



Housing Safety Authority

For safer homes

Compliance and Enforcement Policy



Government of South Australia

Department for Communities
and Social Inclusion

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1. Background

The Housing Safety Authority is responsible for the administration of the *Housing Improvement Act 2016* (the Act) and the *Housing Improvement Regulations 2017* (the Regulations). This legislation ensures the health and safety of the community through the regulation of minimum housing standards in all residential premises in South Australia.

This document is intended to guide staff and the community in relation to the implementation of the Act and Regulations by the Housing Safety Authority.

2. Regulatory Context

The Act and Regulations impose obligations on all owners and occupiers of residential premises to ensure the property meets minimum standards.

Section 3 of the Act outlines the purpose:

The objects of this Act are—

- (a) To ensure that housing meets the prescribed minimum housing standards; and
- (b) To regulate unsafe or unsuitable housing and the rent payable in respect of such housing; and
- (c) To raise community awareness of the prescribed minimum housing standards.

The Housing Safety Authority cannot pursue all the complaints received or issues that come to its attention about housing-related health and safety. While all complaints are carefully considered, the Housing Safety Authority's role is to focus on those circumstances that will, or have the potential to, cause harm to members of the community. The Housing Safety Authority therefore exercises its discretion to direct resources to matters that pose the most serious risks.

The Act and Regulations impose certain requirements which, if contravened, may result in the Housing Safety Authority taking compliance and enforcement action.

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

3. Regulatory Decision-Making

3.1. Principles

The Housing Safety Authority employs best practice regulatory principles and tools and robust processes to:

- Support and enable the willing to comply, or go beyond compliance;
- Tackle important housing-related health and safety issues with a proportionate, risk- and evidence-based approach;
- Withstand challenge; and
- Take decisive and timely enforcement action when needed.

Much of this is achieved through compliance, by providing advice and guidance, partnering with other organisations, education and regulation. However, in some circumstances, the Housing Safety Authority will use its enforcement powers.

The Housing Safety Authority aims to achieve a balanced and principled use of compliance and enforcement tools, ensuring the Housing Safety Authority's actions are consistent, fair and effective. The Housing Safety Authority will provide assurance to the community that the Housing Safety Authority is working to fulfil its role of ensuring housing is healthy and safe.

The Housing Safety Authority's regulatory approach is based on the foundation of firm and fair compliance and enforcement. We are guided by the following core principles:

- Proportional
 - Ensure that any measure taken is proportional to the risks posed and the seriousness of the offence.
- Consistent
 - Act fairly and equitably applying consistent processes in all cases. The Housing Safety Authority will ensure its authorised Housing Investigation Officers (HIOs) are trained and there are effective systems in place to support them.
- Transparent
 - Openly share information about our decisions and actions.
 - Assist the regulated community to understand what is required and what the community should expect from the Housing Safety Authority.
- Targeted
 - Ensure the regulatory effort is directed primarily towards activities that pose the greatest risk, causes the greatest harm or undermine the regulatory regime.
- Timely
 - Work in a timely manner to manage, inform and progress without delay.

3.2. Determining compliance and enforcement action to be taking

Although the main objective of enforcement is to prevent further offence by deterring both the offender and others, there are other factors considered in determining what enforcement measures to take. Some of these are:

- The seriousness of the breach in terms of:
 - Consequences that have resulted, or may result– breaches range from minor technical breaches to breaches that have caused or could cause death or serious injury.
 - The conduct of the alleged offender - were they knowingly in breach of legal requirements?
 - The maximum penalty fixed by the parliament.
- The history of enforcement action taken against the alleged offender – are they a previous offender?
- The likelihood the alleged offender will reoffend.
- The meaningfulness of enforcement options from the viewpoint of an affected party or the public.

- The resources available to the Housing Safety Authority – prosecuting complex cases may strain resources to a level that affect other compliance activities important to public health and safety.

3.3. The risk-based approach to regulation

In general terms, once the magnitude of the issues and associated risks have been considered, a determination of the most appropriate and effective regulatory action(s) to take in response to the issues and associated risk will be made. The Housing Safety Authority will make decisions based upon securing compliance with the legislation.

Following compliance, the Housing Safety Authority will determine if the use of an enforcement tool is appropriate in the circumstances.

3.4. Process for managing non-compliance

As an overview, the process the Housing Safety Authority uses to systematically manage and consistently address each case of non-compliance and make decisions is:

- Finding – the issues categorised as non-compliance
 - The Housing Safety Authority is made aware of possible issues through many avenues including complaints from the public, information from local government and other government agencies.
- Validation – the potential non-compliance may become an actual non-compliance
 - The Housing Safety Authority determines whether the identified issue is, in fact, a non-compliance. This is determined through a number of mechanisms including preliminary investigation, inspection and the collection of further information.
- Assessment – the non-compliance is prioritised
 - The Housing Safety Authority determines the magnitude of the actual non-compliance using a risk assessment approach, including health and safety, and risk to the regulatory regime.
- Decisions – an action plan is made to address the non-compliance
 - The Housing Safety Authority involves a number of officers to address non-compliance and determine the most appropriate and effective regulatory action(s). The decision may take a number of successive and complementary actions including enforcement, where appropriate.
- Implementation – The Housing Safety Authority will implement the decided actions
 - The Housing Safety Authority has a suite of compliance and enforcement tools that can be used in conjunction. The tools include verbal advice, education, warnings, expiation notices, orders and prosecution.
- Follow up – the non-compliance is resolved
 - The Housing Safety Authority ensures non-compliance has been properly addressed, compliance has been secured and enforcement tools have been used, where necessary.

3.5. Regulatory options and tools available

A suite of tools is available for use by the Housing Safety Authority and each tool may be used in conjunction with others.

4. Compliance

To ensure and promote compliance with requirements set out in the legislation, the Housing Safety Authority conducts a range of activities.

4.1. Keeping owners and agents informed

Owners and agents of residential properties will be regularly provided with information on a variety of issues affecting residential premises.

4.2. Online information

Current information on minimum standards in residential premises is available in the Housing Improvement Regulations 2017, which can be found on legislation.sa.gov.au.

4.3. Responding to complaints

The Housing Safety Authority investigates complaints about, or instances of, unhealthy or unsafe housing. The process for responding to a complaint may include (but is not limited to):

- Contacting the owner by telephone or in writing
- Contacting a real estate agent by telephone or in writing
- Contacting the relevant council or Office of the Technical Regulator
- Conducting property inspections
- Speaking with the tenant or occupier

4.4. Housing Investigation Officer's powers

Housing Investigation Officers (HIO) within the Housing Safety Authority are appointed as authorised officers for the purposes of the legislation. HIOs are issued with photo identification and are permitted to carry out certain functions under the legislation. These functions include:

- Entering a premises suspected as being unsafe or unhealthy for the purposes of conducting an inspection;
- Asking questions, analysing evidence, taking photographs and measurements, examining plans/books/papers;
- Requiring a person to answer any question relevant to the enforcement of the Act; and
- The use of reasonable force to enter a property where appropriate.

The exercise of these powers will be in an appropriate and balanced manner.

4.5. Education, advice and persuasion

Where the Housing Safety Authority has detected that a property does not meet the minimum standards in the legislation, the Housing Safety Authority staff may contact the owner and/or agent to determine whether the identified risks can be addressed to make the property healthy and safe.

The Act requires the Housing Safety Authority to establish and keep a publically available register containing all residential premises to which a Housing Assessment, Improvement or Demolition Order applies, or a Rent Control Notice applies.

4.6. Orders

In situations where the risks posed by the property are serious or the owner has not addressed those risks through an informal process, the Housing Safety Authority may issue an order. Those orders including:

- Housing Assessment Order – requires the property to be assessed by a suitably qualified expert.
- Housing Improvement Order – requires specific works to improve the property so it is healthy and safe.
- Housing Demolition Order – requires the property be demolished where it is impracticable or unreasonable to improve the property.
- Emergency Housing Improvement Order – required the property be improved to make it healthy and safe; can be issued verbally when urgent action is required.

The order will set out what the owner is required to do and may set out a timeframe for completion. Failure to comply with an order is an offence (see 'Enforcement').

The Housing Safety Authority can also issue the following notices:

- Notice to Vacate - requires the property to become vacant.
- Rent Control Notice – fixes the maximum rent payable.

5. 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 Housing Safety Authority has the authority to enforce the obligations set out in the Act and Regulations.

5.1. Enforcement options – informal

Failure to meet the obligations set out in the relevant legislation may result in the Housing Safety Authority using a number of enforcement options.

Oral Warning

An apparent non-compliance that is not sufficiently serious for formal regulatory response may be addressed with an oral warning. A record of the warning is kept on file and will be a relevant factor should the person commit further breaches.

Written Warning

For minor instances of non-compliant conduct, a written warning may be issued to the persons committing the offence. A record of the letter is kept on file and will be a relevant factor should the person commit further breaches.

5.2. Enforcement options – formal

Expiation Notices

For offences that are expiable under the law, an expiation fee may be imposed. An expiation is much lower than the maximum penalty that could be imposed by a court in the event of a successful prosecution. Person who received an expiation notice may choose to pay the fee or elect to be prosecuted in court. Records of expiation notices are kept for future reference, and will be a relevant factor should further offences be committed. Examples of expiable offences in the Act include:

Section	Fee	Expiable offence
18(4)	\$210	Failure to repay amount recoverable by the Minister
26	\$210	Charging more than maximum rent specified in 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 or lease
32(2)	\$210	Failure to disclose to the lessee the maximum rent specified in a rent control notice
32(3)	\$210	Failure to disclose information legibly and in a reasonably prominent position on advertisements for sale and lease

Prosecution

For serious offences where warning or expiation is inappropriate, the Housing Safety 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. The maximum penalty for some offences under the Act is \$10,000. Some examples of offences in the Act include:

Section	Maximum Penalty	Offence
11	\$5,000	Hindering or obstructing an authorised officer (HIO) during the course of exercising their powers
13, 14, 15	\$10,000	Non-compliance with Housing Assessment, Improvement or Demolition Order
22	\$2,500	Non-compliance with a Notice to Vacate
26	\$2,500	A landlord charging more than the maximum rent prescribed under a Rent Control Notice
32	\$2,500	Failure to declare that the premises is subject to an order or notice in advertisements for sale or lease

6. Non-Compliance with an Order

6.1. Recovery of costs

The Act allows the Housing Safety Authority to:

- Take the action required by the order;
- Direct someone else to undertake the action on its behalf;
- Recover all reasonable costs for taking action to fulfil an order; and
- Recover the amount, together with interest of 24% per annum which, until paid is a charge in favour of the Housing Safety Authority on any land owned by the individual or corporation.

6.2. Registration on Certificate of title

When the Housing Safety 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 Housing Safety Authority's claim over any costs and expenses incurred in the event of non-compliance with the order.

The Housing Safety 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; or
- Are significant anticipated costs associated with compliance.

The Housing Safety Authority will notify the owner or occupier in writing that an order has been registered.

7. Dispute Resolution

There may be circumstances where an interested party is concerned about, or disputes, a Housing Safety Authority compliance and enforcement decision, action or order. First, discuss the matter with the Housing Safety Authority's Housing Investigation Officer or their Manager.

If a satisfactory outcome cannot be reached, the matter may progress to a formal written complaint addressed to the Director, Property and Contract Management, Housing SA.

Other avenues of review are available via the South Australian Civil and Administrative Tribunal (SACAT) or the State Ombudsman. Reviews through SACAT usually have timeframes within which the application for review must be lodged. The format of the review is set by SACAT.

8. Further Information

Related documents:

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



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