degrees of non-compliance and a view about its seriousness will determine the enforcement action. The following factor may influence the decision in relation to the appropriate enforcement action to be taken:

- The seriousness of the non-compliance, for example,
  - Does it materially affect residents?
  - Will it impact on the viability of the provider?
  - Are there health and safety implications?
- The number of areas where there is non-compliance
- The urgency of the non-compliance being resolved, for example,
  - Is it illegal?
  - Does it pose an immediate health and safety risk?
  - Is there an insolvency threat?
- The track record of the provider
  - Is this the first notice?
  - Have they resolved issues before?
- The providers responsiveness to findings
- Whether the non-compliance results from actions within the control of the provider or whether it is caused by failure or action on the part of a third party
- The governance and management capacity to make changes
- Whether progress is already being made or there are plans in place which the analyst is confident will resolve the issues
- The time required to make the changes
- CEO and Board actions and reactions

## 8. Legislation and compliance

- Community Housing Providers National Law

## 9. Related documents

- [Enforcement guidelines for Registrars](#)
- NRSCH Investigation Policy (under development)
- [Internal review and external appeals FAQ](#)

## 10. Further information

### *Internal reviews and appeals*

A registered provider can request an internal review if it disagrees with a decision made by the Registrar. Decisions that will be reviewed are those that, according to

the Community Housing Providers National Law, can be appealed to an external appeal tribunal. A request for an internal review must be made to the Primary Registrar within the 'relevant appeal period' following receipt of the original decision.