



Government
of South Australia

Housing Safety Authority



Compliance and Enforcement Policy

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Compulsory considerations

<ul style="list-style-type: none"> This policy has been reviewed in its entirety for relevance and is up to date.
<ul style="list-style-type: none"> All feedback, issues and questions have been considered and addressed.
<ul style="list-style-type: none"> This policy complies with the SA Housing Authority Policy Framework and will meet all monitoring, review and evaluation processes required, at least every two years.
<ul style="list-style-type: none"> This policy has been designed and will be implemented in a culturally inclusive and competent way to reduce or eliminate, where possible, external barriers experienced by Aboriginal people when accessing support and services.
<ul style="list-style-type: none"> All records of policy development will be recorded in the Objective system in accordance with the SA Housing Authority Records Management Policy
<ul style="list-style-type: none"> Corporate and organisational risks have been considered and assessed.
<ul style="list-style-type: none"> Staff will be notified of any policy changes when approved.



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Introduction

The Housing Safety Authority (**Authority**) oversees the administration of the *Housing Improvement Act 2016 (Act)* and the *Housing Improvement Regulations 2017 (Regulations)*, which ensure residential premises meet minimum housing standards within South Australia.

Formerly known as the Housing Improvement Branch (**HIB**), the HIB was re-branded in 2016 as the Housing Safety Authority with its primary purpose to address minimum housing standards that expose occupants and visitors to a health or safety hazard.

This document sets out the framework adopted by the Authority to achieve compliance with the Act. It outlines the enforcement powers, functions, priorities and strategies of the Authority.

Strategic Goals

The Authority has strategic goals, which include:

1. Ensuring housing meets prescribed minimum housing standards
2. Imposing rent control on unsafe or unsuitable properties where necessary
3. Raising community awareness of minimum housing standards

Key stakeholders

The Authority liaises with key stakeholders as part of its business. Key stakeholders include:

- Property owners
- Property agents
- Property occupants, e.g.
 - tenants
- South Australian Civil and Administration Tribunal
- Government departments, e.g.
 - Consumer and Business Services
 - Local Authorities
 - Office of Housing Regulation
 - Office of Technical Regulator
 - SA Health
 - SA Housing Authority
- Non-government organisations, e.g.
 - Landlord Association (SA)
 - Real Estate Institute of South Australia
 - Tenants' Information and Advisory Service



Compliance and enforcement strategy

The Authority aims to achieve a balanced and principled use of compliance and enforcement tools, ensuring the Authority's actions are consistent, fair and effective. The Authority will provide assurance to the community that the Authority is working to fulfil its role of ensuring minimum housing standards are met. The Authority is guided by the following core principles:

- Proportionate
 - Ensure any action taken is proportionate to the risks posed and the seriousness of the offence.
- Consistent
 - Act fairly and equitably applying consistent processes in all cases. The Authority will ensure its staff members are trained and there are effective systems in place to support them.
- Transparent
 - Openly share information about our decisions and actions within the confines of the law and information sharing guidelines.
 - Assist the regulated community to understand what is required and what the community should expect from the Authority.
- Targeted
 - Ensure the regulatory effort is directed primarily towards activities that pose the greatest risk, cause the greatest harm or undermine the regulatory regime.
- Timely
 - Work in a timely manner to manage, inform and progress without delay.

To achieve compliance objectives, the Authority uses flexible and integrated strategies:

- encouraging compliance, particularly by educating and informing stakeholders about their rights and responsibilities under the Act
- enforcement, including issuing of orders and other notices
- working with other agencies to implement these strategies, including through coordinated approaches.

The Authority uses a range of investigative and enforcement tools to encourage compliance with the Act, including entering residential premises to conduct inspections and compulsory information gathering powers during the inspection, and the ability to use reasonable force to enter residential premises on the authority of a warrant. In deciding which investigative or enforcement tool (or combination of such tools) to use, the Authority's first aim is to work collaboratively with owners to manage risk proportionately.

The Authority will take a risk-based approach to triaging complaints for investigation or referral. The Authority uses this policy to make informed decision-making in this regard. The Authority's focus is to respond to complaints that refer to substandard properties that expose, or are likely to expose,



occupants or visitors to health or safety hazards. The Authority does not respond to maintenance type matters.

The Authority exercises its compliance and enforcement powers independently in the public interest with integrity, professionalism and without fear, favour or bias.

Determining compliance and enforcement action

Once the Authority has determined whether an issue is in non-compliance under the Act or Regulations and falls within the Authority's legislative powers to address. The issue is assessed using a risk assessment approach to determine the appropriate regulatory action to be taken.

The following factors are considered (but not limited to) when determining appropriate compliance and enforcement action:

- the seriousness of the contravention, e.g., the nature and extent of the impact, harm or potential harm
- the extent and speed of remedial action required
- the compliance and enforcement history
- the alleged offender's willingness to cooperate, including remediation action taken or offered.

The risk-based approach to regulation

In general terms, once the magnitude of the issue and risk associated with it has been assessed, a determination of the most appropriate and effective regulatory action(s) to take in response to the issue and associated risk will be made. The Authority will make decisions based upon securing compliance with the Act and Regulations.

Process for managing non-compliance

The following provides an overview of the process the Authority uses to systematically manage and consistently address non-compliance and make key decisions.

- Allegation – *initial notification received by the Authority*
 - The Authority is made aware of the possible issues through many avenues including complaints from the public, information from Government bodies
- Validation – *the potential non-compliance may become an actual non-compliance*
 - The Authority determines whether the identified issue is in non-compliance with the Act or Regulations through several mechanisms, including preliminary investigation, inspections and the collection of other information.
- Assessment – *the non-compliance is prioritised*
 - The Authority determines the magnitude of the actual non-compliance using a risk assessment approach.
- Decision – *a plan of action is made to address the non-compliance*
 - A plan of action is made to determine the most appropriate and effective regulatory action(s). The decision may take several successive and complementary actions including enforcement where appropriate.



- Implementation – *the decision actions may be implemented*
 - The Authority will use available compliance and enforcement tools. Each tool may be used in conjunction with others. The tools available include verbal advice, education, warning letters, orders and notices, expiation notices and prosecution.
- Follow up – *the non-compliance is resolved*
 - The Authority ensures non-compliance has been properly addressed.

Compliance

The Authority conducts a range of activities to promote and ensure compliance.

Authorised officers

Authorised officers (**AOs**) are appointed under the Act. AOs are issued with a photographic identification card and are permitted to carry out certain functions under the Act. AOs may enter residential premises to inspect the premises. The owner or occupier is notified prior to the proposed entry. During an inspection, AOs may do anything of the following:

- ask questions of any person found in the premises
- inspect any article or substance found in the premises
- take and remove samples of any substance or other thing found in the premises
- require any person to produce any plans, specifications, books, papers or documents
- examine, copy and take extracts from any plans, specifications, books, papers or documents
- take photographs, films or video recordings
- take measurements, make notes and carry out tests
- remove any article that may constitute evidence of the commission of an offence against the Act

An AO can also require any person to answer any question that may be relevant to the administration or enforcement of the Act.

Compliance activities

Compliance activities can assist key stakeholders to understand their rights and obligations under the Act and Regulations, impending changes to the law, or provide a quick response to raising housing standards. They are particularly useful where property owners are keen to ensure they are doing the right thing. The kinds of compliance activities the Authority may undertake are set out below.

Campaigns

The Authority uses targeted campaigns to provide information and advice to key stakeholders to encourage compliance with the Act. The Authority considers that prevention of a breach of the Act is always preferable to acting after a breach has occurred. Where possible, the Authority seeks to work collaboratively with property owners rather than immediately issuing orders and notices.



The Authority ensures key stakeholders are aware of both their rights and responsibilities under the Act through clear and targeted communications. The Authority actively seeks feedback to ensure that our communication is effective.

Industry engagement

The Authority maintains relationships with industry groups or associations and assists them in queries they may have about the Act, as well as attending events and giving presentations.

Working collaboratively

The Authority will seek to work collaboratively with property owners and monitor progression of remediation within an agreed short timeframe, rather than immediately serving the owner with an Order to remediate identified defects. The Authority will request evidence of remediation to ensure risks to occupants and visitors are eliminated or managed appropriately with control measures.

Orders and notices

There are occasions where:

- the property falls far below the minimum housing standards as the described in the housing improvement legislation
- the Authority is unable to work collaboratively with an owner
- the agreed short timeframes are not met by the owner

In these circumstances, Orders are issued to property owners with compliance dates requiring the owner sufficient time and opportunity to remediate, providing safeguards to occupants and visitors of the identified risks and hazards. Rent control is also considered based on criteria detailed in Section 25 of the Act. The Authority will continue to seek working collaboratively with owners to remediate the identified defects.

The Authority may issue one or more of the following Orders and Notices. Timeframes may be given for compliance. Penalties apply for non-compliance:

Housing Assessment Order

An assessment is required to establish whether the premises are, or are not, unsafe or unsuitable for human habitation. The Order may require the assessment to be carried out by a suitably qualified person or prepare a written report in relation to the assessment.

Housing Improvement Order

Works are required to remediate defects at residential premises. The Order will provide a list of defects requiring remediation and may require the premises to be vacated, if occupied, and remain unoccupied for a specific period or until the completion of the specified works.

An emergency Housing Improvement Order may be issued orally if urgent action is required to address unsafe or unsuitable conditions of residential premises.

Housing Demolition Order

It would be impracticable or unreasonable to undertake work to remediate the defects. The Order will require the premises to be vacated, if occupied, and always remain unoccupied prior to



demolition or until the completion of the specified works. The Order may refer to the whole of part of the premises.

Rent Control

Rent control may be applied to ensure tenants are not paying full market rent while living in substandard conditions.

Preliminary Rent Control Notice

A preliminary rent control notice stating the intention to reduce the maximum rent that can be charged and inviting the owner to show, within a specified timeframe, why a rent control notice should not be made. The timeframe is identified within the notice and will not exceed fourteen (14) days.

The Authority will consider any representation received within the specified timeframe.

Rent Control Notice

The Authority may issue a Rent Control Notice at the amount referred to in the Preliminary Rent Control Notice. The maximum weekly rent amount will be published in the Government Gazette and in the Substandard Register.

Notice to Vacate

The Notice may be issued to the occupants requiring them to vacate the premises.

Enforcement

The main objective of enforcement is to prevent repeated breaches of legislation where a breach has already occurred, so the health and safety of the South Australian community is protected. The Act identifies penalties for breaches of the law.

In deciding which enforcement tool to pursue, the Authority uses its discretion and will choose a course of action appropriate to the conduct in question. The Authority strives to ensure that its enforcement activity is:

- without fear or favour
- fair, proportionate and appropriate to the conduct
- dealt with in a timely manner
- in the public interest
- conducted to best utilise its resources
- undertaken as a model litigant
- publicly accountable

Advisory Letter

An advisory letter may be sent for the recipients' information. Such a letter may provide the transgressing individual or corporation with:

- information in the form of guidance, recommendations and/or instructions



- cautionary advice forewarning of possible options and actions, which may be taken should the non-compliance continue.

Warnings

Warnings may be issued verbally or in writing when:

- the contravention identified is administrative and / or minor in nature
- a warning is considered fair and appropriate in the circumstances
- no previous warning has been given

A warning may also be considered appropriate if the identified contravention is a once-off occurrence and / or is easily remedied and for which no further compliance and enforcement action is warranted.

A warning provides clear notice of the non-compliance and any action required to deal with the non-compliance to the individual or corporation. In discussions with an individual or corporations, the Authority will generally alert the transgressing individual or corporation of the forthcoming issue of a warning.

A warning is also formally recorded on the Authority's computer system. Warnings may be used to demonstrate a pattern of non-compliance if future non-compliance is identified. No further compliance and enforcement action is undertaken on that non-compliance.

The actions taken by the transgressing individual or corporation in response to that warning will be considered should the offence continue or occur again. If the offence continues without cessation or further evidence shows the nature of the offence is more serious, the Authority may withdraw the initial warning and issue another administrative or regulatory tool.

Any subsequent non-compliance will be deemed a new offence. The historical record of non-compliances will be used to demonstrate a pattern of non-compliance for such subsequent contraventions.

Ejection Order

An order of the ejection of occupants from residential premises may be issued by the South Australian Civil and Administrative Tribunal (**SACAT**). The Authority may apply to SACAT for an Ejection Order if occupants do not comply with directions of a Notice to Vacate.

Expiation Notices

For offences that are expiable under the law, an expiation fees may be imposed. An expiation fee is much lower than the maximum penalty that could be imposed by a court in the event of a successful prosecution. A person who receives an expiation notice may choose to pay the fee or elect for the case to be heard in court.

An expiation notice is also formally recorded on the Authority's computer system. Expiation notices may be used to demonstrate a pattern of non-compliance if future non-compliance is identified. No further compliance and enforcement action is undertaken on that non-compliance.

The actions taken by the transgressing individual or corporation in response to that expiation notice will be considered should the offence continue or occur again. If the offence continues without



cessation or further evidence shows the nature of the offence is more serious, the Authority may withdraw the initial expiation notice and issue another administrative or regulatory tool.

Any subsequent non-compliance will be deemed a new offence. The historical record of non-compliances will be used to demonstrate a pattern of non-compliance for such subsequent contraventions.

See Appendix A for examples of expiable offences under the Act.

Prosecution

For serious offences where warning or expiation is inappropriate, the Authority will consider whether it is in the public interest to prosecute the alleged offender. This means laying charges against the person in the Magistrates Court.

In determining what is in the public interest, the Authority will consider a range of factors, including but not limited to:

- the risk assessment factors used when determining the action to be taken
- any mitigating or aggravating circumstances
- the culpability of the individual or corporation who committed the contravention
- the cost of prosecution
- the availability and efficacy of other forms of enforcement
- the prevalence of the contravention and the public concern generated
- the need for deterrence, both specific and general
- any precedent which may be set by failure to act
- prosecution measures taken against others arising out of the same incident, or under similar circumstances
- likely outcome in the event of a finding of guilt including the sentencing options available to the court and the powers that are available to the Authority in the event of a contravention of the Act.

See Appendix B for examples of offences under the Act.

Registration of an Order

When the Authority has issued an Order, it may apply to the Registrar-General for registration of the order. This ensures the order binds subsequent owners and occupiers and protects the Authority's claim over any costs and expenses incurred in the event of non-compliance with the order.

The Authority will register an order on the Certificate of Title if there:

- are ongoing requirements for a subsequent owner or occupier to comply with
- there is a risk of non-compliance
- are significant anticipated costs associated with compliance.



Recovery of costs

The Authority may:

- Take the action required by the order
- Direct someone else to undertake the action on its behalf
- Recover all reasonable costs and expenses for taking action to fulfil an order

Dispute resolution

Where a person is concerned about, or disputes, an Authority compliance and enforcement decision, action, or order. First, discuss the matter with the Authorised Officer or the Authority's Manager.

Other avenues of review are available via SACAT or the State Ombudsman. Contact details can be found in the *Further Information* of this policy.

Further Information

Related documents

- *Housing Improvement Act 2016*
- *Housing Improvement Regulations 2017*
- *Housing Improvement (Fees) Notice 2020*

Related contacts

Housing Safety Authority

- ☎ 1300 700 729
- ✉ housingsafety@sa.gov.au
- 🌐 www.housingsafetyauthority.sa.gov.au
- 📮 GPO Box 1669, Adelaide, SA 5001

Consumer and Business Services (CBS)

- ☎ 131 882
- 🌐 www.cbs.sa.gov.au

Ombudsman SA

- ☎ 08 8226 8699
- 🌐 www.ombudsman.sa.gov.au

South Australian Civil and Administrative Tribunal (SACAT)

- ☎ 1800 723 767
- 🌐 www.sacat.sa.gov.au

Full copies of the *Housing Improvement Act 2016* and Regulations are available from:

- 🌐 www.legislation.sa.gov.au



Appendix A

Examples of expiable offences under the Act:

Section	Fee	Expiation offence
18(4)	\$210	Failure to repay rent amount recoverable by the Minister within fourteen days
26	\$210	Charging, demanding or receiving rent more than the maximum rent prescribed under a Rent Control Notice
28	\$160	Failure to keep proper records of rent paid if a Rent Control Notice applies
31	\$210	Failure to display a copy of the notice in a prominent position on the premises
32(1)	\$210	Failure to declare that the premises is subject to an order or notice in advertisements for sale
32(2)	\$210	Failure to declare that the premises is subject to an order or notice in advertisements for lease and the maximum rent payable if subject to a rent control notice
32(3)	\$210	Failure to disclose information legibly and in a reasonably prominent position on advertisements for sale and lease



Appendix B

Examples of offences under the Act:

Section	Maximum Penalty	Offence
11(7)(a)	\$5,000	Hindering or obstructing an authorised officer, or a person assisting, in the exercising their powers
11(7)(b)	\$5,000	Failing to answer a question to the best of their knowledge, information, and belief
11(7)(c)	\$5,000	Being in charge of premises subject to an inspection, fails or refuses to provide reasonable assistance when required
13	\$10,000	Failure to comply with a Housing Assessment Order
14	\$10,000	Failure to comply with a Housing Improvement Order
15	\$10,000	Failure to comply with a Housing Demolition Order
18(4)	\$2,500	Failure to repay rent amount recoverable by the Minister within fourteen days
22	\$2,500	Failure to comply with a Notice to Vacate
24(5)	\$1,250	Hindering or obstructing a bailiff in the exercise of their powers
24(6)	\$1,250	Failure to answer a question to the best of their knowledge, information, and belief
26	\$2,500	Charging, demanding or receiving rent more than the maximum rent prescribed under a Rent Control Notice
28	\$1,250	Failure to keep proper records of rent paid if a Rent Control Notice applies
30	\$1,250	Failure to receive SACAT's consent to grant a fresh tenancy within six months after recovering possession
31	\$2,500	Failure to display a copy of the notice in a prominent position on the premises
32(1)	\$2,500	Failure to declare that the premises is subject to an order or notice in advertisements for sale



Section	Maximum Penalty	Offence
32(2)	\$2,500	Failure to declare that the premises is subject to an order or notice in advertisements for lease and the maximum rent payable if subject to a rent control notice
32(3)	\$2,500	Failure to disclose information legibly and in a reasonably prominent position on advertisements for sale and lease
45	\$7,500	Asking or receiving a fee to represent a party in SACAT housing improvement tenancy dispute proceedings unless allow in this Section
47	\$5,000	Directly or indirectly enters into an agreement or arrangement to defeat, evade or prevent to operation of the Act
50	\$1,250	Failure to comply with a SACAT order under this Section
52	\$10,000	Making a false or misleading statement

