



Registrar of
Community Housing

NSW Registrar of Community Housing

NSW Investigation Procedure

The functions of the Registrar of Community Housing (the Registrar) include investigating complaints about the compliance of registered community housing providers (CHPs) with community housing legislation – *Community Housing Providers (Adoption of National Law) Act 2012 (NSW)* Section 10(e).

Most complaints about the non-compliance of CHPs with the requirements of the National Law are managed using the Enquiry and Complaint Procedure; however, where a complaint reveals potentially serious non-compliance, or a pattern of potential non-compliance with the Regulatory Code or National Law, the Registrar may decide to initiate a formal investigation.

This document sets out the procedure for staff at the Registrar of Community Housing for conducting a formal investigation.

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1. Reaching a Decision to Investigate

Compliance Officers or Investigators are to gather as much information as possible about the alleged incidents to assist in assessing the matter. This may include contacting the complainant and/or the CHP to seek additional information.

The Compliance Officer or Investigator will complete an assessment:

- identifying the issues raised;
- noting the evidence on hand;
- identify any potential non-compliance with the National Law or Regulatory Code;
- consider whether the CHP has addressed the issue; and
- make a recommendation regarding the appropriate course of action.

Where the issues raise concerns of non-compliance which are not serious, or have been rectified by the CHP, and require no further action, the case may be referred to the Investigation Manager or Principal Compliance Officer for review and closure.

Where the issues raised are more complex, and there is potential serious non-compliance, the case will be referred to a case conference for discussion and a decision on the most appropriate action.

The case conference should include the Registrar, Principal Compliance Officers, Investigators, Compliance Officers and any other person who has information or an interest in the issues to be considered.

Where a decision is made at the case conference to conduct an investigation or inspection, an officer will be identified as the investigator or lead compliance officer. The decision is to be minuted and attached to the relevant case.

The Community Housing Regulatory Information System (CHRIS) is the system used by all jurisdictions to record information about registered CHPs. Where it has been decided to conduct an investigation, an investigation case in CHRIS must be created.

The creation of a TRIM file is also required to retain documents in accordance with the requirements of the State Records legislation. This should be created under the CHP's master file for cases and will need to include the name of the CHP, the case number, and the word investigation in the title.

2. Appointing an Investigator

Where the outcome of a case conference is to conduct a formal investigation, the Registrar will appoint an investigator to formally investigate the case.

The appointed investigator must be an employee of the Department of Family and Community Services and hold an identification card which complies with section 11(3) of the National Law. For the purposes of the legislation contingent labour staff are not considered to be employees of FACS.

2.1 Investigator qualifications

The NRSCH policy requires that investigations be conducted in accordance with the AGIS standards. The standard requires that an investigator hold as a minimum qualification a Certificate IV in Government Investigations as set out in the Public Services Training Package (PSP04).

This qualification should be obtained before an officer is primarily engaged as an investigator; otherwise the officer should be under the supervision of a qualified investigator.

2.2 Appointment of assistants

The Registrar may appoint assistants to support the investigator. Assistants may be contracted expertise, support staff or staff from another government body. Assistants will work under the direction of the appointed investigator and can only act pursuant to the power authorised by the appointed investigator. Assistants are bound by the same principles of conduct as the appointed investigator.

3. Ethical Conduct

Investigations must be conducted in an ethical manner and in accordance with the code of conduct and the following principles of ethical behaviour:

- **work legally:** comply with public sector and FACS, NRSCH and RCH codes, practices, policies and procedures;
- **conflicts of interest:** report any perceived or actual conflict of interest applying in respect of the CHP or others subject to the investigation;
- **accountability:** it's your responsibility to be aware of the Code of Conduct and apply it;

- **honesty and openness:** be open, honest and consult with your manager as well as NRSCH, RCH and FACS policies and government directions when you need to resolve an ethical dilemma. Conduct your investigation in an open and honest manner. Inform the CHP and any affected person of the allegations made against them. You must ensure that you give the CHP the opportunity to respond to the allegations and evidence obtained and ensure that you follow the guidelines of procedural fairness;
- **professional behaviour:** be professional and act in an appropriate way when you interact with colleagues, clients and the general public;
- **respect individual differences:** we don't tolerate discrimination, harassment or bullying;
- **work co-operatively:** as a member of a team, you accept your fair share of work and stick to working commitments; and
- **report any breaches of the code of conduct:** you're expected to report conflicts of interest, suspected corruption or other misconduct.

4. Investigation Planning

The investigator will develop a detailed investigation plan including investigation milestones and actions for approval by the Principal Compliance Officer or the Registrar.

The investigator will need to determine the precise allegations to be put to the CHP and draft correspondence to the Chairperson of the CHP for the Registrar's signature advising that an investigation has commenced.

5. Ensuring Procedural Fairness

Investigator must provide the CHP an opportunity to respond to the allegations. The Investigator should offer to arrange an interview with the affected person or the appropriate officer from the CHP providing no less than 24 hours notice and preferably in writing.

The CHP is to be advised that they may have a legal representative present when they are interviewed. The investigator should clarify that the role of a legal representative is not to answer on behalf of their client but to provide their client with appropriate advice.

The CHP is to be provided sufficient detail of the allegations to enable them to respond to the allegations.

The CHP or its representative is to be given an opportunity to review the record of their interview to confirm its accuracy.

6. Evidence Gathering

The investigator may use a number of evidence sources to assess the allegations and the CHPs compliance with the Regulatory Code and National Law. This includes (but is not limited to):

6.1 Internal records

Records held by the Registrar should usually be reviewed in the first instance. This includes evidence submitted as part of a CHP's registration or compliance returns, and the Registrar's record of complaints and notifications under the National Law.

6.2 Open source intelligence

The investigator should collect information from publically available sources. This might include court of tribunal decisions, media publications or social media websites.

6.3 Other government agencies

All of the CHPs regulated by the Registrar of Community Housing have links with other regulator or funding bodies. The investigator should identify these regulators and sources of funding to request intelligence pertinent to the investigation.

6.4 Information requests

When requesting information from the CHP in accordance with Section 15(2)(e) of the National Law, the investigator must be clear as to why the provision of information is necessary to the assessment of compliance with community housing legislation. Information requests must be signed by the investigator or the Registrar.

6.5 Site visits and interviews

All site visit plans must be formally approved by the Principal Compliance Officer and the Registrar before being undertaken. Site visits and interviews are to be conducted by a minimum of two officers, one of whom must be the appointed investigation.

The Investigator will interview all complainants and any other key witnesses and record their statements or make a record of the conversation.

People interviewed are to be given an opportunity to review the record of their interview to confirm its accuracy. Where contemporaneous notes are made during the interview these should be typed and sent to the witness as soon as possible on return to the office. Where a voice recording has been made a transcript should be provided as soon as practicable.

Witnesses who are not comfortable with any form of formal statement should still be allowed to provide information which will be noted in a file note but not formally recorded. Their identity is to remain confidential or if they wish it can be recorded anonymously.

7. Review and Analysis of Evidence

The Investigator should review information gathered and consider whether the evidence supports the allegations of non-compliance with the National Law and Regulatory Code.

For example, a CHP that does not act in accordance with the Residential Tenancies Act, 2010 is also likely to be non-compliant with the Regulatory Code as they will not be complying with Clause 4 Governance - The community housing provider is well-governed to support the aims and intended outcomes of its business, specifically in relation to the following:

- (c) complying with legal requirements and relevant government policies

Consideration should be given to whether further evidence is required, or advice such as legal advice is required. This may include case conferences with the Principal Compliance Officer, the Registrar and other relevant individuals.

8. Reporting to the Registrar

The investigator will provide regular reports to the Principal Compliance Officer and the Registrar throughout the investigation in order to:

- update and review the current situation;
- seek approval for deviation from agreed investigation planning;
- consider strategies and evidentiary requirements regarding identified potential non-compliance; and
- consider additional resourcing.

The Investigator will draft a detailed working paper on the investigation workings and also draft an executive report on their findings for the Registrar.

All relevant evidence should be referenced and included in the investigation working paper. However the executive report should not reference or identify any complainant or witnesses.

The Investigator will then arrange a case conference with the Principal Compliance Officer, the Registrar and other relevant individuals to discuss the findings and recommendations.

Once the executive report is approved by the Registrar, the Investigator will arrange for a copy of the report to be sent to the Chairperson of the CHP for any comment. This is required to allow procedural fairness. The Chairperson should be given at least 14 days to respond.

Note: The decision to make the Executive Summary Report available to the CHP will be made by the Registrar.

9. The Outcome of the Investigation

On receipt of the CHP's comments, or the expiration of the time given for comment, the Investigator will arrange a case conference with the Principal Compliance Officer, the Registrar and other relevant individuals in order for the Registrar to make a final decision on any enforcement action to be taken.

The executive report and an enforcement briefing paper where appropriate should be provided to participants in the case conference to inform their considerations.

9.1 When the outcome is to take enforcement action

Where the Registrar has decided to take enforcement action, the appropriate enforcement notice should be prepared by the Investigator for the Registrar's signature.

Once signed, the enforcement notice should be sent to the CHP's Chairperson via the Community Housing Regulatory Information System (CHRIS).

A new enforcement action will need to be recorded on CHRIS. This can be done by clicking on the Enforcement Tab in the related Case or Assessment. Once completed the EA should be submitted to the Principal Compliance Officer for approval.

In a number of instances the CHP will be asked to provide an action plan and then given further time to demonstrate compliance. If this is the case then the due date in the Enforcement Tab should be the date the action plan is due to be lodged. Once the action plan is lodged and approved then the due date will need to be updated to show the date that the CHP will need to lodge evidence of compliance.

10. Information Sharing

Sharing information is to be at the discretion of the Registrar.

The Registrar when considering any recommendation to conduct an investigation will determine whether or not to share information with other organisations such as ASIC, ACNC or ICAC.

The Registrar does have an obligation to share information with the Registrar's of other jurisdictions when the CHP operates in jurisdictions other than NSW and when the Registrar exercises his enforcement powers.

The Registrar may also share information with the funding agency and seek information on a CHP's contract performance from its funding agency (FACS).

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