

Queensland State Regulatory System for Community Housing (QSRSCH)

Enforcement Guidelines

Information for **State Providers**



**Queensland
Government**

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About the Queensland State Regulatory System for Community Housing



The Queensland State Regulatory System for Community Housing (QSRSCH) is a regulatory system designed to contribute to a well governed and managed community housing sector and provide a platform for the ongoing development and viability of the community housing sector in Queensland.

State providers are councils or other identified organisations that deliver social or affordable housing and associated services to people on very low, low or moderate incomes.

These services are covered by the social and affordable housing policies of government housing (policy/funding) agencies.

The key objectives of the QSRSCH are to:

- provide a consistent regulatory environment to support the growth and development of the community housing sector
- pave the way for future housing product development
- reduce the regulatory burden on housing providers.

A suite of Operational Guidelines direct the overall operation of the QSRSCH in accordance with the Queensland State Regulatory Code and the *Housing Act 2003*.

The scope of the Registrar's functions under the QSRSCH is limited to regulatory activities. The state housing agency will continue to have responsibility for policy and funding decisions.

Purpose

These guidelines should be read in conjunction with:

- the *Housing Act 2003*
- the Queensland State Regulatory Code
- any other guidelines made under the *Housing Act 2003*, or the QSRSCH.

Registrar

The Registrar is appointed under the *Housing Act 2003*, to regulate state-based community housing providers within Queensland.

The Registrar has the power to register providers, monitor provider performance, to intervene when non-compliance occurs, and to cancel the registration of non-compliant providers.

Enforcement powers

The *Housing Act 2003* gives the Registrar the power to take enforcement action if the Registrar reasonably believes a community housing provider is not complying with the conditions of registration.

Under the *Housing Act 2003*, The Registrar has a range of enforcement powers, including:

- issuing a notice of non-compliance
- giving Binding Instructions
- issuing a Notice of Intent to Cancel Registration
- appointing a statutory manager.

In exercising these powers under the *Housing Act 2003*, a Registrar is required to comply with these Enforcement Guidelines.

The purpose of these Enforcement Guidelines is to ensure that the use of enforcement powers is:

- consistent under the Housing Act 2003
- consistent with state and national principles of good regulation.

The *Housing Act 2003* gives the Registrar the power to take enforcement action if the Registrar reasonably believes a state provider is not complying with conditions of registration.

Enforcement principles and approach

Principles

The Registrar has enforcement powers to ensure that tenants and community housing property are protected if a provider does not comply with the *Housing Act 2003* and the Queensland State Regulatory Code.

The enforcement approach is based on a spirit of encouraging state providers to remedy non-compliance, before the Registrar takes enforcement action. Providers self-assessing and the Registrar identifying potential non-compliance early will be encouraged, to promote a culture of compliance as industry best practice.

Providers are responsible for demonstrating and maintaining compliance with the *Housing Act 2003* and will be expected to be proactive in reviewing, disclosing and addressing issues of non-compliance as they arise.

Where there are issues of non-compliance, the *Housing Act 2003* 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 risk
- **Accountable** – able to justify regulatory assessments and be subject to scrutiny
- **Consistent** – enforcement will be consistent across Queensland
- **Transparent** – there will be clear and open communication with providers about enforcement processes and decisions

Enforcement approach

Registrars encourage compliance by providing guidance on the performance and legal requirements that providers must meet under the *Housing Act 2003* and the Queensland State Regulatory Code.

Performance and assessment data is used to inform a risk-based assessment of all state providers to determine compliance with the *Housing Act 2003* and the Queensland State Regulatory Code. This determines the nature of regulatory engagement and, where necessary, action.

Risk-based engagement recognises:

- the impact of complex business structures
- potential or actual problems from providers taking on risky activities
- potential or actual problems due to weaknesses in management or governance.

For providers with a simple business model, engagement will be minimal.

All providers will generally be informed of the expected level of engagement. This engagement will be regularly reviewed while considering changing business focus and complexity and performance.

Regulation will be responsive, proportionate and consistently applied.

In broad terms risk-based engagement will allow the Registrar to:

- maintain a minimum level of regulatory engagement for consistently well-performing providers (for these providers more reliance is placed on monitoring basic data and health checks and on the provider advising the regulator of any change of circumstances).
- engage with providers more intensively where higher levels of risk are identified, in ways that reflect their particular circumstances.

When a risk or series of risks result in non-compliance, the Registrar will use a staged and escalated approach to bringing the provider back to compliance, where the Registrar considers this approach to be appropriate. This recognises that early, open and cooperative enforcement can bring about the quickest and most effective return to compliance in most cases and is least intrusive into the affairs of providers.

If the matter is not serious or urgent, the Registrar will endeavour to work cooperatively with the provider to address issues of non-compliance in the first instance, that is, through regulatory measures.

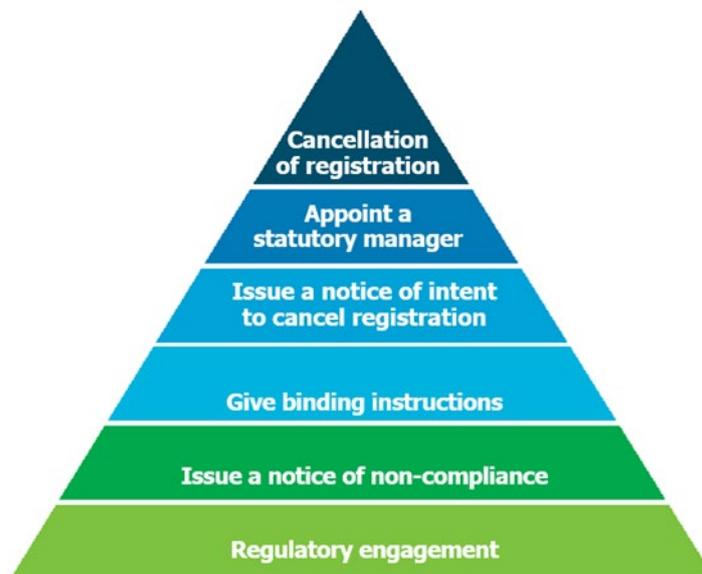
Where a provider is unable or unwilling to sufficiently address issues of non-compliance, or where the non-compliance is significant, the Registrar may use enforcement powers to bring the provider back to compliance or to cancel its registration.

The preferred approach is for the Registrar to progressively escalate the Registrar's responses until a provider returns to compliance. While this is the preferred response, the Registrar may move to any level of enforcement response permitted by the *Housing Act 2003*, if the circumstances warrant it.

For example, there may be situations where it is appropriate for the Registrar to move straight to a notice of intent to cancel the provider's registration.

The escalating approach to non-compliance is depicted in Figure 1.

Figure 1: Escalating approach to non-compliance



Guidance on enforcement action

Information and inspection powers

Under a provider's conditions of registration set out in section 37D of the *Housing Act 2003*, a Registrar may require the provider to do any or all of the following:

- produce information about the provider's affairs or the exercise of its functions, including information about arrangements with others regarding the exercise of its functions, and including copies of documents or records
- ensure that a suitably qualified officer of the provider attends a meeting with the Registrar to answer questions about the affairs of the provider,
- allow the Registrar to carry out an inspection of the provider's premises or records, at any reasonable time.

A Registrar 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.

A Registrar will ensure all information is collected and handled in accordance with applicable information and privacy laws.

A Registrar will ensure that requests to a provider to supply information, or to inspect records or premises, relate to its assessment of whether the provider is complying with the *Housing Act 2003*. In making such requests, a Registrar will document or refer to published reasons as to why the Registrar needs the information to make an assessment of compliance.

Enforcement action

A Registrar can take the following enforcement actions under the *Housing Act 2003*:

- *Issuing a notice of non-compliance* (section 38A of the *Housing Act 2003*). The Registrar may issue a notice in writing to the provider identifying the matters it must address in order to avoid cancellation of its registration.
- *Giving Binding Instructions* (section 38B of the *Housing Act 2003*). The Registrar may give written instructions to the provider about the manner in which the provider is to address any matter that is the subject of a notice of non-compliance.
- *Issuing a Notice of Intent to Cancel Registration* (section 38C of the *Housing Act 2003*). The Registrar may issue a written notice of intent to cancel registration to the provider if the Registrar is of the opinion that either:
 - the provider has not addressed the matters identified in a notice of non-compliance within the specified period
 - the provider has not complied with Binding Instructions within the specified period, or
 - the provider's failure to comply with the community housing legislation is serious and requires urgent action.
- *Appointing a statutory manager* (section 38D of the *Housing Act 2003*). The Registrar may appoint a statutory manager to conduct such of the affairs and activities of the provider as relate to the community housing assets of the provider, only if either of the following occurs:

- A Notice of Intent to Cancel Registration has been issued to the provider, or
- the Registrar forms the opinion that the provider has failed to comply with community housing legislation or Binding Instructions and the provider's failure to comply is serious and requires urgent action.

The Registrar will not require information that identifies anyone who lives in a residential premise, or require entry to a residential premise, unless the person gives consent.

General considerations when deciding whether to take enforcement action

Registrars generally take enforcement action if non-compliance is significant and requires more than regulatory engagement to ensure change is made and compliance is achieved. The sections following outline how the Registrar will make decisions about enforcement actions.

Before taking enforcement action, the Registrar should consider, and balance, the interests of:

- tenants of the provider
- the provider, in respect of the community housing portion of its business activities
- secured creditors and government housing agencies, to the extent required by the community housing legislation of Queensland
- other relevant interests, consistent with the object of the *Housing Act 2003* to promote confidence in the good governance of registered community housing providers so as to facilitate greater investment in that sector.

Consistent with the principles of good regulation, a Registrar will not take enforcement action that is likely to leave the provider less able to comply with the *Housing Act 2003* or less able to remedy the compliance issues identified by the Registrar.

A Registrar will not take enforcement action that materially damages the interests of tenants, the business of the provider, or the contractual or statutory interests of secured creditors and government housing agencies, unless the risk of noncompliance is serious and urgent and all reasonable steps are taken to mitigate that damage.

In deciding whether to take enforcement action, the Registrar should consider relevant information in order to form a judgement about whether a provider is complying with the community housing legislation, including but not limited to:

- any information or reports provided by the community housing provider (or a failure to provide adequate information or reports)
- information obtained from any information request or inspection carried out by the Registrar or authorised officer
- any relevant information provided by a tenant, another body that regulates the provider, creditors or government housing agencies of the provider.

Serious and urgent matters

A matter will be serious and require urgent action where the provider's failure to comply creates a risk that is likely or certain to take shape and is significant or severe in its consequences for community housing tenants or assets.

A serious and urgent matter requires the Registrar to take enforcement action to ensure that tenants and community housing assets are appropriately protected.

A matter that is serious and requires urgent action includes, but is not limited to:

- an act, omission or event that endangers the safety or security of tenants
- a significant threat to the financial viability of the provider
- a significant fraud, theft, corruption or dishonesty by an employee or member of the board of the provider.

The Registrar may also consider other matters are serious and urgent based on a risk assessment that considers the consequences of failing to take enforcement action.

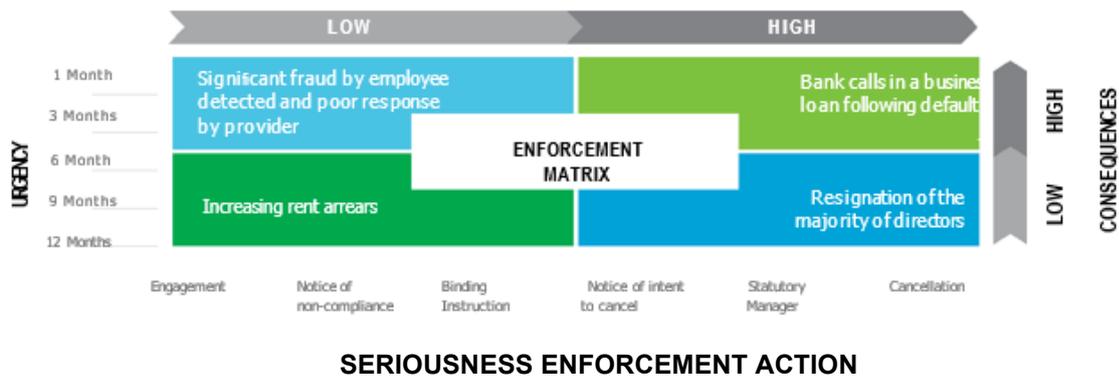
The seriousness and urgency of non-compliance is considered according to a risk matrix to determine the appropriate enforcement action, as illustrated in Figure 2.

Triggers and scope of enforcement action

The enforcement powers in the *Housing Act 2003* are framed broadly to allow the Registrar to undertake proportionate and targeted action based on their judgement of the consequences of a provider’s non-compliance with the *Housing Act 2003*.

The triggers and scope of enforcement action described in the following section are intended to be illustrative of how the principles of good regulation are applied but are not exhaustive because it is not possible to identify all possible situations where enforcement action may be justified.

Figure 2: Enforcement matrix demonstrating possible financial and governance scenarios and possible actions



Notice of non-compliance

The situations in which the Registrar could consider issuing a notice of non-compliance include, but are not limited to, situations where the provider has failed to comply with the community housing legislation and either:

- the non-compliance is not trivial or administrative in nature
- the non-compliance is repeated

- the non-compliance is wilful, systemic in nature, or involves dishonesty, or
- the provider has a history of non-compliance and/or a poor response to rectifying non-compliance.

When issuing a notice of non-compliance, the Registrar must:

- identify the matters required to be addressed in order to avoid cancellation of the provider's registration for not complying with the community housing legislation
- specify a reasonable period in which those matters are to be addressed
- provide a copy of the notice to the funding arm of the Housing Agency in Queensland.

Where the provider is willing and able to remedy the non-compliance, the Registrar may issue subsequent notices of non-compliance providing an extended period to address the matters of non-compliance.

The situations in which the Registrar could consider issuing subsequent notices of non-compliance include, but are not limited to, situations where remedial action by the provider is well underway but not complete, or where remedial action by the provider relies on the action of a third party that is underway but not complete

Binding Instructions

The Registrar may give written instructions to a provider about the way the provider should address any matter that is the subject of a notice of non-compliance issued to the provider.

The situations in which the Registrar could consider giving Binding Instructions include, but are not limited to, situations where either:

- the provider has not addressed a matter identified in a notice of non-compliance within the specified period and the Registrar has reasonable concerns about the willingness or capacity of the provider to identify an appropriate manner in which to address the matter, or
- the Registrar forms the opinion that the provider lacks the willingness or capacity to identify an appropriate manner in which to address a matter that is identified in a notice of non-compliance that has been issued or will be issued at the same time as the Binding Instructions are given.

Binding Instructions require action to rectify a matter identified in a notice of non-compliance either previously given to the provider or given to the provider at the same time as the Binding Instructions. For example, Binding Instructions may:

- require action to address significant deficits in the skills, experience and performance of a provider's board through changes to board membership (in response to a non-compliance related to performance outcome 4 of the *Queensland State Regulatory Code*)
- require action to remedy a serious breach of probity through changes to the provider's systems for preventing, detecting, reporting on and responding to instances of fraud, corruption and criminal conduct (in response to a non-compliance related to performance outcome 5 of the *Queensland State Regulatory Code*)
- requiring action to prevent a significant risk of insolvency (in response to a non-compliance related to performance outcome 7 of the *Queensland State Regulatory Code*)

- requiring action to ensure that tenants are housed to a reasonable standard (in response to a non-compliance related to performance outcome 1 of the *Queensland State Regulatory Code*).

Consistent with the principles of good regulation, the Registrar will try to avoid unnecessary prescriptions and impositions on how providers organise their business, provided that this does not limit the Registrar's ability to require action that will significantly improve the ability of the provider to rectify non-compliance.

Notice of Intent to Cancel Registration

A Registrar may issue a Notice of Intent to Cancel Registration where:

- the provider has not addressed the matters identified in a notice of non-compliance within the period specified in the notice
- the provider has not complied with Binding Instructions issued to the provider within the period specified in the instructions, or
- the provider's failure to comply with the community housing legislation is serious and requires urgent action.

When issuing a Notice of Intent to Cancel Registration, the Registrar must:

- specify the matters the Registrar considers warrant cancellation of registration, and
- specify a reasonable period of at least 14 days for the provider to satisfy the Registrar that its registration should not be cancelled.

A Registrar may extend a notice of intent to cancel, at the request of the provider, if there are good reasons for doing so. Good reasons may include situations where remedial action by the provider is well underway but not complete, and the provider has demonstrated the willingness and capacity to pursue the remedial action.

Statutory manager

The situations in which the Registrar can appoint a statutory manager are where:

- a Notice of Intent to Cancel Registration has been issued to the provider, or
- the Registrar forms the opinion that the provider has failed to comply with the community housing legislation or binding instruction and the provider's failure to comply is serious and requires urgent action.

In appointing a statutory manager, the Registrar is attempting to protect tenants and/or community housing assets in circumstances where the provider lacks the willingness or capacity to bring itself back to compliance or to manage its affairs in an orderly way before its registration is cancelled.

Examples of where a provider will be considered to lack this willingness or capacity are where:

- the provider lacks a properly constituted governing body, to put a governing body in place and hand back control of the provider to the new governing body
- the provider lacks the willingness or capacity to undertake actions necessary to transfer community housing assets to another registered provider following the issuing of a notice of intent to cancel their registration

- a bank triggers an agreement between itself, the provider and a government housing agency because of a default on a financial covenant and the provider lacks the willingness or capacity to undertake actions necessary to meet its obligations under the agreement
- the provider lacks the willingness or capacity to undertake actions necessary to protect tenants from eviction following a secured creditor or corporate regulator appointing a receiver or administrator.

The Registrar will usually specify an initial period of appointment for the statutory manager. The Registrar can amend the period of appointment for the statutory manager. While there is discretion in the period of appointment, it is expected that in ordinary circumstances a statutory manager would be appointed for between three and six months, and in complex circumstances for no more than 12 months.

A statutory manager's expenses while conducting the affairs and activities of a registered community housing provider are payable by the provider.

Notice of Cancellation of Registration

The Registrar may issue a Notice of Cancellation of Registration where:

- the provider has been wound up
- the provider has applied for cancellation, or
- the Registrar has issued a Notice of Intent to Cancel Registration and the provider has not, within the time specified in the notice, satisfied the Registrar that its registration should not be cancelled.

If the notice of cancellation of registration follows a Notice of Intent to Cancel Registration, the Registrar will list the reasons for cancellation and the date of effect of cancellation.

The Queensland Registrar will develop and apply a common set of operating procedures to ensure the consistent use of enforcement powers.

Publication of enforcement action

The Registrar must record on the publicly available Queensland State Register:

- a copy of any Binding Instruction issued to a provider
- a copy of any Notice of Intent to Cancel Registration
- details of any appointment of a statutory manager, including a copy of the relevant instrument of appointment, and
- whether a provider's registration has been cancelled, and details of any cancellation, including a copy of any Notice of Cancellation issued.

Except in prescribed circumstances, other forms of regulatory engagement and enforcement action between a Registrar and provider are subject to non-disclosure requirements.

Consistency and transparency of enforcement action

The Queensland Registrar will develop and apply a common set of operating procedures to ensure the consistent use of enforcement powers. For example, the Registrar will use a standard form for issuing Binding Instructions and appointing a statutory manager.

The Registrar will develop and apply a common set of communication procedures to ensure clear and open communication with providers about enforcement processes and decisions.

Appeals

Providers may appeal to the Appeal Unit in relation to the following enforcement decisions of a Registrar:

- a decision to issue Binding Instructions
- a decision to appoint a statutory manager
- a decision to cancel the entity's registration.

The appeal process will follow the provisions of the *Housing Act 2003* and the procedures of the Appeal Unit.

Glossary

Appeal Unit

The Housing Appeals and Review Unit within the Department of Housing in Queensland.

Binding Instructions

Written instructions given by a Registrar to a provider to rectify the provider's non-compliance.

Community Housing

Housing for people on a very low, low or moderate income or for people with additional needs that is delivered by non-government organisations.

State Community Housing Asset

- a) land vested in the provider by or under the community housing legislation of Queensland, or
- b) land acquired by the provider wholly or partly with funding provided by a housing agency of Queensland, or
- c) land vested in the provider on which a housing agency of Queensland has constructed housing or made other improvements, or
- d) funds provided to the provider by a housing agency of Queensland for the purposes of community housing, or
- e) any other asset of the provider that is of a class of assets declared by the community housing legislation of Queensland as community housing assets for the purposes of the *Housing Act 2003*.

Community Housing Legislation

The *Housing Act 2003* as applied in Queensland, together with any other legislation declared to be community housing legislation by the laws of Queensland.

Community Housing Provider

An organisation that provides community housing.

Evidence Guidelines

Guidelines that describe the performance indicators and evidence sources for the assessment of providers against the *Queensland State Regulatory Code*.

Housing Agency

A body, agency, or officer declared to be a housing agency of Queensland by the community housing legislation of Queensland for the purposes of the provision of the *Housing Act 2003* in which the expression occurs.

Housing Act 2003

The Queensland legislation through which the QSRSCH has been introduced.

Queensland State Register

A single state-based database with the details of all registered community housing providers that is made publicly available.

Queensland State Regulatory Code

The performance requirements that registered housing providers must comply with in providing community housing

Queensland State Regulatory System for Community Housing (QSRSCH)

A Queensland state-based system of registration, monitoring and regulation of community housing providers to encourage the development, viability and quality of community housing to promote confidence in the good governance of registered community housing providers so as to:

- facilitate greater investment in the sector
- make it easier for community housing providers to operate in Queensland, and
- identify appropriate entities to which government funding for community housing might be provided under other legislation or policies of Queensland.

Operational Guidelines

The suite of guidelines that governs the operation of the regulatory system including the Evidence Guidelines and these Enforcement Guidelines.

Participating Jurisdiction

The state of Queensland.

Primary Registrar

The Queensland Registrar – the Registrar for the state of Queensland in which the provider undertakes its community housing activity.

Statutory manager

A Registrar-appointed manager to conduct the affairs and activities of the provider as they relate to the provider's community housing assets if:

- a notice of intent to cancel registration has been issued to the provider, or
- the registrar forms the opinion that the provider has failed to comply with community housing legislation or Binding Instructions and the provider's failure to comply is serious and requires urgent action.

Please note: some common terms may have slightly different definitions in the *Housing Act 2003*, or QSRSCH.

More information

For further information on the QSRSCH for local governments please visit:
<https://www.business.qld.gov.au/industries/service-industries-professionals/housing-accommodation/community/registration>

The Queensland Registrar, DHPW can be contacted by:

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