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# Operational Protocol

# between

# Office of the Public Advocate – Community Visitors Program

# and

# Department of Families, Fairness and Housing –

# Human Services Regulator

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# 1. Intended purpose

This protocol establishes the agreed respective roles, information sharing practices, and notification procedures between the Human Services Regulator (HSR) of the Department of Families, Fairness and Housing (the department) and the Community Visitors Program of the Office of the Public Advocate (OPA).

# 2. Background

The objective of the *Supported Residential Services (Private Proprietors) Act 2010* (the SRS Act) is to protect the safety and wellbeing of residents living in private supported residential services (SRS).

Residents of SRS have the same rights and responsibilities as other members of the community and should be empowered to exercise those rights and responsibilities.

The individual rights of residents should be respected by recognising a resident’s right to:

* Privacy
* Freedom of expression
* Fair and equal treatment
* Dignity and respect
* Freedom from abuse, neglect or exploitation.

# 3. Organisations

#### 3.1 Community Visitors Program (CVP)

Community Visitors are independent Governor in Council appointed volunteers who have a unique role in monitoring the quality of services for people who are vulnerable and living in SRS. The terms and conditions of appointment, functions, and powers of Community Visitors are provided at Part 9 of the SRS Act.

Although there are other standards and monitoring processes that address service quality, the Community Visitors Program is unique in its focus on the welfare and rights of the individual resident and the role of volunteers

The core role of the Community Visitor is to safeguard the interests and rights of vulnerable people who have a disability and are living in eligible services.

Community Visitors do this by identifying and reporting issues and problems from the perspective of the individual resident and by referring these for resolution within the service system.

#### 3.2 Human Services Regulator (HSR)

The role of the HSR is to regulate human services to minimise harm and to protect the safety and rights of children, young people and adults by:

* administering standards
* promoting good practice
* monitoring and enforcing compliance with relevant laws, regulations and standards
* building relationships.

The HSR regulates human services providers under the following legislation and regulatory schemes:

* *Child Wellbeing and Safety Act 2005*(Child Safe Standards and Reportable Conduct Scheme)
* *Disability Act 2006* (registration and Human Services Standards)
* *Children, Youth and Families Act 2005*(registration, Human Services Standards and Victorian Carer Register, including reports of abuse and independent investigations under sections 81 and 82)
* *Supported Residential Services (Private Proprietors) Act 2010*(including *the Supported Residential Services* (*Private Proprietors) Regulations 2012)*

The HSR has 4 teams:

* Child Safeguarding
* Standards and Regulation (including Supported Residential Services registration)
* Regulatory Compliance and Enforcement Team (RCET)
* Strategy and Analytics

The regulatory activities of the HSR are:

* Approvals and registration
* Education and information
* Support to comply
* Target using data and information
* Compliance monitoring.

To targetefforts using intelligence, the HSR:

* Collects data
* Analyses trends
* Identifies risks
* Shares information with peers.

The HSR monitors duty holders’ compliance through:

* Planned or responsive inspections
* Desktop compliance assessments
* Investigating issues and reports
* Independent reviews against standards
* Investigating allegations of abuse.

The HSR enforces compliance through remedy and sanctionsbased on:

* The impact and likelihood of harm
* The duty holder’s behaviour and attitude to compliance.

Remedies may include:

* Issuing compliance guidance
* Notifications of non-compliance
* Remedial notices
* Applying conditions or restrictions on registrations.

Non-compliance may lead to sanctions like:

* Official warnings
* Infringements
* Suspending or cancelling registration
* Prosecution for offences under relevant laws.

# 4. Legislated functions of the HSR and the CVP

The HSR and CVP play important, but distinct, roles in facilitating the objectives of the SRS Act and in ensuring that SRS operate in line with the obligations and standards outlined in the SRS Act and the *Supported Residential Services (Private Proprietors) Regulations 2012 (the Regulations).*

#### 4.1 Community Visitors Program:

The legislative functions of a Community Visitor appointed for a region are to visit any supported residential service in the region and query:

(a)     whether services are being delivered to residents in accordance with the principles of this Act and the accommodation and personal support standards prescribed under this Act;

(b)     the status of any complaint made by or on behalf of a resident and the progress of its resolution, if applicable;

(c)     any other issue or concern raised with the community visitor by or on behalf of a resident.

#### 4.2 Human Services Regulator:

The HSR is delegated, through the relevant Instruments of Delegation made under the SRS Act, all of the powers and functions of the Minister for Disability, Ageing and Carers and the Secretary of the Department of Families, Fairness and Housing as outlined in the Act.

#### 4.3 Proposed changes to legislation and regulatory arrangements

Both parties acknowledge that this protocol is being developed at a time when significant changes are underway regarding the regulation of social services in Victoria. The new *Social Services Regulation Act 2021* will require the development of a new protocol once the new Social Services Regulator is established.

# 5. Term

This protocol will commence on **01 / 01 / 2022** and continue until **31 / 12 / 2022**

# 6. Notifications between Parties

This section outlines the agreed procedures for all notification types between parties.

Definitions of terminology can be found at **Appendix 1: Glossary of terms**.

Emails for identified roles can be found in **Appendix 2: oAppendix 2:** Organisational contact points section of this protocol.

Response and report templates are located at **Appendix 3 – Report templates.**

#### 6.1 Notification Procedure for Standard Issues of Concern

The following steps outline the procedure for the notification of standard issues of concern by the Community Visitors Program (CVP) to the Human Services Regulator (HSR).

**Step 1: Identification of standard issues of concern by Community Visitors when conducting visits at SRS facilities.**

1. Community Visitor (CV) identifies an issue at the time of their visit at the SRS.

**Note:** if issue is deemed as exceptional / emergency, CVs will immediately initiate **the Special Circumstance Procedure 1 - Reporting of high-risk issues** **by the Community Visitors Program to the Human Services Regulator** for immediate or emergency investigation.

1. The CVs discuss the issue with proprietor/responsible person at SRS during the visit and it is resolved. The discussion may also involve the allocated complaints officer at the SRS.
2. The CVs record the identified issue and resolution on the CV Record of Visit Form at the SRS.
3. If issue is not resolved at the time of the SRS visit, **Step 2: Notification for Investigation** is implemented.

**Step 2: Reporting of standard Notifications for Investigation (NFI) by the Community Visitors Program to the HSR for investigation.**

1. CVs complete a CV Record of Visit Report and notify the Regional Convenor (RC) of identified issues.
2. CVs may need to complete a Confidential Supplementary Report to accompany the CV Visit Report (See **Step 3: Confidential Supplementary Report**)
3. The RC and/or Divisional Coordinator will log onto the Human Services Regulator Portal and access the Community Visitor Notification for Investigation form (NFI Form) LINK:  [[NFI Form Online](https://forms.office.com/Pages/ResponsePage.aspx?id=H2DgwKwPnESciKEExOufKA6BbuCGwxpCrnjHM4A2AHZUMFQ0S09HQkpXMTBTTkRIVFdDRzBWWkQwRiQlQCN0PWcu).](https://forms.office.com/Pages/ResponsePage.aspx?id=H2DgwKwPnESciKEExOufKA6BbuCGwxpCrnjHM4A2AHZUMFQ0S09HQkpXMTBTTkRIVFdDRzBWWkQwRiQlQCN0PWcu) They will fill in the form utilising the information from the CV Report. After submitting the NFI Online, either the RC or Divisional Coordinator will send the CV Report and/or confidential report or other attachments to the relevant DFFH email address.
4. After pressing the submit button, the submitter will receive an instant acknowledgement to advise that the NFI Form has been successfully submitted to the HSR.
5. The submitted online NFI Form will automatically be forwarded to the appropriate regional Regulatory Compliance and Enforcement email inbox for triage by the Team Leader, Regulatory Compliance and Enforcement, in accordance with the Human Services Regulator's risk-based resource allocation procedure:
6. Where a NFI is assessed by HSR as urgent it will be allocated to an Authorised Officer and actioned within 24 hours.
7. For those NFIs not assessed by HSR as urgent, action will commence in line with the timeframes outlined in the HSR triaging policy which are as follows:

**Level 3** – **Rapid:** within 24 - 72 hours

**Level 2** – **Routine:** within 5 business days

**Level 1** – **Measured:** within 10 business days.

These response times are indicative only and will depend on a range of factors, including the number and urgency of other matters already being dealt with by HSR, that exist at the time of the notification being received.

1. The NFI will be allocated to an Authorised Officer. The allocated Authorised Officer will contact the CVP contact who submitted the notification **(the CVP submitter**) to inform them that the NFI has been allocated and is being actioned.
2. All further correspondence regarding the issue (for example, further information required or enquiry of progress of notification) will be via normal methods (phone/email) between the allocated Authorised Officer and CVP submitter directly, until the matter is resolved.
3. The timeframe for the resolution of issues referred to HSR is dependent on a broad range of factors, including the number, urgency and complexity of other matters already being dealt with by HSR.
4. Upon resolution, the Authorised Officer will provide a **NFI – Outcome report** via email to the CVP submitter of form.
5. The **NFI – Outcome Report** will include the outcome of the investigation, and any compliance action required of the proprietor. Details of referrals or involvement of other agencies/regulatory bodies will be included.
6. If CVP are dissatisfied with the **NFI – Outcome Report**, or have concerns that have been unable to be addressed via the correspondence process outlined in Step 7, then **Step 4 Escalation of unresolved issues arising from a Notification for Investigation (NFI)** may be implemented.

**Step 3:** **Confidential Supplementary Report**

A CV Visit Report is based on the observations and discussion at the time of the visit and is left at the SRS as the proprietor’s record of visit.

However, to protect and avoid possible retribution towards residents, sensitive information should not be included in the record of visit left at the SRS.

Sensitive or confidential information may be shared with HSR via a Confidential Supplementary Report. This report can include information of abuse and assault, poor proprietor responses or poor treatment of CVs.

**Step 4: Escalation of unresolved issues arising from a Notification for Investigation (NFI)**

1. The RC and/or Divisional Coordinator will raise the unresolved issue directly with the relevant Manager, Regulatory Compliance and Enforcement Team (RCET - North/West or South/East) via email.
2. The relevant regional Manager, Regulatory Compliance and Enforcement will liaise directly with the relevant regional RCET Team Leader and Authorised Officers to consider the ongoing concerns of the CVP and how to resolve the issue.
3. The relevant Manager, RCET (North/West or South/East) will maintain communication with the RC and/or Divisional Coordinator.
4. The issue may also be tabled as an agenda item at a scheduled Regional CVP/RCET liaison meeting, to further discuss and reach a resolution.

If issue is still not resolved following this process, the issue can be further escalated through **Special Circumstance Procedure 3: Escalation and resolution of serious systemic unresolved issues.**

**Step 5: Out of scope issues**

Community Visitors may inadvertently report matters that may exceed or be out of scope of the compliance and enforcement powers of the HSR.

If an issue raised is outside the authority of the Act, or beyond the specific powers of the Authorised Officer to address, the Authorised Officer shall notify the CVP and recommend that the issue should be referred by the CVP to a more appropriate regulatory authority, including Victoria Police, local council or other relevant regulatory bodies.

#### 6.3 Special Circumstance Procedures:

The below procedures are outlined to provide The Office of the Public Advocate and/or the Community Visitors Program and the Human Services Regulator with a clear process for special circumstances issues:

**Special Circumstances Procedure 1: Reporting of high-risk issues by the Community Visitors Program to the Human Services Regulator for immediate or emergency investigation**

This procedure applies when the issue of concern identified by Community Visitors at an SRS alleges:

* A significant harm has occurred or is certain to happen to one or more residents if the allegation were found proven;
* Significant risk to resident(s) with an almost certain likelihood of the consequences being proven; or
* CVP are concerned of the potential for retribution against a resident/staff.
1. In this event, the CVs should immediately advise the:
* Most senior staff available at the SRS who are on duty;
* The CVP Regional Convenor; and
* Relevant regional Regulatory Compliance and Enforcement Team
1. Where a CV is concerned of the potential for retribution against a resident or staff member at an SRS facility, the CV should advise the relevant:
* Regional Convenor; who will advise the Regulatory Compliance and Enforcement Team.

**Special Circumstances Procedure 2: Notification procedure for escalating concerns about the poor treatment or obstruction of Community Visitors**

1. CVs should document minor issues in the **CV Record of Visit Form** report and provide proprietors with an opportunity to respond to and address identified issues of concern.
2. If the proprietor’s behaviour is deemed to be more serious, a **Notification for Investigation** (NFI) and a **Confidential Supplementary Report** detailing the CVs experience may be required to alert HSR of the abuse or obstruction of CVs.
3. HSR will provide CVP a response to each issue raised within an NFI.
4. The HSR will investigate and speak to all parties as soon as practical. If the circumstances of the issue are such that the HSR is unable to take regulatory action, guidance will be provided to proprietor about the role and function of CVs and the proprietor’s obligations under the Act.
5. If CVP continue to have concerns about the poor treatment or obstruction of Community Visitors at the same SRS, they will submit a second NFI, and Confidential Supplementary Report, to HSR.
6. If the CVP continue to have concerns about the issues raised after the HSR responds to a second NFI, the matter will be escalated to the Director, HSR.
7. If concerns remain unresolved, the matter will be escalated to the Senior Executive Director, Strategy and Regulation.

**Special Circumstances Procedure 3: Notification of serious, systemic or unresolved issues between the Office of the Public Advocate and/or Community Visitors Program and the Human Services Regulator**

This procedure is to progress and facilitate resolution of unresolved issues relating to either a previous NFI or other systemic, serious or unresolved issues relating to the regulation of SRS identified by the Office of the Public Advocate and/or the Community Visitors Program.

**Note:** This procedure may also be used by the Human Services Regulator to notify the Office of the Public Advocate and/or the Community Visitors Program of serious, systemic or unresolved issues. In this case, the procedure will be the same but roles of parties will be reversed.

1. **Day 1:** OPA/CVP notify issue by email to the Director, Human Services Regulator. Email to include “*Special Circumstances Notification to HSR*” in subject line.
2. **Day 1-5:** On receipt of Notification, HSR to send immediate acknowledgement by email to the **Public Advocate.**
	* Cc to OPA Manager Quality & Audit
	* Cc to RCET Statewide Manager
	* HSR to begin drafting outline of response\*\*.
3. **Day 5-10: HSR** to review the response to notification.

 Forward response to the **Public Advocate** with cc to **OPA Manager Quality & Audit.**

#### 6.4 Notification of SRS closures

SRS proprietors must notify the HSR in writing of the intention to close the SRS and give at least 28 days’ notice to residents. The HSR will inform CVP when it receives formal notice of intention to close the SRS.

Community Visitors will refer information received about closures to the CVP Regional Convenor and Divisional Coordinator for verification. Unverified information will not be shared with residents as this may create distress for residents.

Informal information about a closure or intended closure of an SRS may be mutually shared between the relevant HSR RCET divisional team and CVP Divisional Coordinator at their discretion.

Community Visitors play an important role in supporting residents and identifying residents’ needs when an SRS closure occurs. HSR will encourage proprietors to involve Community Visitors in meetings to discuss SRS closure at the same time as advice to residents and their families, administrators, guardians or nominated persons.

#### 6.5 Change of SRS Ownership or new SRS

The HSR is often alerted to potential change of ownership registration applications prior to a formal application for registration being lodged.

The outcome of a registration application usually forms a provisional clause within business sale contracts between an SRS proprietor and an interested buyer. Commercial confidentiality prevents the HSR from disclosing information related to change of ownership applications prior to or during the application process.

The HSR will alert the CVP within 24 hours of a successful application upon that decision being made by the delegate, and any subsequent short-term conditions on registration being met. This usually coincides with the issuing of a Certificate of Registration to the incoming proprietor.

Likewise in the case of a an application for registration of a new SRS, the HSR will inform the CVP at the time of the issuing of the certificate of registration.

#### 6.6 Notification of deaths in SRS (expected and unexpected)

A proprietor must notify the department within one business day of the unexpected death of a resident in SRS. HSR will notify CVP about the unexpected death including:

* the full name of the deceased
* date notified to the HSR
* address of SRS, and
* any other relevant information to assist Community Visitors in planning a visit.

The SRS Act does not require proprietors to notify HSR about expected deaths, and Authorised Officers (AO) may only find out during inspections or through conversations with SRS proprietors or staff. Similarly, CVs may also find out about the expected death of an SRS resident during a visit to the SRS or via conversations with SRS proprietors or staff.

Information obtained by either party regarding an expected resident death will be mutually shared between the relevant HSR RCET divisional team and CVP Divisional Coordinator of the relevant division of CVP at the earliest possible time.

#### 6.7 SRS resident demographics

The operational model of individual SRS can change over time as the SRS transitions to a different resident profile. Most commonly, this involves a shift over a prolonged period of time from an ‘above pension’ profile with predominantly aged resident cohort, to a ‘pension level’ profile, with younger residents with different support needs (e.g. mental health, drug and alcohol). The change in resident profile and complexity can contribute to a change in compliance position of the SRS.

The HSR does not request formal information on changes in demographic profile of SRS from proprietors.

When the HSR registers an SRS, either through a change of ownership or a new SRS, the HSR does receive information on the proposed business profile of the SRS, including the proposed resident cohort. The HSR will share information relating to proposed resident cohort with the CVP as part of the registration data set that is provided to CVP at quarterly Board Liaison Meetings.

CVP will share with HSR information that is indicative of a change in the demographic profile of SRS, such as the age range of residents.

# 7. Human Services Regulator / Community Visitors Program meetings

#### 7.1 Statewide board liaison meetings

The Public Advocate, Residential Services Board and the Director, Human Services Regulator, or other persons delegated by the Public Advocate and the Director Human Services Regulator, along with staff deemed to be appropriate, will meet on a regular basis, not fewer than four times a year.

The purpose of the board liaison meeting is to discuss policy issues related to the SRS sector, systemic issues identified within the SRS sector, and any changes within the Human Services Regulator or the Community Visitors Program.

The board liaison meeting may be identified as the appropriate forum to discuss issues identified at a regional level that have sector-wide implications and/or issues arising from CV notifications for investigation that have been escalated via the escalation process outlined in this protocol.

Where appropriate, confidential information may be shared at a board liaison meeting, including information on current investigations or enforcement activity by the HSR. It is incumbent on the party sharing confidential information to clearly state that the information is confidential nature, and to clearly state whether the information can be shared beyond the board liaison attendees, and if so, who it can be shared with.

The record of the meeting (minutes) will clearly record this information.

**7.1.1 Quarterly data provided at board liaison meetings:**

Routine information to be provided by the department to the Community Visitors Program at board liaison meetings includes details of:

* SRS Name changes
* SRS Closures
* SRS Change of Ownerships (including proposed resident profile)
* New SRS Registrations (including proposed resident profile)
* Prescribed Reportable Incident data by type and totals
* Notice to Vacate data by type and totals
* Dashboard summary of Community Visitors Program Notifications for Investigation (NFI) from last quarter, including number resolved / number open.

#### 7.2 Regional CVP/RCET liaison meeting

Regional meetings will occur on a regular basis, not fewer than four times a year.

Attendees will include:

* the Office of Public Advocate Regional Convenor,
* relevant Community Visitors,
* the OPA Divisional Coordinator, and Safeguarding, Inclusion & Volunteer Programs (SIVP) Manager
* Team Leader and Authorised Officer of the relevant local Regulatory Compliance and Enforcement Team, or
* persons delegated by the Regional Convenor and Divisional Manager,
* staff deemed to be appropriate

The purpose of the meetings is to discuss current localised issues at SRS, identify any themes, and clarify HSR and CVP responses.

Any issue that remains unresolved after discussion at the regular regional meetings may be escalated via the escalation process outlined in this protocol.

A standard template agenda will be used to ensure consistency across regions and provide a standard framework for information exchange.

The record of the meeting (minutes) will clearly record the actions arising.

# 8. Confidentiality and Privacy

The following conditions apply to any information sharing that occurs via this protocol.

8.1 Any information obtained as a result of this protocol must only be used by the HSR and CVP for the specific purpose the information is requested and shared for. This includes compliance with statutory obligations such as those contained in the *Privacy and Data Protection Act 2014*.

8.2 The HSR and CVP must keep *confidential information* confidential except as permitted:

* by the conditions of use imposed by either the HSR or CVP; and
* to the extent that the HSR or CVP are required by law to disclose any *confidential information*

8.3 The obligations of the HSR and CVP under this section will survive the termination of this protocol and will continue in relation to the *confidential information* until the *confidential information* disclosed to it lawfully becomes part of the public domain.

The obligations set out in clauses 8.1 and 8.2 above do not apply where the confidential information is otherwise lawfully obtained by the HSR or the CVP.

# 9. Review

This protocol may be reviewed at any time at the request of either party.

Any change to the protocol must be endorsed by the Director, Human Services Regulator and the Public Advocate.

# 10. Dispute Resolution

If a dispute relating to the contents of this protocol should arise, the matter will be referred to the Director, Compliance and the OPA Manager, Safeguarding, Inclusion & Volunteer Programs for resolution.

In the event the matter cannot be resolved, it is to be referred to the Director, Human Services Regulator and Public Advocate.

# Signing page

Signed for and on behalf of the Community Visitors Program by:

**Dr Colleen Pearce**

**Public Advocate**

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Signature

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Name

Date: / / 2021

Signed for and on behalf of the Human Services Regulator Unit by:

**Anthony Kolmus**

**Director, Human Services Regulator**

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Signature

Anthony Kolmus

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Name

Date: / / 2021

# Appendix 1: Glossary

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| The Act | The *Supported Residential Services (Private Proprietors) Act 2010*. |
| AO - Authorised Officer | means a person appointed under section 130 of the Act to exercise the general powers defined in section 143. Authorised Officers are mandated with an investigative, and where necessary, prosecutorial function to ensure compliance with the regulatory requirements of the Act. |
| CV - Community Visitor | means a person appointed under section 182 of the Act to undertake the functions defined in section 184 of the Act with the powers provided in section 187. |
| CVP - Community Visitor Program | means the Program area of the Office of the Public Advocate that supports and coordinates the activities of Community Visitors.  |
| The department | The Department of Families, Fairness and Housing  |
| HSR | The Human Services Regulator of the Department of Families, Fairness and Housing  |
| NFI | Means a Notice for Investigation submitted by a Community Visitor to the Human Services Regulator for further investigation.  |
| OPA | means the Office of the Public Advocate |
| Proprietor | means a person who is the owner of a business or undertaking providing accommodation and support, at the premises of a SRS. |
| RCET | Regulatory Compliance and Enforcement Team. RCET is the inspectorate workforce of the HSR.  |
| The regulations | The Supported Residential Services (Private Proprietors) Regulations 2012. |
| Regional Convenor and/or Regional Convenor | means a nominated Community Visitor with additional administrative and organisational responsibilities for a team of Community Visitors within particular regional boundaries. |
| Residential Services Board | means the Community (Residential Services) Visitors Board as defined in section 193 of the Act. |
| SIVP | Safeguarding, Inclusion & Volunteer Programs |
| Supported Residential Service  | has the meaning given in section 5 of the Act |
| Resident  | means a person who receives personal support and accommodation at an SRS  |
| SRS | means a supported residential service |

# Appendix 2: Organisational contact points

## Human Services Regulator

* Director, HSR Anthony.J.Kolmus@dffh.vic.gov.au
* Director, Compliance Richard.Marks@dffh.vic.gov.au
* StatewideManager, Regulatory Compliance and EnforcementPaul.Paciocco@dffh.vic.gov.au
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* Manager, Regulatory Compliance and Enforcement (South/East) Drago.Dragojlovic@dffh.vic.gov.au
* Divisional RCET teams:

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## Community Visitors Program

* Public Advocate Colleen.Pearce@justice.vic.gov.au
* OPA Compliance Manager Ann.Henderson@justice.vic.gov.au
* OPA Manager, Safeguarding, Inclusion & Volunteer Programs

Rosemary.Barker@justice.vic.gov.au

# Appendix 3: CVP Notification for Investigation drafting template



# Appendix 4: CVP Confidential Supplementary Report



# Appendix 5: HSR NFI Outcome Report template

