

Social and affordable housing regulation in Victoria

Final Report

Social and Affordable
Housing Regulation Review



May 2022

Chair's foreword

In its 2020-21 Budget, the Victorian Government announced a massive investment in social and affordable housing. Amounting to \$5.3 billion, the Big Housing Build is the largest social housing investment in living memory. Shortly after, the Minister for Housing, The Hon Richard Wynne, and Assistant Treasurer, The Hon Danny Pearson, announced that there would be an independent review into the state's social and affordable housing regulatory framework. And so began this Review.



The Panel quickly came to the view that tenants – both current and future – should be the focus of our efforts. We wanted to make sure that their voice is heard and continues to be heard as the system grows. In reaching this conclusion, we have listened carefully to experts here and overseas, and we want in particular to thank the Scottish Housing Regulator and the English Social Housing Regulator for their time and advice.

But most importantly, we have listened to the views of tenants. They say many things, but most often they express gratitude to be given the home they need to have a good life. But they have also told us that the system does not treat them as well as it should; that too often they feel belittled or treated paternalistically by well-intentioned people; and that they are fearful of speaking up because they do not want to jeopardise their home.

Our Review findings would not have been possible without the many stakeholders who are central to the social and affordable housing system we have today. We have been mightily impressed by their preparedness to spend time with us, to give feedback in an open and constructive way, and to always be available to work with us to design a regulatory system for the future. A sincere thanks is owed to Lesley Dredge and more recently Sarah Toohey, the past and present CEO of the Community Housing Industry Association of Victoria, Homes Victoria's CEO, Ben Rimmer and his executive leadership team, Deputy Secretary Chris Barrett and his senior leadership team in the Victorian Department of Treasury and Finance, and Bernard Gastin, David Schreuder and the team of Office of the Housing Registrar. A sincere thanks is also owed to Katelyn Butterss and her colleagues at the Public Tenants Association of Victoria. As Chair of the Review, I especially want to thank my fellow Panelists, Heather Holst and David Cousins. We have not always agreed, but we are all the richer for it. I could not think of two better people to be part of my team. Finally, a sincere thanks to the thousands of social housing tenants and social housing workers who took the time to communicate with the Review during our consultation sessions.

The high-quality reports that we have published to date – including this final report – would not have been possible without one further ingredient: an incredibly talented Secretariat: Milena Canil, Alexandra Claire, Bradley Griffiths, Pauline Ireland, Lachlan McGrath, Anastasia Moore and Alexander Philipatos, under the splendid leadership of Angelina Yannuccelli.

Over the last 18 months, we as a team have spent countless hours in conversation with people across the state, with many on more than one occasion. We wanted to be sure that their views were reflected as far as possible. We gave a pledge to all those who stood tall that while we may not be able to reach agreement on everything, they would be certain we listened and heard what was said.

We sincerely hope that our recommendations deliver a tenant-focused social and affordable housing system that is the envy of the nation.

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Acknowledgements

The independent Panel of the Social and Affordable Housing Regulation Review acknowledges Aboriginal and Torres Strait Islander people as the First Peoples and Traditional Owners and custodians of the land and waterways on which we live and work. We honour and pay our respects to Elders past, present and emerging.

We acknowledge all Aboriginal and Torres Strait Islander peoples and their ongoing strength and resilience despite the past and present impacts of colonisation and dispossession. We acknowledge the important role that Aboriginal and Torres Strait Islander young people play in their communities and across Victoria — not only as emerging leaders, but leaders in their own right.

Australia's Aboriginal and Torres Strait Islander peoples represent the world's oldest living culture. We celebrate and respect this continuing culture and strive to empower Aboriginal and Torres Strait Islander young people as they draw on the strength of their community to build a bright future.

This Final Report has been prepared by the independent Panel of the Social and Affordable Housing Regulation Review, May 2022:

Emeritus Professor David Hayward, Chair

Dr Heather Holst, Panel member

Dr David Cousins, AM, Panel member

List of acronyms and abbreviations

ACCO	Aboriginal Community Controlled Organisation
ACNC	Australian Charities and Not-for-Profits Commission
AHV	Aboriginal Housing Victoria
CEFL	Common Equity Finance Limited
CERC	Common Equity Rental Cooperative
CHIA Vic	Community Housing Industry Association Victoria
CPRC	Consumer Policy Research Centre
CRA	Commonwealth Rent Assistance
DFFH	Department of Families, Fairness and Housing
DTF	Department of Treasury and Finance
ESC	Essential Services Commission
EWOV	Electricity and Water Ombudsman of Victoria
NDIS	National Disability Insurance Scheme
NHFIC	National Housing Finance and Investment Corporation
NRAS	National Rental Affordability Scheme
NRSCH	National Regulatory System for Community Housing
VAGO	Victorian Auditor-General's Office
VAHMF	Victorian Aboriginal Housing and Homelessness Forum
VBSC	Victorian Small Business Commission
VCAT	Victorian Civil and Administrative Tribunal
VHR	Victorian Housing Register
VPTA	Victorian Public Tenants Association
VRS	Victorian Regulatory System
WHCL	West Heidelberg Community Legal

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Executive summary

The Victorian Government asked the independent Panel for the Review of Social and Affordable Housing Regulation to conduct a whole-of-system regulatory review. The scope of the Terms of Reference (Appendix A) was broad. It included consideration of the effectiveness of regulation as an accountability mechanism for public, community and affordable housing tenants, and the community. The Panel was also asked for advice on how the regulatory system can best support social and affordable housing growth and transformation over the coming decades.

The Panel's approach to the Review was to consult extensively and focus on the issues identified by stakeholders, including tenants, housing providers, peak bodies, support service providers, investors, government, academics and other experts. It met with more than 120 organisations and gathered feedback from over 1,300 survey responses, emails and letters.

The Panel conducted a dedicated consultation project with Aboriginal housing stakeholders, including tenants, Aboriginal Community Controlled Organisations and non-Aboriginal housing providers. Several other research projects were commissioned to consult on specific topics with relevant stakeholder groups.

The Panel released three consultation papers and an Interim Report, which received 126 submissions in response. The consultation process has informed the findings and recommendations in this report, which are presented in seven key reform pillars outlined below.

Chapter 1, *Placing current and prospective tenants at the centre of the social and affordable housing system*, identifies that the social housing system is not sufficiently tenant-centred or informed. Recommendations are for a modern, user-centred regulatory system, including a clear statutory objective 'to promote and safeguard the interests of current and prospective tenants', a customer service charter, and a single advocacy body for public and community housing tenants.

Chapter 2, *Streamlined and consistent social housing regulation*, recommends a consistent set of performance standards, enshrined in regulation, for public and community housing. This will address different accountability standards and tenant experiences, owing to different oversight mechanisms, and service delivery standards, across public and community housing. While entity-level oversight of financial management and governance by the regulator is not recommended, greater transparency of the public provider's financial performance is needed.

Chapter 3, *Regulation that drives better standards of social housing delivery*, identifies areas of tenancy and dwelling management where regulation should be updated and modernised. These include energy efficiency, fire safety, accessibility, and repairs and maintenance. New tenancy management standards cover culturally safe practices and tenancy sustainment, including steps to prevent evictions into homelessness from social housing. The frontline workforce will be key to implementing these reforms. Recommendations aim to foster a culture of continuous improvement, beginning with a comprehensive workforce development strategy.

Chapter 4, *Complaints and dispute resolution arrangements that work for tenants*, describes complaints management and dispute-resolution arrangements as unclear and convoluted. While provider complaints management should remain a first port of call, a support and referral service in the single advocacy body will help with system navigation.

A specialist external dispute resolution service will be able to employ a range of tools, including early intervention and issuing of formal determinations covering all matters relating to social housing tenancies. Dedicated services for Aboriginal tenants are to function in both new services.

Neighbourhood disputes are also a widespread problem, are difficult for tenancy managers to assist with, and can lead to people leaving their housing. Restorative justice approaches should be available to assist in resolution and could support tenancy sustainment.

Chapter 5, *Regulation that drives accountability for the use of public funds*, highlights the need for the regulatory framework for social and affordable housing to be adaptable to a changing environment. The regulator should be appropriately equipped and resourced to effectively oversee emerging complex investment vehicles, and to regulate in an environment where the types of entities seeking registration are changing. Appropriate and proportionate oversight of affordable (discounted rental) housing receiving government support will be needed.

To bolster transparency and accountability in the system, a uniform performance reporting framework for social and affordable housing is recommended.

Chapter 6, *Regulation that supports sustainability and growth*, addresses the role of regulation (and the regulator) in the much-needed growth of social and affordable housing to meet continued high demand. The regulatory framework and approach must be able to support small and specialist providers to become registered, including importantly, Aboriginal Community Controlled Organisations.

There is scope to reduce reporting burden and duplication across the board and introduce greater flexibility into portfolio management. There are also opportunities for the regulator to play a stronger role in supporting growth. There could be benefits to joining the National Regulatory System for Community Housing, providing it can be sufficiently aligned with Victoria's priorities.

Chapter 7, *An independent regulator for the social and affordable housing sector*, underpins the reform package. The Victorian Housing Registrar is not sufficiently equipped, under its current structure and governance arrangements, to perform the roles and functions recommended in this report.

The Panel recommends an independent social and affordable housing regulator that is sufficiently resourced to oversee both public and community housing (and affordable housing), can effectively engage with tenants through a formal advisory infrastructure, and can employ a range of tools to allow for a graduated approach to enforcement, including routine and ad hoc inspections. Modernisation of the *Housing Act 1983* would improve clarity, coherence and complementarity of the roles of the new regulator and Homes Victoria.

Chapter 8, *A system that supports those who are eligible but unable to obtain social housing*, considers the consumer safeguards in place for people in the private rental market who are eligible for, but unable to obtain, social housing. The Panel believes there is scope to improve the culture of rental housing provision, by raising landlord awareness of their critical role in providing an essential service, often to vulnerable and disadvantaged tenants. It is recommended that applicants on the Victorian Housing Register be assisted to access supports and improve their accommodation while waiting for social housing, noting the funding and resourcing implications of this solution.

Approach and methodology

In November 2020, as part of the Big Housing Build, the Victorian Government announced an independent review into social and affordable housing regulation to ensure appropriate settings were in place to support a growing and changing sector. An independent Panel was appointed to undertake the review according to a Terms of Reference (Appendix A).

The Terms of Reference for the Review address regulatory arrangements for the social and affordable system housing as a whole. The Panel's approach has been to focus on issues identified by a wide range of stakeholders consulted between January 2021 and May 2022.

The first phase of the consultation process sought to identify issues and needs in the sector and how these interact with relevant regulation.

In March and April 2021, the Panel visited 10 social housing providers and several public, community and transitional housing properties in Ballarat, Bendigo, Geelong, Moe, Morwell, North Richmond, Shepparton and Wodonga. The Panel met with staff and tenants on these visits.

Following these visits COVID-related travel restrictions limited the Panel's ability to undertake face-to-face consultations. This meant it relied on online forms of communication and interaction. Despite the limitations, the Review implemented a significant and wide-reaching consultation program with stakeholders including social housing tenants¹, providers, peak bodies, community services providers, investors, regulators and academics. The Panel was impressed by the level and degree of engagement evident across Victoria, as well as nationally and internationally.

Between March and November 2021, the Panel met with over 120 stakeholder organisations (Appendix B). From these meetings, the Panel was able to gather a wealth of information on a range of issues relevant to the Terms of Reference.

The Panel invited submissions to three substantive consultation papers via the Engage Victoria website: <<https://engage.vic.gov.au/social-housing-regulation-review>> between June and August 2021:

Social Housing in Victoria. Consultation paper 1. Background and scoping paper (released mid-June 2021)

This paper set the context for the Review and provided a profile of current and prospective social housing tenants, their housing providers and the regulatory system. It outlined some of the problems with the current system, notably, that social housing is scarce and that many people eligible for social housing must rely on the private rental market.

Social Housing in Victoria. Consultation paper 2. Service delivery and the tenant experience (released mid-July 2021)

This paper focused on the 'consumer' aspects of regulation, namely, the regulatory arrangements that influence the way housing services are delivered and tenants' experiences of these.

¹ Throughout its Review the Panel has used the terms 'tenants' and 'landlords' as opposed to the terms 'renters' and 'rental providers' that are used in the *Residential Tenancies Act 1997*.

Social Housing in Victoria. Consultation paper 3. Role of regulation in sector accountability, viability and growth (released mid-August 2021)

This paper focussed on the economic and prudential aspects of regulation and its role in supporting accountability, and sector viability and growth.

In response, the Review received:

- 80 written submissions from housing providers, tenants, advocacy groups, service providers, academics and government agencies.
- 82 contributions responding to specific questions posed on the Engage website.

A dedicated parallel consultation process was conducted on issues specific to Aboriginal housing and Aboriginal housing providers, Aboriginal tenants and communities. Aboriginal Housing Victoria, Aboriginal Community Controlled Organisations, community and public housing organisations, Aboriginal tenants and those seeking housing, and third-party representative bodies participated. This work was underpinned by the recommendations of the Victorian Aboriginal Housing and Homelessness Framework. In October 2021, a **Findings and Options paper** was released on the Engage Victoria website for further public comment.

The Panel commissioned research projects to obtain further direct input from current, past and prospective tenants of community and public housing. **The research engaged over 800 participants through individual interviews, focus groups and an online survey.** Researchers sought a diversity of participants based on ethnicity (translators were engaged), life stages and experiences, and other demographics. Researchers were able to interview some of the more vulnerable tenants who may not have participated in surveys. The final reports for these projects were published on the Engage Victoria website at: <https://engage.vic.gov.au/social-housing-regulation-review>.

Input was sought from community and public housing tenants using another short online questionnaire, which was translated into 14 community languages. A hardcopy version of the questionnaire was distributed to relevant services, groups and Homes Victoria. **Over 1,300 responses were received online, in hard copy or by email.** The Victorian Public Tenants Association was commissioned to lead this work.

Similarly, input from social housing and community support workers was sought through an online questionnaire. **85 responses were received.**

A communications program was undertaken to raise awareness of the Review and encourage participation:

- A simplified fact sheet was developed and adapted as needed for different groups and translated into 14 community languages:
 - Over 200 community service agencies, housing providers, sector peak bodies and other groups were contacted via email and/or telephone to inform them of the Review and encourage their participation and the participation of their clients.
 - Social media posts and graphics were developed and disseminated to those groups to share via social media channels.
 - Newsletter/article content was developed and adapted for groups to share via other communications channels.
 - Content was developed for the Multilingual News Service and shared in several community languages.

Materials were also developed that were distributed to community housing organisations by the Victorian Housing Registrar, requesting that the material be shared with tenants.

Similar materials were also developed for Homes Victoria to distribute to public housing tenants via hard copy mail.

The Panel acknowledged that, due to timing issues with the Homes Victoria mail out, there was some confusion about the closing date for comments and some tenants may not have participated for that reason. The Panel also recognised that many tenants, including older people, do not use or have home access to the internet, and lockdowns due to the COVID-19 pandemic made participation difficult. Reports on the feedback received were published on the Engage Victoria website at: <<https://engage.vic.gov.au/social-housing-regulation-review>>.

The extensive consultation process was supplemented by the commissioning of a number of specific research reports including:

- *International social housing systems and regulation: A comparative analysis for Victoria*, Centre for Urban Research, RMIT University
- *Sustaining tenancies: Issues and challenges for social housing providers*, Unison Housing Research Lab, RMIT University
- *Sustaining tenancies: Measuring performance*, Unison Housing Research Lab, RMIT University
- *Options for regulating for the good growth of Victoria's social and affordable housing*, J. Lawson, V. Milligan, L. Davies
- *Mapping support services for social housing tenants*, 89 Degrees East
- *Tenant Voice Project*, 89 Degrees East.

The information gathered during the first phase of the consultation process informed the Panel's proposals contained in the Interim Report, which was published on the Engage Victoria website in December 2021.

The Interim Report comprised a series of 18 papers that were based on themes identified by stakeholders and commissioned research. Those themes considered a range of matters including service delivery issues, dwelling standards and safety, dispute resolution mechanisms and the social housing workforce.

The Interim Report put forward for consultation:

- changes to regulation, policies and processes to place social housing tenants, regardless of who their landlord may be, at the centre of the system
- changes to improve delivery and increase the stock of housing for Aboriginal tenants
- a case for a single, whole of social housing sector regulator, and consistent service delivery standards for public and community housing
- changes in the existing community housing regulation to reduce unnecessary administrative burden and barriers to registration, as well as changes to enable the system to adapt and effectively manage risks associated with an increasingly complex sector.

Consideration was also given to the benefits of Victoria's participation in the National Regulatory System for Community Housing.

In response to the Interim Report, 26 submissions were received. In addition, the Panel held a webinar to which all subscribers were invited. Of the Review's 1,490 subscribers, 790 attended the webinar.

The second phase of the consultation process focused on the Interim Report proposals, with a view to 'road-testing' them to inform the Panel's final report and recommendations. Two roundtables

provided an opportunity for the Panel to work with key stakeholders on some of the more complex issues identified in submissions.

The final report has been conceptualised and presented according to 7 key pillars:

- placing current and prospective tenants at centre of the system
- streamlined and consistent social housing regulation
- regulation that drives better standards of social housing delivery
- complaints and dispute resolution arrangements that work for social housing tenants.
- regulation that drives accountability for use of public funds.
- regulation that supports financial sustainability and growth
- an independent regulator for the social and affordable housing sector.

In formulating the recommendations and findings contained in this report, the Panel has considered best practice principles of regulation including:

- the need for the regulation to have clarity of purpose
- avoidance of conflicting roles
- compatibility with growth and innovation promotion
- outcome focused regulation
- regulation that provides consistency and certainty
- appropriate governance and structure of the regulator including:
 - independence
 - Minister/Board/Chief Executive Officer composition and relationship
 - appropriate regulatory tools
 - adequate capacity – staff and funding
- transparency and accountability
- coordination
- efficiency.

The Panel has also:

- examined the regulatory oversight that currently applies to social and affordable housing in Victoria
- examined the case for common regulation for social housing
- considered how the regulatory system can ensure long-term, strong and high-quality resident and community outcomes in public, community, and affordable housing
- explicitly considered the views of Aboriginal Victorians to advise on how Victoria's housing system can reflect culturally safe housing and services
- considered how the regulatory system can enable Aboriginal self-determination by supporting more housing for Aboriginal Victorians by Aboriginal Community Controlled Organisations
- examined the case for Victoria's participation in the national regulatory scheme.

This report recommends a system that builds on the existing arrangements, with some important changes needed for regulation and the operation of the overall social housing system to adapt to its changing environment.

The Panel acknowledges that there is not always a clear delineation of policy and system design and regulatory matters, and there will invariably be overlaps and interrelationships. Many aspects of the policy environment were still being developed at the time of undertaking this Review. Attempts have been made to signpost policy and system design matters, and in many instances, they are included, either because the policy position is uncertain, or because the Panel wishes to draw attention to a particular issue.

Throughout the Review, consistent with its governance framework, any conflicts of interest, perceived or otherwise, were noted and recorded. Dr Heather Holst, the current Commissioner for Residential Tenancies for Victoria, declared a conflict in relation to matters regarding the rights of Victorian tenants under the *Residential Tenancies Act 1997*. Dr Holst was excused from discussions and the subsequent recommendations involving the remit of the office of the Commissioner.

Overview: The reform package

The Review recommends a reform package that embodies a modern system of social and affordable housing regulation in Victoria. It is person-centred and equipped to support and facilitate growth in much-needed housing stock over the coming decades. It envisages a regulatory system where current and prospective tenants can communicate their interests and shape the services they receive. Culturally safe provider practices, and culturally appropriate regulation are central features.

The reform package aims to capture the momentum of the Victorian Government's \$5.3 billion investment in the Big Housing Build, to continue to grow housing stock to meet the needs of Victorians.

The Review Terms of Reference (Appendix A) called for a systemwide review of public, community and affordable housing regulation, rather than a narrow assessment of the technical rules that apply to any one of those sectors.

It has been almost two decades since the establishment of the Victorian Regulatory System for community housing and the Housing Registrar. The social and affordable housing landscape in Victoria has evolved considerably (Appendix C) and is poised to undergo further transformation in the decades ahead. The Panel approached the Terms of Reference in this context.

Despite these changes, the underlying purpose of social housing regulation remains constant. It is to:

- provide accountability for housing and services to system users (current and prospective tenants)
- provide accountability to the community for use of public funds
- support and facilitate growth in housing stock, by giving assurance to investors and funders that regulated providers are well governed and financially viable.

To achieve its outcomes, the design and approach to regulation must adapt, and be adaptable, to a changing environment.

The Review's Consultation Papers, Aboriginal Housing Findings and Options paper, and Interim Report, which were released throughout 2021, discussed the range of issues identified by stakeholders. It found that the Victorian Regulatory System for community housing was well designed. It also found that the Housing Registrar has driven continuous improvement in the sector, emulating several aspects of the Scottish social housing regulatory arrangements, which are considered best practice.

Good regulation is necessary, but not sufficient, to bring about growth in social and affordable housing in the absence of other essential ingredients, such as policy and investment certainty and continuity. However, the sector has not experienced the level of growth that was envisaged at the inception of the regulatory system in 2004, and there is scope for regulatory reforms that better support and facilitate financial sustainability and growth.

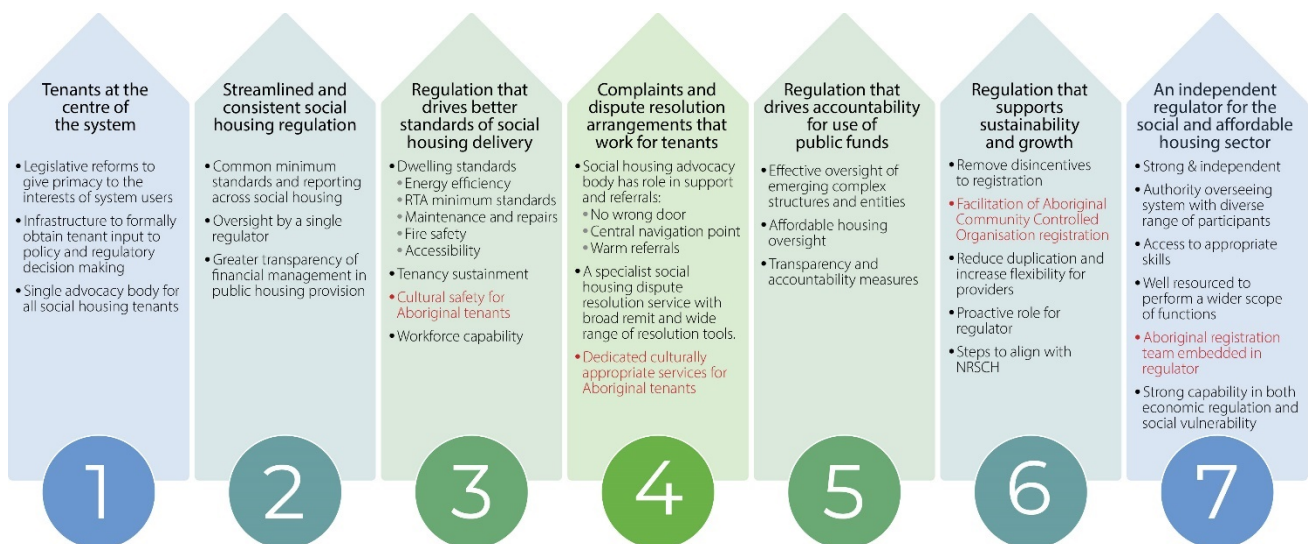
Some good practice was evident in public housing, particularly in local housing offices, where staff showed exceptional commitment to assisting vulnerable tenants and sustaining tenancies. However, staff in public housing have heavy workloads, and resources for training have been diminished over time. As pointed out by recent Victorian Auditor General's Office reports, there are significant issues with asset management and financial performance in public housing. Research undertaken with tenants as part of this Review indicated there was dissatisfaction with aspects of service, particularly with repairs and maintenance.

Affordable housing is an emerging discounted rental housing product, set to develop and grow, as part of the Big Housing Build. Information on the sector is not extensive, but it is understood there

are many provider types receiving various forms of funding or other public supports to deliver this discounted housing. The Victorian Government is also set to develop 2,400 affordable housing properties, as part of the Big Housing Build. It is imperative that appropriate oversight exists to ensure accountability for the use of public funds and delivery of affordable housing to eligible tenants.

The reform package has seven key pillars, which reflect stakeholder feedback on the proposals put forward in the Interim Report in December 2021. Each pillar is presented in the following seven chapters.

An eighth chapter draws attention to people eligible for social housing who are not able to access it, due to a severe shortage of properties in Victoria. There is an emphasis on the safeguards in place in the mainstream residential tenancies market for people who experience disadvantage. Acknowledging the recent extensive reforms to residential tenancies laws in Victoria, the Panel considers there is scope to strengthen the culture of renting to ensure that decent housing, as an essential service, is accessible and functional for all members of the community.



The reform package is underpinned by a single social and affordable housing regulator that has the authority and independence to effectively oversee diverse sector participants. These include small, medium and large providers as well as complex consortia in the community housing sector; the public housing provider, with over \$31 billion worth of assets; and the emerging affordable housing sector. It will implement reforms to modernise the system and bring about a high degree of transparency. It will have a dedicated Aboriginal housing team to ensure regulation is appropriate to Aboriginal Community-Controlled Organisations, and that culturally safe practice is implemented by all providers.

The regulator will also have formal mechanisms in place to consult with current and prospective tenants on system design and matters that affect their housing. It will drive the reform program to bring the system into line with best practice and expectations of contemporary person-centred regulation. It will be a trusted and authoritative voice on sector health and risks and will support and facilitate growth by enabling greater flexibility in the system, while applying a sophisticated approach to risk assessment and monitoring.

To reinforce good practice and support outcomes for individuals, complaints handling and dispute resolution will be simplified and made more effective for tenants and providers. The complaints-

handling processes of community and public providers will be streamlined and strengthened in the first instance. A specialist social housing dispute resolution service will assist in resolving disputes, using a range of tools, and where needed, provide formal determinations for tenancy matters. This service will divert matters from the Victorian Civil and Administrative Tribunal (VCAT) and provide resolutions in a non-adversarial setting.

Strong information-sharing arrangements will enable the identification of systemic issues and action by the regulator. A single front door assisting tenants to navigate the complaints and dispute-resolution options, advise on an escalation pathway and provide warm referrals, including to the dispute resolution service where needed, could be located in a single social housing advocacy body that builds on the existing Victorian Public Tenants Association. Restorative justice offers a promising option for resolving neighbour and tenant disputes and supporting tenancy sustainment.

The individual reform streams will together support good practice and continuous improvement. The regulator will set an example for the sector in its consultative approach with current and prospective tenants. It will develop and uphold modern, consistent performance standards, including strong tenancy sustainment practices that avoid tenants being evicted into homelessness.

A versatile and non-adversarial dispute-resolution service that shares information with the regulator will reinforce good practice and strong accountability among providers. At the same time, a sophisticated approach to risk assessment, and appropriate 'see-through' powers will allow the regulator to reduce unnecessary regulatory burden and undertake a more-proportionate, risk-based approach.

Victoria should encourage the National Regulatory System for Community Housing (NRSCH) jurisdictions to consider the key reforms contained in this report. If the NRSCH were sufficiently tenant-focused and informed, with performance standards on safety (including cultural safety) and tenancy sustainment, Victoria should look to join. Participation from the Commonwealth would help to bring about a coherent national scheme and realise the benefits of a truly national regulatory approach. In the immediate term, Victoria should investigate with NRSCH jurisdictions what other steps can be taken to generate some of those benefits.

Alignment of regulation with government policy and priorities is important. Following the announcement of the Big Housing Build in 2020 and the creation of Homes Victoria, significant policy activity has been underway in the sphere of social and affordable housing. This Review has been undertaken in parallel with the development of the Government's 10-year social and affordable housing strategy. Policies and initiatives relating to the funding and delivery of affordable housing have also been under development. Legislative changes in relation to the scope and powers of the Director of Housing are also being considered.

The *Housing Act 1983* is almost four decades old, and it needs a comprehensive review to complement the recommended reforms to the regulatory system, and provide greater certainty and clarity about the functions of Homes Victoria in the future.

Many of the recommendations in this report have legislative requirements and funding implications. The Panel has sought to identify where legislation may be either required or desirable, and where funding implications will be significant and/or ongoing. There are also recommendations that would bring about savings (such as removal of the regulator's (the Housing Registrar's) complaints function, and reduction in VCAT caseload resulting from the specialist dispute-resolution service).

Throughout this report, reference is made to 'the regulator'. The regulator is intended to mean the relevant regulator of social and affordable housing, which may be the existing Housing Registrar or a newly established social and affordable housing regulator.

Summary of findings and recommendations

Chapter 1 Placing current and prospective tenants and the centre of the system

Recommendation 1.1: Create a clear objective for social housing regulation in legislation

Create an explicit single statutory object of the regulatory system, which is “to promote and safeguard the interests of current and prospective tenants”.

Amendment to *Housing Act 1983* (or other eventual relevant legislation as the case may be)

Recommendation 1.2: Develop a customer charter of social housing service standards

Develop, in consultation with current and prospective tenants and other relevant stakeholders, a charter of service standards in social housing that will:

- outline the key service standards that tenants can expect under the performance standards for registered housing agencies, and rights contained in other relevant legislation such as the *Residential Tenancies Act 1997*
- be easily accessible, with service providers required to support tenants to understand the charter’s purpose and contents
- embed principles of cultural safety for Aboriginal tenants
- be modifiable by social housing providers to reflect the specific services of the organisation and standards they wish to deliver, without diminishing any charter service standards or rights.

The charter should not impose any requirements on social housing providers over and above the regulatory performance standards.

Legislation to require development of a charter, and to require inclusion of current and prospective tenants in development

Inclusion in performance standards to provide a copy to tenants

(Performance standards are recommended to be enshrined in regulation)

<p>Recommendation 1.3: Decisions about regulation should be informed by tenants</p> <p>Embed tenant involvement practices in its policies and processes in the regulator. This should include:</p> <ul style="list-style-type: none"> • lived experience to be included in the expertise required on the board of the regulator (Chapter 7) • a tenant advisory group that meets regularly to provide advice on the activities of the regulator • a larger tenant panel, which provides feedback on the regulator’s decisions about standards, processes and operations. 	<p>Legislation required for Board specification</p> <p>Tenant advisory group and panel could be legislated or administrative</p>
<p>Recommendation 1.4: Strengthen the requirement for tenant involvement in housing providers’ activities and operations</p> <p>Develop a new standard for tenant involvement with registered agencies, in consultation with tenants and other stakeholders. This should require providers to have a tenant engagement strategy, and to demonstrate the influence that tenant involvement has on their organisations</p> <p>Update guidance on best practices in tenant involvement.</p>	<p>Regulation (performance standard)</p>
<p>Recommendation 1.5: Support tenants and providers to engage</p> <p>Develop and provide learning and capability building resources to improve tenants’ capacity to engage with providers, and providers’ capacity to engage with tenants.</p>	<p>Funding</p>

<p>Recommendation 1.6: Create a single advocacy body for social housing tenants</p> <p>Create a new body to represent the interests of public and community housing tenants. This body should be formed in consultation with key stakeholders such as public and community housing tenants, providers and peak bodies. It should deliver:</p> <ul style="list-style-type: none"> • a public housing advocacy function, which could be performed by existing Victorian Public Tenants Association staff • a new community housing advocacy and support function • other shared functions, such as policy and social housing advocacy and administrative functions. <p>Consideration should be given to locating the following functions in the new body that are recommended by this Review, including:</p> <ul style="list-style-type: none"> • a tenant regulatory engagement interface (Recommendation 1.4) • support and referral for complaints and dispute resolution (Recommendation 4.3). <p>This body should have oversight by a new board and receive stable, long-term funding from the Victorian Government that is independent of the Department of Families, Fairness and Housing (and Homes Victoria).</p>	<p>Body to be established outside legislation but may be referenced in the legislation or performance standards</p>
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<p>Recommendation 1.7: Commissioner for Residential Tenancies to consider public housing</p> <p>Include public housing in the remit of the Residential Tenancies Commissioner.</p>	
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Chapter 2 Streamlined and consistent social housing regulation

<p>Recommendation 2.1: Establish common performance standards for social housing</p> <p>Develop a common set of service delivery performance standards for public and community housing activities through a consultative process with stakeholders. These standards should include governance, tenancy management, allocations practices, dwelling standards, safety, cultural safety and asset management.</p> <p>Enshrining social housing performance standards in regulation would assist to clarify their legal status including in relation to residential rental agreements under the Residential Tenancies Act.</p> <p>Performance standards should form part of a process of continuous improvement and reviewed at appropriate intervals.</p>	<p>Regulation (performance standard)</p>
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<p>Recommendation 2.2: Assess registered agencies' allocation practices against their allocation strategies</p> <p>Victorian Housing Register allocations data should be provided to the regulator to monitor and report on:</p> <ul style="list-style-type: none"> • alignment of registered agencies' allocation practices with allocation strategies • sector trends and anomalies. <p>Research should be undertaken to investigate how Victorian Housing Register data can be used to generate greater transparency in allocation practices across social housing.</p> <p>Monitoring of allocations to affordable housing should also be undertaken.</p>	<p>Possible need to add legislated function or duty of the regulator</p>
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<p>Recommendation 2.3: Strengthen the transparency of financial performance information for public housing provision</p> <p>Publish financial statements for public housing that are comparable with those for registered community housing agencies.</p> <p>Performance data relating to public housing costs and expenditure should be disaggregated by housing office.</p>	
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Chapter 3 Regulation that drives better standards of social housing delivery

<p>Recommendation 3.1: Monitor and report on energy efficiency in social housing</p> <p>Require social housing providers to report on the energy efficiency of their housing stock, as well as heating and cooling facilities, as part of their requirement to maintain an accurate and current list of properties owned and managed.</p>	<p>Regulation (performance standard)</p>
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<p>Recommendation 3.2: Require social housing properties to comply with minimum standards prescribed by the Residential Tenancies Act 1997 by January 2027</p> <p>Require under the <i>Residential Tenancies Act 1997</i> all social housing properties to comply with minimum standards in the <i>Residential Tenancies Regulations 2021</i> by January 2027 (except where any earlier date/s are specified for individual standards).</p> <p>This requirement should not preclude providers from meeting the standards earlier.</p> <p>Individual risk assessments to be undertaken at the start of new tenancies and at regular intervals (Recommendation 3.8) should take account of any outstanding repairs required for the health and safety of the tenant.</p> <p>The creation of any additional minimum standards and phase-in provisions in the future should take issues relating to their application to social housing into account.</p>	<p>Amendment to <i>Residential Tenancies Act 1997</i></p>
<p>Recommendation 3.3: Review maintenance systems and processes for public housing</p> <p>Review the current systems and processes for the management of maintenance and repair requests in public housing.</p>	<p>Administrative review may lead to legislative change</p>
<p>Recommendation 3.4: Regulator to monitor fire safety in social housing properties</p> <p>Require social housing providers to notify the regulator of all reported fires (including causes and consequences).</p> <p>The regulator should make and publish any related findings, including the degree to which the provider assessed the fire risk associated with the tenancy, and what actions were taken to address the risks. Recommendations should be included.</p> <p>Require social housing providers to assess fire risk as part of the general needs assessment at the beginning of a tenancy and at reasonable intervals throughout (Recommendation 3.7).</p>	<p>Regulation (performance standard)</p>

<p>Recommendation 3.5: Ensure needed accessibility modifications to social housing properties are made promptly</p> <p>Require through performance standards that all social housing providers undertake accessibility modifications without delay, to be accompanied by funding from the Victorian Government, in the absence of an alternative funding source.</p> <p>Work with the Commonwealth to establish a mechanism that will allow needed accessibility modifications to be undertaken without delay by social housing providers, and which ensures funding by the appropriate source.</p>	<p>Regulation (performance standard)</p>
<p>Recommendation 3.6: Enhance the measurement of tenancy sustainment</p> <p>Develop an approach to measuring performance in tenancy sustainment, which:</p> <ul style="list-style-type: none"> • draws on the principles of survival analysis, to account for differences in tenant mix across providers, and durations of maintained and exited tenancies • accounts for the positive and negative reasons that tenants leave social housing • uses data that is already collected where possible. <p>This approach should be developed by the regulator in consultation with providers and other relevant stakeholders.</p> <p>Performance of social housing providers in relation to tenancy sustainment should be published.</p>	<p>Regulation (performance standard)</p> <p>Legislation may be required for duty of the regulator to develop</p> <p>Development of the approach is administrative</p>
<p>Recommendation 3.7: Require registered community housing agencies to apply human rights principles in decision making</p> <p>Require registered agencies to apply a human rights framework that is relevant and adapted to housing, and to put in place processes within their organisation to support its application.</p> <p>The framework and processes should be developed through a consultative process with the regulator, tenants, providers, and sector advocates, and adapted for the provision of social housing</p> <p>Clarify the status and applicability of the <i>Charter of Human Rights and Responsibilities Act 2006</i> to registered community housing agencies.</p>	<p>Regulation (performance standard)</p>

Recommendation 3.8: Strengthen tenancy sustainment practices in social housing

Create a tenancy sustainment performance standard consistent with a 'no evictions into homelessness' policy, which includes:

- guidance on roles and responsibilities in establishing tenancies
- a requirement to undertake individual risk assessments to identify support needs and risks for the particular tenant and their household when establishing a tenancy and at regular intervals, that includes but is not limited to:
 - support services
 - cultural safety
 - dwelling features and facilities, including thermal regulation
 - accessibility needs
 - fire and building safety, including outstanding essential repairs
- a requirement to apply a framework that reflects and gives effect to human rights principles to decision making about evictions and transfers
- provision for tenancy transfers with support as an alternative to eviction

As part of this process the broader policy settings needed to minimise evictions into homelessness should be considered, including any amendments to the *Residential Tenancies Act 1997* to allow providers to transfer tenants to alternative accommodation.

Data collected on the support needs of tenants through the Victorian Housing Register should be made available to housing providers to allow them to assess the support needs of tenants (with privacy safeguards in place).

Regulation (performance standard)

Legislation may be required for duty of the regulator to provide guidance, collect data and share information

Possible legislative change to the *Residential Tenancies Act 1997*

Recommendation 3.9: Require social housing providers to provide culturally safe services

Include culturally safe practices in the performance standards for registered housing agencies, building on the cultural safety frameworks published by the previous Department of Health and Human Services and the Community Housing Industry Association of Victoria.

Regulation (performance standard)

<p>Recommendation 3.10: Create a workforce development strategy for the social housing sector</p> <p>Develop and implement a workforce development strategy for the social housing sector, which includes but is not limited to:</p> <ul style="list-style-type: none"> • a review of the workforce capability framework • a review of classification levels for public housing workers • a package of micro-credentials that form or contribute to formal qualifications at the certificate, diploma and degree levels, beginning with induction and with each level nested into the higher levels • appropriate accreditation mechanisms • consideration of a minimum qualification (such as a Certificate IV in Community Services or Social Housing) • developing tools to support workers who are at risk of, or have been subjected to, occupational violence and aggression • developing a sector-wide code of conduct observable by all housing providers — with individual provider codes of conduct that are consistent with this framework. <p>This strategy should be developed by Homes Victoria, in consultation with community housing organisations, the regulator, other areas of government, union/s and any other expertise required.</p> <p>Victoria could seek agreement from other jurisdictions to set this as a project to be undertaken with the Australian Housing and Urban Research Institute, with appropriate advisory bodies appointed, including tenants.</p>	<p>Legislation may be required to create duty to prepare</p>
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<p>Recommendation 3.11: Require providers to embed a culture of ongoing professional development</p> <p>Require all registered housing agencies to embed a culture of ongoing professional development for frontline housing staff and managers, which supports them to access formal training opportunities as well as informal, workplace-based professional development.</p>	<p>Regulation (performance standard)</p>
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Chapter 4 Complaints and dispute resolution arrangements that work for tenants

Recommendation 4.1: Streamline public housing complaints management processes

Redefine the complaints handling process of the Department of Families, Fairness and Housing so that its objective is seen to be gathering welcome feedback to improve system performance.

The complaints handling system should be streamlined, including the Housing Appeals Office.

Tenants should be engaged as part of the redesign, to help ensure that the new system operates more effectively and efficiently according to their needs.

Recommendation 4.2: Strengthen complaints management processes for registered community housing agencies

Base the performance standards for registered agencies on the Australian/New Zealand standard for complaint handling.

Require agencies to report on how they have implemented the principles.

Require agencies to link tenants making a complaint with advocacy support and inform them of their options for external dispute resolution.

Regulation (performance standard)

Recommendation 4.3: Establish a support and referral service for complaints and disputes

Establish a support and referral service for complaints and dispute resolution. This function could sit within the social housing advocacy body (Recommendation 1.6).

The support and referral service should:

- provide navigation, warm referrals and support to tenants to engage with their providers' complaints processes and the dispute resolution system
- include a dedicated service for Aboriginal tenants, which is staffed by Aboriginal people
- be able to triage and escalate urgent matters for immediate resolution to the external dispute resolution service (Recommendation 4.4) or the Victorian Civil and Administrative Tribunal as appropriate.

Funding

Recommendation 4.4: Establish a specialist external dispute resolution service

Establish a support and dispute resolution service for social housing which:

- can investigate all tenancy disputes related to social housing
- uses a range of tools to resolve disputes
- can provide formal determinations (including for rental payment plans) where needed
- provides culturally safe support and dispute resolution services for Aboriginal tenants, performed by respected Aboriginal community members
- works closely with the support and referral service and provides warm referrals where appropriate, including to restorative justice services (Recommendation 4.5)
- has a governance structure appropriate for a mixed sector, which will provide value, credibility and authoritative determinations for both tenants and providers, where needed
- requires the participation of all registered community housing agencies and the public provider as a condition of registration or funding
- provides for voluntary membership by unregistered providers of housing
- requires participants to obtain a determination for most matters, prior to pursuing the matter with the Victorian Civil and Administrative Tribunal (VCAT)
- could be funded based on a hybrid model, which includes government funding, member base-fees and contributions per escalated dispute
- fosters a constructive culture and non-adversarial approach to complaints and dispute resolution in the sector
- implements strong information-sharing arrangements with the regulator.

It is recommended that clarity be provided regarding social housing matters that are not referable to VCAT, with a view to ensuring social housing tenants have access to justice in relation to all aspects of their housing.

Could be established outside legislation and then referenced in legislation.

Legislation required for:

- registration requirement for agencies to participate
- formal determination making
- demarcation of matters that must be brought prior to VCAT
- information sharing with the regulator

Recommendation 4.5: Provide restorative justice services for neighbourhood conflicts and disputes

Establish, in consultation with tenant groups and other key stakeholders, a restorative justice program to assist in resolving neighbourhood conflicts and disputes in social housing.

The services should be provided by independent specialist providers, which could be coordinated by the dispute resolution service.

Regulation (performance standard for agencies to participate)

Funding

<p>Recommendation 5.1: Enable effective regulation in an environment that is increasing in complexity</p> <p>Amend the regulatory framework to:</p> <ul style="list-style-type: none">• introduce public disclosure requirements on registered entities involved in multi-party arrangements with respect to multiple directorships and related party/entity transactions, with requirements for continuous disclosure to the regulator as circumstances change• require all registered entities to disclose board and executive remuneration to the regulator, using salary bands similar to those used in departmental annual reports• give the regulator full visibility of relationships, agreements and transactions between a registered entity involved in a multi-party arrangement and related parties/entities, with the ability to publicly disclose any arrangements or dealings that it considers may promote the breach of regulatory standards or place the entity at risk• give the regulator enhanced monitoring and investigation powers, including routine and ad hoc inspection powers, and a power to conduct or commission forensic audits• give the regulator and an administrator appointed under the Act power to obtain documents or information from related entities and any third parties that the regulator considers are relevant to its regulatory functions, with the aim of allowing the regulator to obtain information about funds or assets once they have left the regulated entity, if required.	<p>Legislative change to the <i>Housing Act 1983</i> (or relevant legislation)</p>
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<p>Finding 5.1: A policy change away from the not-for-profit model would require system review</p> <p>The Victorian regulatory regime is designed specifically to regulate the not-for-profit sector and relies on other laws and the norms of conduct that apply to not-for-profit and charitable bodies.</p> <p>If government policy shifted to allow for-profit entities to become registered social housing providers, further work would be required to develop a fit-for-purpose regulatory scheme.</p>	
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<p>Recommendation 5.2: Regulation of affordable housing</p> <p>Develop and implement arrangements for the regulation of affordable housing (or discounted rental housing excluding social housing):</p> <ul style="list-style-type: none"> • Establish and maintain a central list of all subsidised affordable housing properties. • Require any Victorian public body (including Homes Victoria) or local government that allocates a subsidy for affordable housing (the contract issuer) to notify the regulator of key information such as the property/ies affected, the subsidy's terms and conditions, the organisation that received the subsidy and the name of the organisation that is to manage the affordable housing tenancy/ies. This information is to comprise the central affordable housing list. • The contract issuer is to remain responsible for ensuring that the terms and conditions of their subsidy agreement with the provider are complied with – this responsibility would not be transferred to the regulator. • The regulator should have powers to notify the contract issuer of lack of performance by the affordable housing provider brought to its attention; and the power to notify the Minister/s and publish findings. • A distinction between social and affordable housing should be maintained in legislation and for data collection and analysis purposes, to avoid scope for ambiguity in the use of these terms. <p>It is recommended that the arrangements be reviewed and evaluated in three to five years to determine whether they are proportionate, adequately bring about accountability, and are appropriate for the tenant cohort.</p>	<p>Legislation</p>
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<p>Recommendation 5.3: Develop rules and a mechanism for allocating affordable housing and a methodology for evaluating the Victorian Affordable Housing Rental Scheme</p> <p>Develop:</p> <ul style="list-style-type: none"> • transparent criteria and rules for allocating affordable housing properties both for the general (income-based) cohort and the essential worker cohort, in consultation with prospective tenants and other stakeholders • the methodology for independent evaluation of the Victorian Affordable Housing Rental Scheme, in parallel with the scheme design, so that appropriate data is captured consistently throughout its operation to enable meaningful evaluation. 	<p>Legislative power or duty to develop rules or mechanism and require independent evaluation</p>
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<p>Recommendation 5.4: Develop a uniform performance reporting framework for social housing</p> <p>Apply a uniform performance reporting framework for public and community housing, building on the Housing Registrar’s existing framework and with reference to other jurisdictions (such as the Scottish Housing Regulator’s framework). Current and prospective tenant advice should be incorporated.</p> <p>Require uniform presentation of performance reporting across public and community housing sectors. With the introduction of a single regulator, these statistics could be combined in the same published report.</p> <p>The regulator should review the performance reporting framework regularly, via a consultative process that includes sector participants and tenants, to make improvements on the performance reporting regime.</p>	<p>Legislation required</p>
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Chapter 6 Regulation that supports sustainability and growth

<p>Recommendation 6.1: Amend the wind-up provisions to ensure the assets of a specialist housing agency are transferred to another registered agency that shares its mission, and that Aboriginal housing remains in Aboriginal hands</p> <p>Amend the wind-up provisions to ensure, as far as possible, that assets are transferred to another registered housing agency with the same mission as the agency being wound up, with the assets of an Aboriginal housing agency to be required to remain with an Aboriginal provider.</p>	<p>Legislation</p>
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<p>Recommendation 6.2: Facilitate the registration of Aboriginal Community Controlled Organisations</p> <p>Undertake a program of initiatives to facilitate the registration of Aboriginal Community Controlled Organisations (ACCOs), that includes but is not limited to:</p> <ul style="list-style-type: none"> • prioritising assisting ACCOs to become registered • establishment of a culturally safe pre-registration team within the regulator led by an Aboriginal senior officer and comprising Aboriginal staff to undertake outreach with ACCOs and Aboriginal communities • working with the Aboriginal community and Aboriginal Housing Victoria (AHV) to develop model policies and templates to facilitate successful registration of ACCOs including board information packs and action plans, which map out the first year of registration and the actions needed to meet the first compliance review 	<p>Mainly administrative</p> <p>Regulation for performance standards</p>
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- identifying practical ways of recognising the multiple accreditation and regulatory requirements that ACCOs already meet and working with AHV, ACCOs and other regulators to investigate scope for mutual recognition to minimise duplication of the compliance and reporting obligations that ACCOs face
- ensuring regulatory performance standards are sufficiently flexible to recognise the strengths of ACCOs and their delivery of housing, knowledge of family and community circumstances, and approaches to managing arrears and evictions
- ensuring the regulatory framework incorporates Aboriginal housing perspectives into operational processes and service delivery, and that regulation is proportionate and suited to the scale of the organisation being regulated
- developing and implementing, in collaboration with Victorian Aboriginal Housing and Homelessness Forum, Indigenous Governance Principles that value, respect and inform how ACCOs can meet housing regulatory governance standards.

Extra funding will be required to support ACCOs to prepare for registration and to meet regulatory requirements in their first year after registering.

In addition to the suite of regulatory initiatives, the Aboriginal community and ACCOs should be provided with information on:

- the broader social housing system and social housing regulation
- landlord responsibilities and the *Residential Tenancies Act 1997*.

<p>Recommendation 6.3: Reduce duplication where registered community housing agencies report to multiple regulators</p> <p>Require formal information-sharing arrangements between the social and affordable housing regulator and the Social Services Regulator (and other relevant regulators) and enable relevant intelligence to be acted on.</p> <p>Create a mechanism to enable dual housing and homelessness providers to register with, and report to, a single regulator. For example, relevant social services client safeguarding provisions (those relating to client safety and incident reporting) could be applied to homelessness services that are also registered agencies under the <i>Housing Act 1983</i> and be overseen by the Social Services Regulator.</p> <p>The regulator should have explicit duties to perform its functions in a way that is proportionate and targeted to where action is needed, and to work with other regulators to minimise duplication and administrative burden for registered agencies, wherever possible.</p>	<p>Legislation</p>
<p>Recommendation 6.4: Reduce duplication and confusion in regulatory and contract reporting</p> <p>Put in place a memorandum of understanding or similar formal arrangements between the regulator and Homes Victoria whose objective is to reduce duplication in regulatory and contract reporting.</p> <p>The arrangements should explicitly allow for cross reporting of data required for regulatory monitoring purposes to the funder and regulator, and for sharing of information between the regulator and funder about the performance of a registered provider.</p> <p>Mutual consultation on new contracts or regulations should be included.</p>	<p>Legislative authorisation to share information may be required</p>

<p>Recommendation 6.5: Expedite land transaction approvals as a step towards enabling a portfolio management approach</p> <p>Amend legislation to:</p> <ul style="list-style-type: none"> • require Homes Victoria to grant or refuse approval for land transactions within 30 days of receiving a written request from a registered agency • introduce statutory criteria for decision making • provide that approval cannot be unreasonably refused. <p>Consider replacing the requirement for Homes Victoria approval with a more flexible system overseen by the regulator, modelled on the Scottish regulatory approach.</p>	<p>Regulation (performance standard)</p>
<p>Recommendation 6.6: Registered agencies to develop and maintain an up-to-date assets and liabilities register</p> <p>Require registered agencies to develop and maintain an up-to-date assets and liabilities register that contains details of property ownership, associated debt, status as social or affordable or a mix, obligations related to use, building condition, maintenance plans and tenancy obligations.</p>	<p>Legislation</p>
<p>Recommendation 6.7: Strengthen the regulator’s role in supporting growth</p> <ul style="list-style-type: none"> • Include principles in the regulatory framework to guide the regulator’s strategy and functions, to encourage appropriate growth in social and affordable housing stock, while ensuring the long-term financial health of registered providers. • Ensure the regulator develops a tailored approach to risk management, based on the individual risk profile of registered agencies. • Require registered agencies to articulate strategies in relation to growth of stock and report on progress. • Include a statutory function for the regulator to conduct research and inquiries to promote continuous improvement in regulatory practice; and engagement with tenants, providers and other stakeholders, including investors. 	<p>Legislation</p>

Recommendation 6.8: Create a pathway for Victoria to join the National Regulatory System for Community Housing

Commence discussions with the National Regulatory System for Community Housing (NRSCH) jurisdictions to identify opportunities for closer alignment of provisions, streamlining of registration requirements and greater consistency in data and performance reporting.

Recommend to NRSCH jurisdictions and the Commonwealth Government that a fresh policy review, aimed at creating an effective and tenant focused national regulatory system be conducted in consultation with key stakeholders in the system.

Key features that Victoria would be seeking in the first instance include:

- an agreed set of contemporary national standards that are tenant centred, and give prominence to tenant voice
- standards for the safety of properties (especially fire safety) and Aboriginal cultural safety
- an effective governance framework that ensures consistency is achieved and maintained over time, and any changes can be progressed and endorsed by participating governments in a timely way
- agreement on the scope to retain some jurisdictional differences (for example, if jurisdictions choose to regulate public housing, it would be outside the NRSCH).

Key technical and policy issues to be considered by any new national review include:

- adequacy of the primary regulator model for effective regulation of providers operating at scale across multiple jurisdictions, and issues regarding line of sight for local regulators of providers operating in their jurisdiction
- retaining investments of state/territory governments for the benefit of the residents of that state/territory
- adequate regulation of complex multiparty special purpose vehicles and for-profit providers
- registration of for-profit providers of social housing.

Recommendation 7.1: Establish an independent social and affordable housing regulator

Establish an independent social and affordable housing regulator with the following capabilities and governance features:

- Capabilities should include:
 - the independence, authority and leadership capability to effectively regulate a complex provider environment, encompassing public and community housing, and other forms of government-subsidised rental housing
 - strong capability to implement client-centred regulation, including for the development and implementation of system-user consultation structures that inform regulator priorities and system-design decisions
 - access to skilled staff and expertise to enable it to perform all aspects of its role effectively. The specialist skills to regulate complex entities and investment models are essential
 - a dedicated function for Aboriginal housing staffed by Aboriginal people.
- Governance features include that the regulator:
 - is (or forms part of) a statutory body with functions and powers specified in legislation
 - has structural independence, in that it is not subject to broad powers of Departmental or Ministerial direction and control
 - is adequately resourced to perform functions efficiently and is not dependent on a host department for core services such as legal advice and communications
 - has a multi-member decision-making structure, including an expertise-based board
 - has a clear published approach to regulation, including how and when powers will be exercised
 - is subject to administrative and judicial review of significant regulatory decisions and public accountability via reporting
 - has clear objectives and sufficient powers to perform its regulatory functions effectively.

Legislation

<p>Recommendation 7.2: Resource a program of inspections and enhance the regulator’s inspection and audit powers</p> <p>Resource and implement a program of proactive routine property inspections as well as reactive inspections and investigations.</p> <p>The regulator’s current monitoring and enforcement powers should be amended to ensure that they are fit-for-purpose to enable it to conduct routine and ad hoc inspections of rented properties and conduct or commission forensic audits where required (Recommendation 5.1)</p>	<p>Legislation</p>
<p>Recommendation 7.3: Remove the statutory distinction between housing association and housing provider</p> <p>Remove the statutory distinction between housing association and housing provider under section 85 of the <i>Housing Act 1983</i>, to facilitate an approach to regulation and inspections based on provider risk-profiling.</p>	<p>Legislation</p>
<p>Recommendation 7.4: Enhance the tools available to the regulator to allow for a more graduated approach to enforcement</p> <p>Give the regulator the power to issue improvement notices when there have been breaches of regulatory standards and consider introducing a power to levy fines.</p>	<p>Legislation</p>
<p>Recommendation 7.5: Transfer eligibility and allocations powers to the Minister</p> <p>Transfer the Director of Housing’s power to make legislative instruments determining the rules for eligibility for, and allocation of, social housing to the responsible Minister.</p>	<p>Legislation</p>

Finding 7.1: The Housing Act 1983 needs modernisation to complement the recommended regulatory reforms and reflect other changes in the sector

The Housing Act is substantially outdated and focuses primarily on public housing. It does not reflect the current focus on growing social and affordable housing through the community housing sector including through public, not-for-profit and other private-sector partnerships.

There is a case for a review of the Housing Act to complement the reforms to the regulatory system recommended in this report, and ensure clarity, coherence and complementarity of the respective roles and responsibilities of the social and affordable housing regulator and Homes Victoria.

Chapter 8 A system that support those eligible but unable to obtain social housing

Recommendation 8.1: Offer support to applicants on the Victorian Housing Register

Link Victorian Housing Register applicants to services and accommodation-related assistance.

This should include equivalent supports for tenants who are eligible for social and affordable housing, and programs such as Tenancy Plus to help them access appropriate interim accommodation.

This would require adequate funding and resourcing.

It could also include personalised advice on support services (based on the information applicants provide about their support requirements when registering) and other accommodation-related supports.

Funding



1. Placing current and prospective tenants at the centre of the social and affordable housing system

Key issues

- Social and affordable housing exists to meet the housing needs of current and prospective tenants. The adoption of a user-centred approach would bring social housing into line with modern social services practices.
- The market mechanisms by which customers signal service, price and quality preferences to providers are absent in social housing, making regulation critical for accountability to users. In this respect:
 - social and affordable housing in Victoria is 'hyper-rationed' to those most in need
 - incentives to respond to customer preferences are limited and the system relies on government subsidisation and regulation, and on the culture and mission focus of providers, to provide housing and services of an appropriate standard.
- Many tenants participating in this Review reported poor experiences in social housing, including a lack of responsiveness, a feeling that their voices were being ignored, and a lack of respect and support. Others reported a hesitation to register complaints or concerns for fear of having their tenancies terminated, with no other housing options.
- The *Housing Act 1983* does not provide a clear objective for the social housing regulatory system. A clear objective to promote and safeguard the interests of current and prospective tenants would send a strong signal to the regulator and providers about what their primary purpose is.
- A shift to a user-centred system is consistent with, and need not be at the expense of, financial sustainability and growth of social housing (Chapter 6). Further, the inclusion of prospective tenants as system users signals the importance of sustainability and growth.
- The service standards that current and prospective tenants can expect are often unclear to them. A customer service charter outlining the performance standards for social housing would help communicate this information.
- There are insufficient mechanisms in place to enable social housing tenants (and prospective tenants) to express their views and preferences. In this respect:
 - formal mechanisms should be introduced to ensure tenant voices are heard in the development of policy and regulatory decisions affecting their housing
 - there is a case for stronger obligations on social housing providers to engage with tenants, and greater guidance and support for providers, with a view to enhancing a culture across the sector that genuinely values strong engagement
 - there is a need for a dedicated social housing tenant advocacy body to service both community and public housing tenants.

1.1. What is the problem?

A key theme that the Panel heard throughout its consultation process was that the social housing system is not as focused as it should be on listening to the voices of tenants – both current and prospective.¹ In this respect, the Panel heard concerns that the social housing system has become increasingly focused on the operations of providers and management of waiting lists. For example, Australian Housing and Urban Research Institute research has noted that:

“... many operational policies are influenced by a primary need to manage the social housing waiting list, rather than ensuring positive outcomes for tenants and their households.”²

Interestingly though, the concept of placing tenants at the centre of a renewed system was not in dispute. While some stakeholders pointed out that the system is also designed to promote other objectives, such as provider viability and growth, there was a consensus that these are simply a means to an end – that of serving tenants.

The main finding of this Review is that the voices of current and prospective tenants should be placed at the centre of the system (Box 1.1). Person-centred approaches are now common in other areas of human services, such as healthcare and disability services, and are considered best practice.

Box 1.1: What does placing current and prospective tenants at the centre mean?

Person-centred approaches are used in many areas of human services, such as healthcare and disability support. In brief, person-centred approaches place the focus on what matters to the people receiving support, rather than on the preferences of the service system or providers.

Person-centred approaches:

- support people to be involved in decisions about their lives, rather than the system making decisions for them
- take into account people’s life circumstances and characteristics, and tailor supports for them, rather than using a ‘one size fits all’ approach
- focus on people’s strengths, rather than on their challenges.³

In healthcare, rather than professionals making unilateral decisions about the course of care to take, patients are involved in decision-making, and provided with information to assist in this. Patients have the right to refuse any treatment they are not comfortable with.⁴

Every human service sector is different, and approaches that work in one area of service delivery may not be applicable in their entirety for others. Nonetheless, the core principles remain – that the interests of current and prospective tenants should be front and centre, and tenants should be involved in decisions about how their interests are best served.

Under ideal market conditions, where choice and competition promote the responsiveness of service provision customer preferences, the need for regulation is minimal. In the absence of these market forces, providers have little incentive to be responsive to tenants, other than their not-for-profit purpose or mission. In this context, regulation performs a consumer protection role to make providers accountable to tenants who, because of limited housing choices, cannot themselves hold providers sufficiently to account.

As noted by the Consumer Policy Research Centre (CPRC):

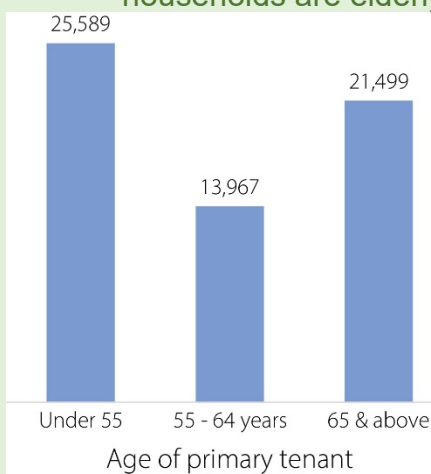
“We know from our research the difficulty and stress when navigating complex systems and markets is compounded for consumers experiencing vulnerability.”⁵

Social housing tenants are often highly vulnerable, not just because of low incomes, but also because many experience multiple challenges, including disability, trauma, drug and alcohol addiction, family violence, and periods of homelessness (Box 1.2).

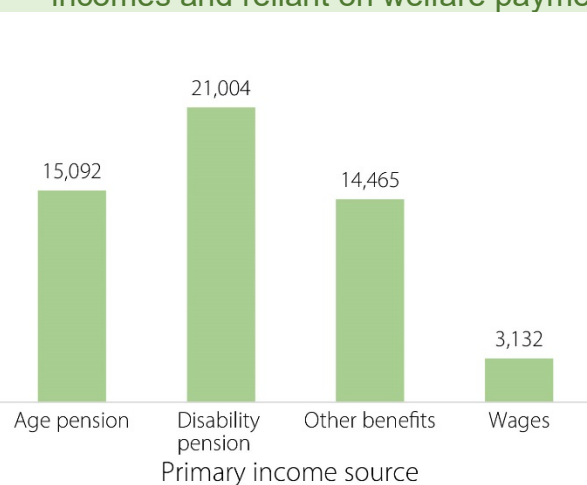
Box 1.2: A snapshot of tenants in public housing in Victoria

There were 79,916 households in social housing - 61,055 households were in public housing

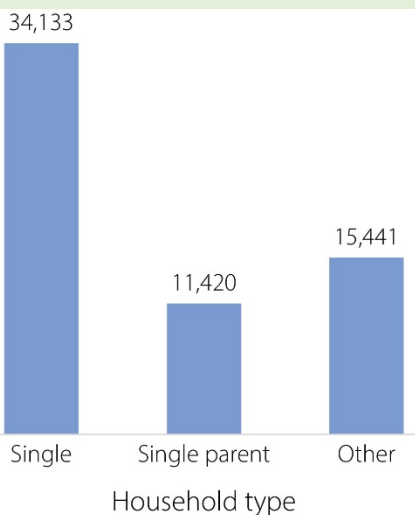
A high proportion of public housing households are elderly



Most public housing households are on low incomes and reliant on welfare payments



Many households are single person



Many initially entered through the priority waiting list



Sources: Department of Families, Fairness and Housing. 2021. *Housing Assistance: Additional Service Delivery Data 2020–21*, p. 6; Housing Registrar. 2021. *Registered housing agency performance*; Homes Victoria. 2021. *Public housing tenants (unpublished data)*.

Based on extensive consultation with stakeholders, the Panel considers that the following factors have contributed to the current situation where the system does not always respond to the voices and interests of current and prospective tenants.

1.1.1 The regulatory system has no clear statutory objective

Section 73 of the *Housing Act 1983* notes that the object [of Part VIII] "...is to provide a regulatory framework to encourage the development of rental housing agencies serving the housing needs of low-income tenants by providing for ... the registration of rental housing agencies; and ... the regulation and monitoring of registered agencies". This object provides guidance on the operation of the regulatory system, rather than on what the objective of the regulatory system should be.

The Panel recognises that the Housing Registrar includes promoting tenant outcomes as one of the key purposes in its corporate plan and notes that it is committed to safeguarding the interests of current and prospective tenants. However, this objective is not reflected in the legislation.

The Housing Act itself has a principal object (section 6) to ensure every Victorian has adequate and appropriate housing at a price within their means. Section 6 goes on to list various functions and activities that signal how the principal object might be achieved. These appear reasonable but again, do not provide clear guidance in cases decisions involving trade-offs need to be made.

1.1.2 The service standards tenants can expect are not always clear to them

The Housing Act requires social landlords to act in ways that consider the interests of tenants.⁶ In community housing, the minimum service standards that tenants should receive from their providers are set through the performance standards for registered housing agencies.⁷ These standards detail requirements, such as treating eviction as a last resort. In public housing, the policies and procedures of Homes Victoria also provide for service standards and consumer protections.

A key theme emerging from the tenant consultation surveys undertaken for this Review was that tenants are often unaware of, or do not understand, the standards applying to their housing. For example:

- less than half of public housing tenants agreed that their rights are protected, while about 65 per cent of community housing tenants agreed with this proposition
- about 40 per cent of community housing tenants did not consider that they could stay in their home for as long as they wished, with about half raising concerns about eviction or safety
- just under half of public housing tenants, and just over half of community housing tenants surveyed, felt like they could have a say in the services or supports they receive
- tenants in community housing who had problems with repairs and maintenance were generally unaware of their rights and felt powerless to pursue issues of concern to them.⁸

Tenants raised issues such as a lack of responsiveness to maintenance requests, feeling like their voice was being ignored, perceptions of poor service, and a lack of support.⁹ Many tenants advocated for stronger rights, with comments such as:

"I didn't feel like I had rights. I never felt that I was respected whilst living in housing. I never felt like I had a voice. I felt like nothing was done."¹⁰

Documented standards will be less effective where tenants are unaware of their existence, or do not feel empowered to exercise their rights. Some submissions raised concerns that the policies of some community housing agencies are unclear or fall short of those provided by public housing.¹¹ For example, the Community Legal Centres Joint Submission suggested there is often a gap in standards and accountability for community housing tenancies, which has an effect on tenants.¹² Although the Housing Registrar's standards for registered agencies are clear and have been stable over time, there is enough flexibility within the standards to allow for considerable variation in each agency's policies and practices. This can leave tenants confused about what level of service to expect.

This issue is relevant to both public and community housing as highlighted by the survey results. It should also be noted that community housing tenants often express higher satisfaction than public housing tenants.¹³

The CPRC highlighted the need for service delivery standards to be presented in a “relevant, clear and comprehensible manner...”¹⁴

1.1.3 There has been insufficient involvement by public and community housing tenants in decisions that affect their housing

The purpose of involving tenants in decision-making is to enable them to express what their interests are and how they are best served, rather than having them inferred by others. Unfortunately, there has been little systematic assessment of the tenant involvement practices of community housing organisations within Victoria.¹⁵ There are a variety of ways to involve tenants (Box 1.3), and there are examples of good practice across the sector, particularly in cooperatives where tenants are extensively involved in management and operations.

Box 1.3: Types of tenant involvement

Tenant involvement and empowerment refers to ways tenants can influence the decisions — strategic and operational — of their housing provider, as well as in the broader policy and regulatory environment.¹⁶

There are a wide range of options available to providers to involve tenants in decision-making, from consultative approaches (such as surveys) to tenant control and collaboration (such as tenants running their own cooperatives). The tools in the Housing Registrar’s good practice guide on tenant involvement include:

- tenant participation on boards
- tenant representative bodies
- tenant associations
- focus groups
- maintenance groups
- tenant inspectors
- surveys
- suggestion boxes
- one-on-one feedback
- use of web-based tools.¹⁷

Many organisations that have effective tenant involvement approaches use a range of these strategies, and it is important to note that what works in one organisation may not work in others.

A common practice in regions such as Scotland and Wales involves housing providers inviting tenants to critically scrutinise their operations. This can be achieved with tenant panels which have access to up-to-date performance data and information.¹⁸

However, views expressed through consultations and submissions suggest that more work needs to be done to give tenants greater voice.¹⁹ For example, Quantum Support Services noted that:

“Social housing tenants have conveyed disappointment and dissatisfaction with the lack of accessible and easy to navigate information, whether concerning wait list, application processes or dispute resolution, modifications and maintenance

requests. Tenants have said they are unsatisfied and that they feel 'unheard...and have no control over their homes'.²⁰

Meaningful and representative tenant involvement can be challenging for some organisations. This is particularly the case in Victoria where, as noted, many tenants entering the system have recently experienced trauma, have high support needs and may not be in a position to engage with their housing provider.²¹

Some providers noted difficulties, either because tenants themselves do not wish to participate, or because there is a lack of funds for programs to enable meaningful involvement. Some providers highlighted programs that they have set up to involve tenants, and others are moving in this direction.²² Nonetheless, even where tenant involvement pathways have been established, some tenants raised concerns about their input being undervalued, or the process being tokenistic and not taken seriously.²³

In relation to public housing, participants expressed a view that tenant involvement has become less of a focus, leading to tenants becoming disenfranchised and disempowered. For example, the Victorian Public Tenants Association (VPTA) has pointed to tenant participation groups and tenant participation officers that have been defunded or deprioritised.²⁴

Given the potential benefits for tenants, providers and the system, meaningful tenant involvement should be prioritised (Box 1.4).

Box 1.4: The benefits of tenant involvement

In his classic study of respect in western welfare systems, the American sociologist, Richard Sennett, concluded that the only way to ensure that service recipients feel respected, and providers treat them respectfully, is by giving them a say in the conditions of their existence.²⁵

Systems and services can be designed and delivered in the 'best interests' of users, but if they have not sought and incorporated input from the users themselves, they are likely to fall short of this aim, and can even disempower them. Tenant involvement gives tenants a say in decisions that affect their housing and their lives, but can also lead to other improvements, including:

- higher tenant satisfaction generally
- quality of decision making
- the scope and quality of services delivered.

Involving tenants can highlight solutions and interventions that organisations had not considered. It can also lead to a better allocation of scarce resources to the services that tenants actually want.

In other research, Manzi et al examined the effect of greater tenant involvement on the housing practices of AmicusHorizon, a large English housing provider with over 20,000 properties under management.²⁶ They found that greater tenant involvement gave AmicusHorizon the largest tenant satisfaction of any social landlord in the United Kingdom. Case studies from two areas in the study identified estimated cost savings resulting from the tenant involvement of £2.7 million per annum, versus estimated costs of £950,000.

Participants in the Hickman and Preece study²⁷ highlighted that tenant involvement can prevent over-servicing — allocating resources to services tenants do not want. One participant highlighted that tenant participation had saved their organisation £2.5 million per year.²⁸

1.1.4 There has been no clear approach to considering the needs of prospective tenants

The term ‘prospective tenants’ refers to the large group of people who need social housing but are unable to access it, including people who are homeless, on the waiting list for social housing and those who are eligible but have chosen not to apply. It also encompasses people who may need social housing in the future.

While it is difficult to identify and consult with people in this category, it is important for policy makers to consider their interests when making decisions that have specific future implications, for example, around asset management and new construction.

These trade-offs are made (implicitly or explicitly) whenever a decision about social housing is made. Policies relating to tenure security, rent policy, allocations and housing quality can have different impacts, depending on whether someone is in the system already or enters in the future.

A crucial part of placing current and prospective tenants at the centre of the system is enabling them to have a say in these trade-offs. Currently, the decisions are largely made by policy makers, regulators and providers, with little input from current and prospective tenants themselves, and with little transparency about how they are made.

1.1.5 There are gaps in tenant advocacy for community and public housing tenants

The VPTA is a peak body representing public housing tenants and waiting list applicants. It undertakes systematic advocacy to the Department of Families, Fairness and Housing (DFFH), as well as assisting individuals. Although the VPTA assists community housing tenants, it does not have a formal role (or resourcing) to do this. As such, community housing tenants lack a dedicated body to help them to engage with their providers and the system, and to advocate on their behalf.

The Victorian Residential Tenancies Commissioner also plays a role advocating to government on behalf of Victorian renters, which include tenants under a residential tenancy agreement, residents of other tenure types that fall under the *Residential Tenancies Act 1997* and specialist disability residents. Public housing is excluded from this remit, although community housing is included.

While responsive to issues affecting public housing tenants in practice, explicit inclusion would enable the Commissioner to work more proactively in tenants’ interests. Like tenants in the private rental sector, those in public housing are subject to residential tenancy agreements under the Residential Tenancies Act. Incorporating public housing in the Commissioner’s responsibilities is aligned with other recommendations in this report for greater consistency in social housing and equity for tenants.

1.2. What is recommended and why

Over the course of the Review, the Panel assessed a range of interstate and international approaches to the regulation of social housing, with a view to identifying best practice in placing tenants at the centre.

The Scottish approach to current and prospective tenant-informed regulation of social housing resonated strongly with the Panel. Its system features a clear legislative objective and entrenched tenant engagement practices (Box 1.5). While Scotland had a long history of tenant engagement, reforms in 2010 led to a shift in the way tenant input was to be obtained and used by the regulator, and these practices were a catalyst for improvements across its social housing sector.

The package of reforms recommended in this report draws from the Scottish model. Of course, these changes alone will not necessarily lead to a tenant-focused system, especially in the short term. However, they will help drive the cultural change to support reform.

Box 1.5: The Scottish approach to social housing regulation

The Scottish system of social housing regulation is often put forward as an example of best practice in tenant focus. Several submissions to this Review recommended aspects of its model be implemented in Victoria.²⁹ The Scottish social housing system is much larger and more mature than Victoria's, but its regulatory model provides a useful case study, and some aspects of its system should be considered for Victoria.

The *Housing (Scotland) Act 2010* includes an explicit object for the regulator to "... safeguard and promote the interests of persons' who are or may become homeless ... [as well as] ... tenants of social landlords ... [and] ... recipients of services provided by social landlords".³⁰

Alongside this objective, a social housing charter was introduced, which outlines the performance and standards that tenants can expect to receive from their landlord.

The Scottish regulator engages closely with tenants in undertaking its role. As part of its 2020–22 tenant involvement plan, the regulator noted that it will engage with its National Panel of more than 400 social housing tenants, and also engage with tenants via regional networks and tenant advisers.³¹

At the time of the introduction of the regulator in 2010, satisfaction with the Scottish social housing system was already high and has continued to increase at a steady pace. Overall, tenant satisfaction has risen from 87.9 per cent in 2013–14 to 89.1 per cent in 2019–20. More sizeable performance increases have been cited in specific areas. For example, satisfaction with opportunities to participate in decision making processes has risen from 78.4 per cent (2013–14) to 87.2 per cent (2019–20), and the length of time taken to complete emergency repairs has decreased from 6.9 hours to 3.6 hours.³²

A review of the Scottish social housing charter in 2016 found that most participants felt that the quality of landlord services had improved due to the charter. The review identified six ways in which the charter had improved services, including:

- better communication between landlords and tenants
- that landlords are more accountable for service quality
- general quality improvements
- greater focus on tenant priorities
- encouragement of tenant-led scrutiny
- enabling landlords to plan their services more effectively.³³

1.2.1 A clear legislative objective for the regulatory system

As a starting point, the regulatory system needs a clear objective that places the interests of current and prospective tenants at the centre of the system. This would help the regulator (and others) to prioritise its functions, as well as to set the cultural focus for the system.

In terms of implementing such an objective, the Panel considered two options of:

- a single objective to safeguard and promote the interests of current and prospective tenants, similar to the Scottish approach³⁴
- multiple objectives that describe the regulator’s functions in relation to a range of economic and consumer objectives, similar to the English approach.³⁵

The Panel favours the single objective, a position that was supported by many of those who participated in this Review.³⁶ Under the single objective, it is clear that where a decision is to be made amongst competing objectives, the deciding factor should be the interests of current and prospective tenants. The English approach provides more detail, but introduces potentially conflicting objectives, which can dilute this focus.

Some participants argued that the regulatory system should serve a number of stakeholders, particularly funders and providers, who generate housing and provide services.³⁷ While the Panel agrees that system improvements brought about by regulation can promote the interests of these stakeholders, their involvement in the sector should ultimately be to meet the needs of the system users. Supporting documentation, such as statements of ministerial priorities and other guidance material produced by the regulator, should be used to clarify the roles of other system stakeholders.

Importantly, the inclusion of prospective tenants is intended to ensure that social housing is fit for purpose over the long term, by keeping the stock well maintained and environmentally sustainable.³⁸ It encourages the regulator to consider how social housing stock might grow, and the waiting list be reduced, while ensuring that the housing (and associated services) is suitable for current tenants. It also means people who may be experiencing homelessness have a voice in the way the system is designed.

Inevitably, there will be trade-offs between the interests of current and prospective tenants, and the recommended legislative objective should mean these trade-offs are made explicit and avoided wherever possible.

Recommendation 1.1: Create a clear objective for social housing regulation in legislation

Create an explicit single statutory object of the regulatory system, which is “to promote and safeguard the interests of current and prospective tenants”.

1.2.2 A customer charter of social housing service standards

The Panel recommends development of a charter of customer service standards, which is provided to all social housing tenants. Charters have been used in other areas of service delivery to make the entitlements of service users clearer and more accessible (Box 1.6).

The charter should not impose any extra requirements on social housing providers. Instead, it should outline the performance standards that apply to providers (including Homes Victoria), in a way that is relevant to tenants. It could also refer to tenants’ existing rights in other legislation, such as the Residential Tenancies Act. It should also contain information about how to make a complaint, and the dispute resolution options available (Chapter 4).

Box 1.6: Examples of service charters in service delivery

Australian Charter of Healthcare Rights

The Australian Charter of Healthcare Rights outlines what consumers can expect when receiving healthcare. Provisions in the charter include a right to:

- receive safe and high-quality healthcare that meets national standards
- be treated as an individual, with dignity and respect
- be given assistance, when needed, to understand and use health information.³⁹

The healthcare rights charter was revised following a review in 2018, which received 1,600 survey responses, and undertook workshops with consumers, staff and policy makers. Ninety-three per cent of survey respondents found the information in the charter useful, with respondents noting that it made their rights when interacting with the healthcare system more explicit.⁴⁰

The Charter of Aged Care Rights

The Charter of Aged Care Rights outlines the rights that consumers of Commonwealth Government-funded aged care services can expect. It includes rights to:

- safe and quality aged care services
- live without abuse and neglect
- be listened to and understood.⁴¹

The Carnell-Paterson Review of aged care regulatory processes noted that the aged care rights charter covers much of the same ground as the service standards but is more expansive and better suited to the individual care recipient. However, it also noted that awareness of the charter is low.⁴²

Following that Review, providers have responsibilities to support consumers to understand the charter and must provide consumers with a copy.

An overarching customer service standards charter will also signal to tenants that they can expect the same baseline level of service standard, regardless of who their provider is (Chapter 2).

The contents of the recommended customer charter should be determined through a consultation process that includes current and prospective tenants. It is important that the charter is easily accessible to tenants, and that service providers support tenants to understand its purpose and contents.

The Review's Aboriginal housing consultation process also highlighted the need for the service charter to incorporate the principles of cultural safety.⁴³ The design should consider existing charters in other service areas and jurisdictions, including the Scottish Social Housing Charter.⁴⁴

Review participants generally supported the introduction of a service standards charter.⁴⁵ However, the Community Housing Industry Association Victoria (CHIA Vic) noted that many community housing organisations already have service charters in place, and that another charter could cause confusion. The approach taken to implementing the Australian Charter of Healthcare Rights could address this concern. Under that system, organisations are required to have an accessible charter that is consistent with the Australian Charter of Healthcare Rights.⁴⁶ Organisations can choose to either adopt the charter in whole, or make modifications to it, so long as the core rights remain. This

would negate the need for multiple service charters. It would also allow providers to maintain their individual ethos, and not discourage them from exceeding minimum standards.

Recommendation 1.2: Develop a customer charter of social housing service standards

Develop, in consultation with current and prospective tenants and other relevant stakeholders, a charter of service standards in social housing that will:

- outline the key service standards that tenants can expect under the performance standards for registered housing agencies, and rights contained in other relevant legislation such as the *Residential Tenancies Act 1997*
- be easily accessible, with service providers required to support tenants to understand the charter's purpose and contents
- embed principles of cultural safety for Aboriginal tenants
- be modifiable by social housing providers to reflect the specific services of the organisation and standards they wish to deliver, without diminishing any charter service standards or rights.

The charter should not impose any requirements on social housing providers over and above the regulatory performance standards.

Beyond the customer service standards charter, it is important that the information the regulator publishes on provider performance is clear and shaped for the needs of tenants, including activity and outcomes reporting to Victoria's Aboriginal communities (Chapter 5). For example, the CPRC⁴⁷ suggested an interactive dashboard to display tenant and service delivery outcomes. The Housing Registrar has recently developed a data dashboard, and this could continue to be refined, in consultation with the recommended tenant panel (Recommendation 1.3).

Several tenant groups also noted there are difficulties in understanding the policies of some providers,⁴⁸ and the Housing Registrar should continue to encourage 'plain language' for provider policies, and for providers to publish meaningful information on their performance.

1.2.3 Listening to current and prospective tenants

There are opportunities to strengthen tenant voice and develop a more tenant-informed social housing system, by facilitating and supporting tenant involvement. While a clear legislated objective for the regulatory system will go some way towards this, a process of cultural change is needed both at the local and provider level, and at the system design and decision-making level.

As noted above, including voices of both current and prospective tenants addresses current standards and performance, as well as considerations for the future including growth of social housing stock. The Panel recommends a three-pronged approach that includes:

1. The regulator driving the process of cultural change by adopting tenant involvement practices and creating formal mechanisms to obtain tenant input to system design.
2. Strengthening the requirements for all providers (including Homes Victoria) to obtain and incorporate tenant input.
3. Supporting tenants and providers to engage with each other.

Formal mechanisms for current and prospective tenants to inform the regulator

The Housing Registrar has begun to engage with tenant groups, and according to its corporate plan, intends to strengthen relationships with tenant advocates.⁴⁹ The Housing Registrar's 2021 Annual Forum focused on tenant voice, with insights from organisations and tenants.⁵⁰ However, there are currently no formal processes in place to engage with current and prospective tenants.⁵¹

Box 1.7: Key principles to guide the design of processes for current and prospective tenant engagement

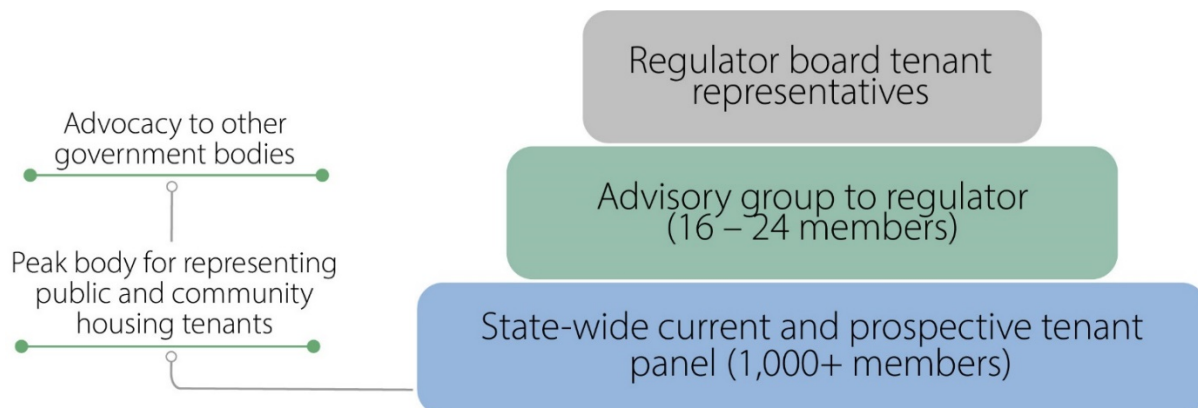
The Panel undertook a consultation process involving social housing tenants and housing peak bodies as a first step to establishing a formal engagement process.⁵² The key principles outlined by Review participants to guide the design of the process included:

- **Inclusiveness** – tenants from different backgrounds should have an opportunity to be heard.
- **Representativeness** – tenants involved in engagement activities should be representative of all tenants.
- **Accountability** – the regulator's process should be accountable to tenants
- **Transparency** – wherever decisions are made, information about the process should be available to tenants, noting that there is a lack of trust from tenants that their opinions will lead to meaningful change.
- **Adequate resourcing** – there should be sufficient resources to plan, implement and act on engagement processes, including compensation for tenants involved in formal positions, as well as accessibility mechanisms to allow for involvement.
- **Tenant-led** – tenants should be active co-designers of the process.

The consultation also produced a broad consensus for a three-tiered approach (Figure 1.1) consisting of:

- **Tier 1** – there should be tenant representation on the board of a social and affordable housing regulator (Chapter 7 discusses the structure of the regulator in more detail). Specifically, there should be at least three tenant representatives, representing diverse tenants from public and community housing, and prospective tenants.
- **Tier 2** – a tenant advisory group should meet regularly to provide advice on policy, monitoring, reporting and service delivery issues. This body could consist of between 16 and 24 members, and represent the key groups in social housing.
- **Tier 3** – current and prospective tenants who were interested could register, participate on a panel and provide feedback on a range of issues. This panel could give advice on policy issues beyond regulation.

Figure 1.1: An approach to tenant involvement in regulation



Participants noted the need for strong linkages between the tiers, for example, making board members accountable to the broader tenant advisory group, and ensuring that information generated from the panel was circulated back to the advisory group.⁵³

This approach is similar to the Scottish Housing Regulator’s approach. The Scottish regulator has two tenants on its board and a tenant engagement plan that includes gathering feedback from a national panel of tenants, involving tenants when consulting on regulatory proposals, and involving tenant advisors in examining how they regulate and communicate.⁵⁴

The Panel considers that the above model should form a starting point for tenant engagement with the regulator, noting that it will evolve over time.

Recommendation 1.3: Decisions about regulation should be informed by tenants

Embed tenant involvement practices in its policies and processes in the regulator. This should include:

- lived experience to be included in the expertise required on the board of the regulator (Chapter 7)
- a tenant advisory group that meets regularly to provide advice on the activities of the regulator
- a larger tenant panel, which provides feedback on the regulator’s decisions about standards, processes and operations.

Strengthen tenant voice and influence on the operations and processes of housing providers

Current performance standards require registered community housing agencies to involve tenants and residents in the planning and delivery of housing services in a variety of accessible ways. While there are examples of good practice across the sector, as highlighted earlier, many tenants do not feel they genuinely have a say in decisions about their housing.

The Panel considers there is scope for stronger regulatory standards to bring all registered housing agencies up to a consistent level of tenant engagement. For example, the Aged Care Standards

require that consumer input is obtained in the development, delivery and evaluation of services, and consumers are supported in that engagement.⁵⁵ Significantly, the Royal Commission on Aged Care Quality and Safety did not consider that this standard went far enough, noting that engagement needs to be supported by a clearly articulated strategy.⁵⁶

The Panel does not propose to prescribe the content of a new standard, as this should be developed through a consultative process. However, as a starting point, the standard should require:

- support to tenants to engage – it should not be sufficient for providers to establish mechanisms for engagement but have little uptake because tenants do not feel supported
- a tenant engagement strategy – this should be accessible, and articulate the ways in which the agency will engage with tenants, and support them to do this
- demonstration of how tenant input has been used and its impacts on their operations – tenant involvement should lead to demonstrated effects, rather than being tokenistic.

The regulator could support organisations to fulfil these requirements. The Housing Registrar has issued guidance on tenant involvement and uses this guidance to help registered agencies improve their performance.⁵⁷ There would be merit in the guidance being updated, to take account of international developments⁵⁸ (for example, the use of tenant scrutiny panels) and of the new performance standard.

Through this process, current practices could be evaluated to provide greater guidance on what works. It could also draw on best practice approaches in the private sector to understand the views and needs of customers. This document should also consider the views of tenants.⁵⁹ Leadership from the regulator in incorporating this approach into its own operations, as described above, will drive changes in provider performance in this respect.

Some participants suggested there was a need for a tenant involvement framework.⁶⁰ Guidance by the regulator should help to form the basis for such a framework, alongside input from the industry itself.

Recommendation 1.4: Strengthen the requirement for tenant involvement in housing providers' activities and operations

Develop a new standard for tenant involvement with registered agencies, in consultation with tenants and other stakeholders. This should require providers to have a tenant engagement strategy, and to demonstrate the influence that tenant involvement has on their organisations

Update guidance on best practices in tenant involvement.

Improving mechanisms to allow for tenant involvement will be less effective if tenants lack the skills or the support to engage. As CHIA Vic points out, the infrastructure to support and train tenants for this purpose does not exist.⁶¹ While organisations should support their tenants to engage, a broadly available program that supports tenants and providers in their activities also has merit. Examples of similar programs in other jurisdictions include:

- Tenant Participation Advisory Services (United Kingdom), which are stand-alone organisations that provide a range of support for tenants and landlords
- The Tenant Participation and Community Engagement Program (New South Wales), which includes a component that seeks to increase access to skills and information needed to actively participate in housing, including tenant training workshops. This program is available for public housing tenants only.

This work will require funding.

Recommendation 1.5: Support tenants and providers to engage

Develop and provide learning and capability building resources to improve tenants' capacity to engage with providers, and providers' capacity to engage with tenants.

1.2.4 Create an advocacy body for all social housing tenants

As noted above, there is no dedicated advocacy body for community housing tenants. Several participants identified the need for an independent body to advocate for community housing tenants, and to provide a representative voice for all social housing tenants.⁶²

The Panel agrees there is a gap in advocacy services for community housing tenants. The VPTA does provide an effective service for public housing tenants, and it could be resourced with an extended remit to cover community housing. However, the Panel has also heard concerns as to whether the VPTA is best placed to represent the needs of community housing tenants, given its focus on public housing.

Despite these concerns, the Panel considers that a single advocacy body for the social housing sector, rather than a separate body for community housing, is preferable because it would:

- encourage greater consistency in standards and regulation
- be consistent with streamlined dispute resolution processes for tenants (Chapter 4)
- avoid the potential confusion that two separate bodies could create
- allow more efficient use of resources, including shared functions and sharing of information.

On balance, the Panel recommends that a single social housing advocacy body with its own constitution and branding should be created. It should be formed in consultation with relevant stakeholders, such as public and community housing tenants, providers and peak bodies.

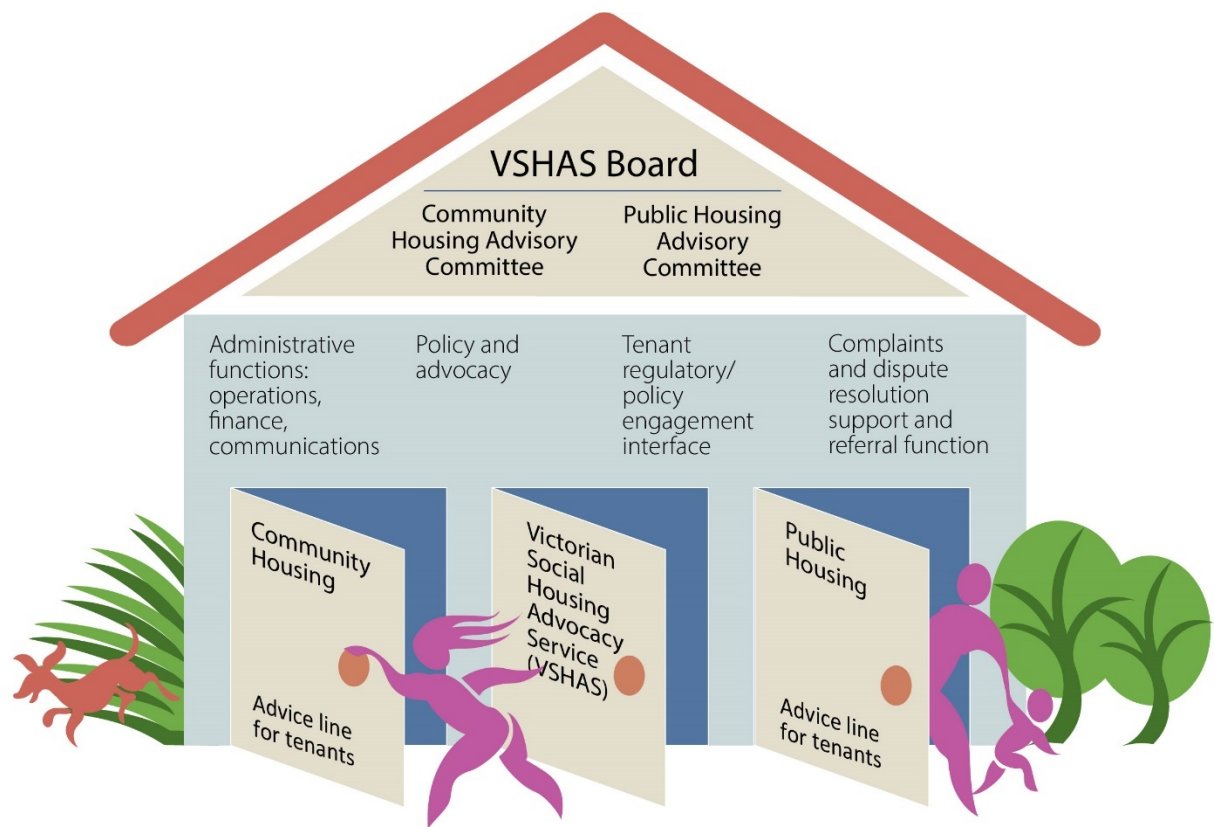
In addition to its tenant advocacy functions, this body could also perform a tenant regulatory engagement interface (Recommendation 1.4), and the support and referral function to support the complaints and dispute resolution arrangements (Recommendation 4.3).

The Panel further considers it important that the creation of a single body not result in the loss of the extensive skills and experience of the VPTA in representing tenants. One option the Panel favours is to retain the VPTA, while including a dedicated community housing advocacy service under one roof (Figure 1.2). The body could initially be constituted by separate public and community housing divisions to provide specialist advice to tenants, with several other shared functions. The governance arrangements could consist of a board with membership from the public and community housing advisory committees as shown below. It is expected that, over time, the separate 'divisions' would not be needed and could be combined.

Retaining its existing staff would allow the VPTA to hold onto its expertise, but additional staff would be required to perform the community housing function and to augment some of the shared functions. There would be scope for efficiencies from sharing resources and information.

This entity should receive stable, long-term funding from the Victorian Government, to be apportioned across its two functions. This would allow the body to plan its activities, without risk of being de-funded. Funding should be independent of DFFH (and Homes Victoria).

Figure 1.2: A possible structure of an advocacy body for all social housing tenants



Recommendation 1.6: Create a single advocacy body for social housing tenants

Create a new body to represent the interests of public and community housing tenants. This body should be formed in consultation with key stakeholders such as public and community housing tenants, providers and peak bodies. It should deliver:

- a public housing advocacy function, which could be performed by existing Victorian Public Tenants Association staff
- a new community housing advocacy and support function
- other shared functions, such as policy and social housing advocacy and administrative functions.

Consideration should be given to locating the following functions in the new body that are recommended by this Review, including:

- a tenant regulatory engagement interface (Recommendation 1.4)
- support and referral for complaints and dispute resolution (Recommendation 4.3).

This body should have oversight by a new board and receive stable, long-term funding from the Victorian Government that is independent of the Department of Families, Fairness and Housing (and Homes Victoria).

1.2.5 Include public housing in the remit of the Commissioner for Residential Tenancies

As noted above, community housing is already included in the remit of the Residential Tenancies Commissioner, however public housing is not included. The Panel considers that including public housing in the responsibilities of the Residential Tenancies Commissioner would provide greater consistency of treatment of public and community housing tenants, consistent with its other recommendations.

This change would mean that public housing would be considered together with other tenure types that are subject to the Residential Tenancies Act. Such a change would not aim to create a new advocacy service for public housing tenants or displace any existing advocacy services, but instead provide for completeness and coherence in the Commissioner's work. The single advocacy body for social housing tenants (Recommendation 1.6) is recommended in parallel with this change.

Recommendation 1.7: Commissioner for Residential Tenancies to consider public housing

Include public housing in the remit of the Residential Tenancies Commissioner.



¹ For example, Victorian Public Tenants Association (submission 15, p. 13) and Domestic Violence Victoria and Domestic Violence Resource Centre Victoria (submission 28, p. 2). The consultation papers for this Review highlighted that tenants would be the focus of the Review and the regulatory system going forward. This focus was welcomed by many participants including: Community Housing Industry Association (submission 3, p. 1); Launch Housing (submission 12, p. 1); Victorian Council of Social Service (submission 39, p. 5); South Port Community Housing Group (submission 47, p. 1); Housing for the Aged Action Group (submission 65, p. 2); and Uniting Vic Tas (submission 67, p. 2).

² Muir, K., Powell, A., Flanagan, K., Stone, W., Tually, S., Faulkner, D., Hartley, C. and Pawson, H. 2020. 'A pathway to where?' *Inquiry into understanding and reimagining social housing pathways*, Australian Housing and Urban Research Institute Limited, Melbourne, AHURI Final Report No. 332, p. 22, Australian Housing and Urban Research Institute Limited, Melbourne, available at: <https://www.ahuri.edu.au/research/finalreports/332>.

³ National Disability Practitioners. 2016. *What is a person centred approach?*, available at: <https://www.ndp.org.au/images/factsheets/346/2016-10-person-centred-approach.pdf>; NSW Health. 2020. *What is a Person-Centred Approach?*, available at: <https://www.health.nsw.gov.au/mentalhealth/psychosocial/principles/Pages/person-centred.aspx#:~:text=A%20person%2Dcentred%20approach%20is,their%20needs%20and%20unique%20circumstances>.

⁴ Department of Health. 2015. *Patient-centred care explained*, available at: <https://www.betterhealth.vic.gov.au/health/servicesandsupport/patient-centred-care-explained>.

⁵ Consumer Policy Research Centre (Interim Report submission 9, p. 1).

⁶ Australian Housing and Urban Research Institute. 2020. *Examining the role of social housing landlords: What are the responsibilities of landlords regarding tenant wellbeing?*, available at: <https://www.ahuri.edu.au/research/brief/examining-role-social-housing-landlords>.

⁷ Housing Registrar. 2015. *Performance standards for registered housing agencies*, Victorian Government Department of Treasury and Finance.

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- ⁸ RedRoad Consulting. 2021. *Social Housing Regulation Review: Public Housing Tenants' Engagement, Findings Report*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>; 89 Degrees East. 2021. *Social Housing Regulation Review. Community Housing Tenant Engagement Project*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.
- ⁹ For example, see: Social Change Projects. 2021. *Social Housing Regulation Review: Report on Tenant Submissions*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.
- ¹⁰ RedRoad Consulting. 2021. *Social Housing Regulation Review: Public Housing Tenants' Engagement, Findings Report*, p. 23, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.
- ¹¹ See for example, Jesuit Social Services (submission 41, p. 5); Tenants Victoria (submission 29, p. 18); Domestic Violence Victoria and Domestic Violence Resource Centre Victoria (submission 28, p. 3); Peninsula Community Legal Centre (submission 40, p. 3); and West Heidelberg Community Legal (submission 52, p. 7).
- ¹² Community Legal Centres Joint Response (submission 5, p. 3).
- ¹³ Australian Government, Productivity Commission. 2021 *Report on Government Services 2021*, Tables 18A.40 and 18A.42, available at: <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/housing-and-homelessness/housing>.
- ¹⁴ Consumer Policy Research Centre (Interim Report submission 9, p. 3).
- ¹⁵ This point was noted by Community Housing Industry Association Victoria (submission 68, p. 13) indicating that the nature and effectiveness of current practices have not been evaluated.
- ¹⁶ Pawson, H., Bright, J., Engberg, L., van Bortel, G., McCormack, L. and Sosenko, F. 2012. *Resident Involvement in Social Housing in the UK and Europe*, Hyde Housing Group, London.
- ¹⁷ Housing Registrar. 2013. *Good Practice Guide: Getting tenants involved*, available at: <https://www.vic.gov.au/sites/default/files/2021-02/Getting-tenants-involved.pdf>.
- ¹⁸ Scottish Government. 2019. *Guide to successful tenant participation*, available at: <https://www.gov.scot/publications/guide-successful-tenant-participation/>; Preece, J. 2019. *Understanding approaches to tenant participation in social housing: An evidence review*, UK Collaborative Centre for Housing Evidence, University of Sheffield.
- ¹⁹ See for example, Victorian Council of Social Service (submission 39, p. 3); Peninsula Community Legal Centre (submission 40, p. 4); Tenants Victoria (submission 29, p. 23); Housing for the Aged Action Group (submission 65, p. 3); South Port Community Housing Group (submission 47, p. 5); Youth Affairs Council Victoria (submission 55, p. 3); and Council to Homeless Persons (submission 36, p. 9).
- ²⁰ Quantum Support Services (Interim Report submission 20, p. 23).
- ²¹ Community Housing Industry Association Victoria (submission 68, pp. 13–14) noted the distinction between the UK system, where social housing makes up a sizeable proportion of homes, and Victoria. It noted that multiple measures are key, and that the desire for renters to be left alone also needs to be respected.
- ²² For example, Launch Housing (submission 12) highlighted its Lived Experience Advisory Program which enables it to hear from a wide and diverse client group.
- ²³ 89 Degrees East. 2021. *Social Housing Regulation Review. Community Housing Tenant Engagement Project*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>
- ²⁴ Victorian Public Tenants Association. 2018. *Victorian Budget 2019/20 Submission*, p. 9, available at: <https://vpta.org.au/wp-content/uploads/2019/01/VPTA-2019-20-Budget-Submission.pdf>.
- ²⁵ Sennett, R. 2004. *Respect in a World of Inequality*, W.W. Norton and Company.
- ²⁶ Manzi, T., Simpson, I., Bailey, N. and Glover-Short, C. 2015. *Success, Satisfaction and Scrutiny: The Business Benefits of Involving Residents*, University of Westminster and AmicusHorizon.
- ²⁷ Hickman, P. and Preece, J. 2019. *Understanding Social Housing Landlords' Approaches to Tenant Participation*, pp. 20–21, UK Collaborative Centre for Housing Evidence, University of Sheffield.
- ²⁸ Hickman, P. and Preece, J. 2019, *Understanding Social Housing Landlords' Approaches to Tenant Participation*, pp. 20–21, UK Collaborative Centre for Housing Evidence, University of Sheffield.
- ²⁹ Council of Single Mothers and their Children Incorporated (submission 24, p. 3); Tenants Victoria (submission 16, pp. 8–9); Mallee Family Care (submission 42, p. 7); Victorian Public Tenants Association (submission 60, p. 3).
- ³⁰ *Housing (Scotland) Act 2010*, s. 2, available at: <https://www.legislation.gov.uk/asp/2010/17/contents>.
- ³¹ Scottish Housing Regulator. 2020, *How we involve tenants and service users in our work 2020–2022*, available at: <https://www.housingregulator.gov.scot/for-tenants/how-we-involve-tenants-and-service-users/how-we-involve-tenants-and-service-users-in-our-work-2020-2022>.
- ³² Scottish Housing Regulator. 2020, *National Report on the Scottish Social Housing Charter – Headline Findings – 2019–20*, available at: <https://www.housingregulator.gov.scot/landlord-performance/national-reports/national-reports-on-the-scottish-social-housing-charter/national-report-on-the-scottish-social-housing-charter-headline-findings-2019-20>; Scottish Housing Regulator. 2015. *National Report on the Scottish Social Housing Charter: An analysis of landlords' 2013/14 annual returns*, available at: <https://www.housingregulator.gov.scot/media/1144/national-reports-national-report-on-the-scottish-social-housing-charter-2013-14.pdf>.
- ³³ Scottish Government. 2016, *Consultation on a Review of the Scottish Social Housing Charter: An Analysis of Responses*, p. 4, The Scottish Government, Edinburgh.
- ³⁴ *Housing (Scotland) Act 2010*, available at: <https://www.legislation.gov.uk/asp/2010/17/contents>.
- ³⁵ Ministry of Housing, Communities and Local Government and Regulator of Social Housing. 2016. *Framework document for the Regulator of Social Housing*, pp. 3–6, available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755234/Framework_document_for_RSH_and_MHCLG.pdf.

³⁶ For example, Victorian Public Tenants Association (Interim Report submission 8, p. 3); Quantum Support Services (Interim Report submission 20, p. 1); Safe and Equal (Interim Report submission 19, p. 5); Housing for the Aged Action Group (Interim Report submission 14, p. 1); Community Housing Industry Association Victoria (Interim Report submission 24, p. 3).

³⁷ For example, Australian Housing and Urban Research Institute (Interim Report submission 16, p. 3).

³⁸ For example, The Council of Single Mothers and their Children (submission 24, p. 2) and Community Information and Support Victoria (submission 27, p. 2) noted the limitation of focusing only on current tenants — notably the current shortage of social housing.

³⁹ Australian Commission on Safety and Quality in Health Care. 2020. *Australian Charter of Healthcare Rights, Second Edition*, Australian Commission on Safety and Quality in Health Care, Sydney.

⁴⁰ Australian Commission on Safety and Quality in Health Care. 2018. *Review of the Australian Charter of Healthcare Rights, Consultation Report (Phase 1)*, Australian Commission on Safety and Quality in Health Care, Sydney.

⁴¹ Aged Care Quality and Safety Commission. 2022. *Charter of Aged Care Rights*, available at: <https://www.agedcarequality.gov.au/consumers/consumer-rights>.

⁴² Carnell, K. and Paterson, R. 2017. *Review of National Aged Care Quality Processes*, Australian Government Department of Health.

⁴³ Social Housing Regulation Review. 2021. *Review of Social Housing Regulation: Aboriginal Victorians and Social Housing Regulation: Findings and Options*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

⁴⁴ The Council to Homeless Persons (submission 6, p. 14) noted that the Department of Families, Fairness and Housing is working on a customer charter, and that this could be embedded across the regulatory system. The Victorian Council of Social Service (submission 41, p. 16) highlighted the Scottish charter as best practice for performance standards — noting that it outlines the results that tenants expect their landlords to achieve.

⁴⁵ Joint Legal Assistance Sector (Interim Report submission 23, p. 12); Housing for the Aged Action Group (Interim Report submission 14, p. 1); Council to Homeless Persons (Interim Report submission 15, p. 12); Victorian Public Tenants Association (Interim Report submission 8, p. 3).

⁴⁶ Australian Commission on Safety and Quality in Health Care, *National Safety and Quality Health Service Standards Action 2.03, Healthcare rights and informed consent*, available at: safetyandquality.gov.au/standards/nsqhs-standards/partnering-consumers-standard/partnering-patients-their-own-care/action-203#:~:text=Frequently%20asked%20questions-,Action%202.03%20states,patients%2C%20carers%2C%20families%20and%20consumers.

⁴⁷ Consumer Policy Research Centre (Interim Report submission 9, p. 4).

⁴⁸ In particular, rent setting and allocations policies were often seen as difficult for tenants to understand. See for example, Tenants Victoria (submission 29, p. 25); Geelong Housing Action Group (submission 38, p. 5).

⁴⁹ Housing Registrar. 2021. *Corporate Plan 2020–2022*, available at: https://www.vic.gov.au/sites/default/files/2021-08/HR%20Corp%20Plan%202020-22_160821.pdf.

⁵⁰ Housing Registrar. 2021. *Housing Registrar newsletter - September 2021*, available at: <https://www.vic.gov.au/housing-registrar-newsletter-september-2021>.

⁵¹ Tenants Victoria (submission 29, p. 22) noted that there are few, if any, formal mechanisms for tenant voice to influence the design of the regulatory system. Mallee Family Care (submission 42, p. 1) noted the importance of co-design of housing regulation.

⁵² 89 Degrees East. 2021. *Social Housing Regulation Review. Community Housing Tenant Engagement Project*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

⁵³ 89 Degrees East. 2021. *Social Housing Regulation Review. Tenant Voice Consultation Project*, (unpublished report).

⁵⁴ Scottish Housing Regulator. 2020. *How we involve tenants and service users in our work 2020–2022*, available at: <https://www.housingregulator.gov.scot/for-tenants/how-we-involve-tenants-and-service-users/how-we-involve-tenants-and-service-users-in-our-work-2020-2022>.

⁵⁵ Aged Care Quality and Safety Commission. 2021. *Aged Care Quality Standards*, Standard 8, Organisational governance, available at: <https://www.agedcarequality.gov.au/providers/standards/standard-8>.

⁵⁶ Royal Commission into Aged Care Quality and Safety. 2021. *Final Report: Care, Dignity and Respect*, p. 477, available at: <https://agedcare.royalcommission.gov.au/publications/final-report>.

⁵⁷ Housing Registrar. 2013. *Good Practice Guide: Getting tenants involved*, available at: <https://www.vic.gov.au/sites/default/files/2021-02/Getting-tenants-involved.pdf>.

⁵⁸ Both Scotland (Scottish Government. 2019. *Guide to Successful Tenant Participation*, available at: <https://www.gov.scot/publications/guide-successful-tenant-participation/>) and Wales (Regulatory Board for Wales. 2019. *The Right Stuff — Hearing the Tenants' Voice*, available at: https://gov.wales/sites/default/files/publications/2019-07/hearing-the-tenants-voice_0.pdf) have recently updated guidance on tenant involvement and voice.

⁵⁹ Some participants, including Community Housing Industry Association Victoria (submission 68, p. 14) and Council to Homeless Persons (submission 36, p. 9) called for the introduction of such a framework.

⁶⁰ Community Housing Industry Association Victoria (Interim Report submission 24); Council to Homeless Persons (Interim Report submission 15).

⁶¹ Community Housing Industry Association Victoria (submission 68, p. 13).

⁶² Victorian Public Tenants Association (submission 60, p. 6); Geelong Housing Action Group (submission 38, p. 7); Victorian Council of Social Service (submission 13, p. 3); Salvation Army Tenancy Plus Program (submission 22, p. 1).

2. Streamlined and consistent social housing regulation

Key issues

- Social housing in Victoria is characterised by a large public housing sector, owned and operated by the Victorian Government through Homes Victoria, and a smaller community housing sector run by not-for-profit providers.
- Public and community housing are subject to different policies and standards. Differences in practices relating to dwelling standards, tenancy management and dispute resolution can lead to inequities for tenants.
- Registered community housing agencies are regulated under the Victorian Regulatory System by the Housing Registrar, and must comply with its performance standards and reporting requirements.
- Public housing is not transparently assessed against performance standards by an external regulator with powers to issue enforceable directions and publish findings and recommendations.
- Common regulatory arrangements for social housing service delivery and asset management would address inequities for tenants, enable greater comparability and accountability, and help raise standards for both public and community housing tenants.
- There is a lack of transparency in public housing, particularly around core operating costs by dwelling type and location, as well as asset management.
- It is appropriate for government to continue to oversee the financial management of public housing, although greater transparency and consistency in reporting are recommended.
- There is a need for comparable performance data for public and community housing, to enable benchmarking, and assessment of value for money by provider, as well as the capacity of tenants to evaluate what option might be best for them.

2.1. What is the problem?

Different oversight mechanisms, service delivery standards and asset management standards across public and community housing have contributed to:

- differential treatment of tenants
- complexity and confusion for tenants, their advocates and dispute resolution bodies
- a lack of transparency and accountability for the use of public funds.

2.1.1 There is differential treatment of tenants

While both sectors are subject to the *Residential Tenancies Act 1997*, there are inconsistencies in performance standards between public and community housing. Registered community housing agencies are subject to the Victorian Regulatory System. They must comply with the

Housing Registrar's tenant and housing services standards (among others),⁶³ which regulate how providers manage rents, eligibility, allocations, termination of assistance, complaints, tenant engagement, and tenant satisfaction.

Standards for public housing are determined by the Department of Families, Fairness and Housing (DFFH) (and Homes Victoria). While public housing is subject to parliamentary oversight through the Victorian Auditor-General and the Victorian Ombudsman, these mechanisms do not provide the continual oversight and assessment against performance standards that an external regulator does. For example, there is annual performance reporting of indicators against targets, but no explicit process for when targets are not met. By contrast, the Housing Registrar conducts an annual compliance assessment on all registered agencies against seven minimum standards.

Depending on who their landlord is, tenants have different entitlements in relation to rent-setting rules, dwelling standards, tenancy conditions, customer service standards, maintenance arrangements, complaints and dispute resolution processes and likelihood of eviction.

Choice is generally considered a positive feature in consumer markets. However, choice of social housing provider and dwellings in Victoria is largely theoretical, and therefore there is not a strong case for differentiation on these points.

The Panel has heard that variation in rent setting policies within the community housing sector creates confusion for tenants and advocates, and contributes to inequity, perceived if not material.⁶⁴ Registered agencies can generally charge up to 30 per cent of household income plus any Commonwealth Rent Assistance for social housing. However, there is variation in how household income is calculated. Some agencies assess the income and payments for a dependent (such as Youth Allowance) as household income,⁶⁵ while others apply a lower flat rate (say, 15 per cent).⁶⁶ There are also cases where a single provider may have different rent setting policies, based on the program under which the dwellings were funded at the outset.

Given the tenant cannot choose their provider in any meaningful way, (they can register a preference for public or community housing), it is not surprising that tenants say they do not understand why differences like these exist. The payment of service charges in community housing properties with multiple tenancies, such as rooming houses, introduces further variables that create confusion.

The differences that result from providers formulating their own policies do not necessarily lead to a diminution of rights, though it can make navigating the system more difficult when issues arise, for tenants working with advocates. Domestic Violence Victoria and Domestic Violence Resource Centre Victoria pointed to the increased complexity in the dual-sector system.⁶⁷ The Community Legal Centres Joint Response pointed out that the detailed Tenancy Management Manual for public housing that governs issues, such as accessibility modifications, temporary absences, tenant breaches, arrears and evictions was more prescriptive than policies of registered agencies.⁶⁸

Where policies lack clear guidance (such as whether the provider will fund accessibility modifications) there will be genuine uncertainty about what tenants can expect. There is an argument here for greater clarity of policies.

2.1.2 There is scope for more transparency in how social housing is allocated

The Victorian Housing Register is a centralised mechanism used to allocate social housing properties. The Register was created in 2016 and community housing agencies began using it to

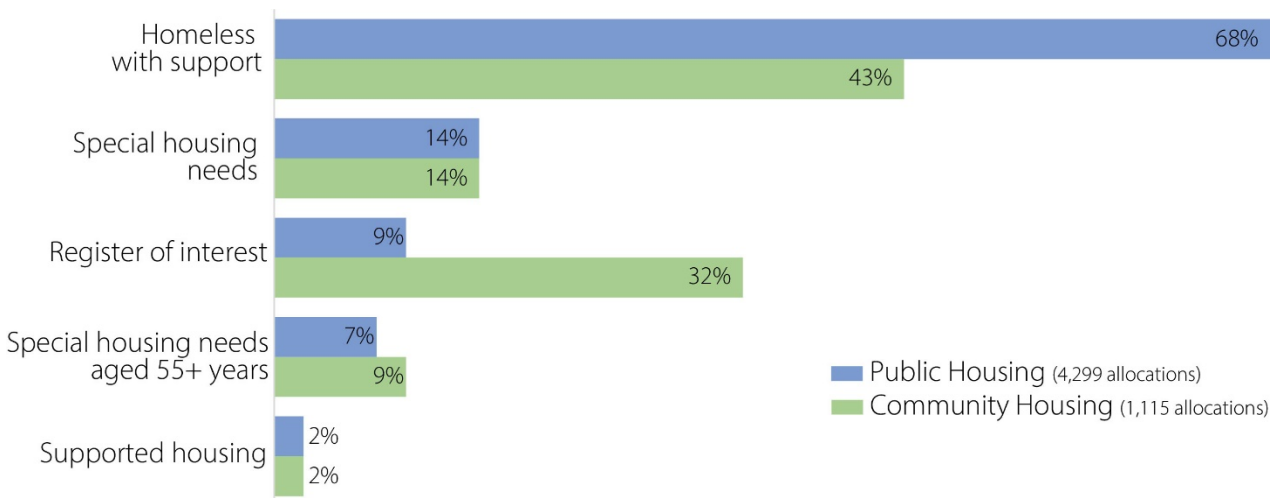
allocate properties in 2018. It contains several priority access categories, as well as a Register of Interest for general applications.

The *Community housing allocations framework for the Victorian Housing Register* outlines the coverage, measurement of priority allocations, business rules and performance monitoring of community housing partners that participate in the Register. This framework complements the *Public housing allocations operational guidelines*, which describe the allocation process that is in place for public housing.⁶⁹ A key difference between allocations in public and community housing relates to the order in which applications are drawn from the Victorian Housing Register. Public housing offer properties in category and effective date order. Participating community housing agencies have a minimum ‘priority allocation’ target, within which they can determine the order in which allocations are drawn, based on their agency policies and target client groups.⁷⁰

Participation agreements between Homes Victoria and individual registered housing agencies determine which of their portfolio properties are within scope of the Register. These vary for each agency according to their particular funding and contractual arrangements. As part of their regulatory requirements, registered agencies must have a public allocations strategy that is sensitive to tenants with low incomes and high needs.

It is understood that the allocations of individual agencies are monitored by Homes Victoria according to contractual agreements. Data recently published by Homes Victoria indicates that, collectively, the community housing sector is meeting its allocation targets (Figure 2.1).

Figure 2.1: Allocations by Victorian Housing Register category and housing type, 2019–20



Source: Homes Victoria. 2021. *Social Housing Allocations: A Report on Social Housing Allocations for the 2019–2020 Period*.

For registered community housing agencies, the ability to choose tenants, even when heavily constrained, enables them to manage their tenant profile in a way that best reflects their mission. It also enables them to be responsive to local needs as they arise. The capacity for individual providers to provide specialist services and approaches was considered one of the advantages of growing the community housing sector when the regulatory system was established. Many providers exist to accommodate tenants with specific needs and characteristics.

The cost profiles of tenants can substantially influence the financial performance of providers, and therefore their ability to create surpluses and grow the stock of housing. There are competing priorities in the system to accommodate those with the highest needs, provide good quality housing and reduce the waiting lists. Community housing agencies make trade-offs within their organisations to balance these priorities.

Some participants raised concerns over the allocation practices of some registered agencies.⁷¹ They believe providers have scope within the priority access categories to select tenants with higher incomes or lower needs (and lower costs). That is, that registered agencies can select tenants with higher household incomes and from certain priority access categories with potentially lower support needs and/or other risks that create costs for providers, while still meeting their contracted allocations requirements.

There is a wide range of factors that determine the parameters of individual registered agencies' participation agreements and allocations practices more specifically. These differences make it difficult to meaningfully assess allocations practices for the sector by comparing data from the Victorian Housing Register.

Despite these complexities, and the short time period with which the Register has been operating, the Panel considers there is scope for greater transparency of allocations to both community and public housing.

2.1.3 There is a lack of transparency and accountability in public housing financial management

Providers of community housing face the risks of financial failure if they take on too much debt or have poor governance. The public housing provider does not face the same risks of insolvency and is not subject to the same commercial disciplines.

The public housing provider, DFFH (Homes Victoria), is subject to parliamentary and ministerial oversight. Reports published by the Victorian Auditor-General's Office (VAGO) in 2012 and 2017, identified persistent financial sustainability problems in public housing, with the short-term cash position being managed through short-term strategies like postponing renewal and acquisition programs.⁷² Inadequate information on property condition, an issue VAGO also highlighted, as well as lack of effective accountability mechanisms, may have allowed these problems to persist. The public housing provider is the largest single landlord in the state. Aggregate performance data for the organisation are helpful, but can be of limited use without a regional or area office breakdown.

2.2. What is recommended and why

The Panel recommends a system where providers of social housing are regulated consistently, and subject to transparent, independent and effective oversight. It is important that such a system does not create duplication of oversight mechanisms. This will help bring about consistent processes and service standards for tenants, regardless of whether they live in public or community housing.

2.2.1 Uniform performance standards across public and community housing

Both public and community housing should be regulated by a common set of performance standards for service delivery and asset management. These standards would ensure an appropriate minimum level of performance for all social housing tenants, regardless of who their landlord is, and would also ensure the regulator can monitor issues arising in both sectors.

Several Review participants noted the potential benefits of common performance standards. Mallee Family Care pointed to the benefits of the recently announced Social Services Regulator as a model, including streamlined and simplified regulation across social services, a single set of standards, less red tape, bolstered enforcement powers and separation in decision making.⁷³

Community Housing Industry Association Victoria noted that setting shared performance standards would reduce confusion and create data sets that can be used to protect public investment and create a shared understanding and ability to analyse the strengths and opportunities of the whole social housing system.⁷⁴ The Australian Housing and Urban Research Institute pointed to the appetite amongst stakeholders of the five-year review of the National Regulatory System for Community Housing for core common standards to apply to public and community housing providers, including data to report on these standards.⁷⁵

The performance standards should be developed through a consultative process involving current and prospective tenants, community and public housing providers, and the regulator. The standards should draw out the best of both systems and consider best practice in other jurisdictions.

As an example of scope, both public and community housing organisations could be subject to three of the Housing Registrar's current performance standards:⁷⁶

- tenant and housing services
- management of housing assets
- community engagement.

The remaining performance standards would apply to community housing agencies alone (Box 2.1 covers these standards in greater detail, as part of the discussion on activity and entity regulation). Service levels and entitlements should not be diminished for any tenants as part of the process. Common performance standards should not imply identical policies for all providers, but the result will be a higher set of minimum standards across the board. Recommendations in later chapters will address specific consistency issues in public and community housing.

It is recommended that the performance standards be included in regulation. This is consistent with performance standards in other social services sectors, and it is understood that performance standards under the new Social Services Regulator will be in regulation. This would ensure they have clear legal status, are easily accessible, and are compatible with the *Charter of Human Rights and Responsibilities Act 2006*.

It is acknowledged that there will be funding implications for both the community and public sectors, where they are required to meet a higher standard.

Recommendation 2.1: Establish common performance standards for social housing

Develop a common set of service delivery performance standards for public and community housing activities through a consultative process with stakeholders. These standards should include governance, tenancy management, allocations practices, dwelling standards, safety, cultural safety and asset management.

Enshrining social housing performance standards in regulation would assist to clarify their legal status including in relation to residential rental agreements under the Residential Tenancies Act.

Performance standards should form part of a process of continuous improvement and reviewed at appropriate intervals.

2.2.2 Greater transparency in social housing allocation practices

Many participants called for greater consistency in the allocation practices of public and community housing providers.⁷⁷ The Panel understands that individual participation agreements between registered agencies and Homes Victoria reflect a range of relevant factors, including funding arrangements and properties within scope, among others. Any changes to the current settings are policy matters for government and could have funding implications.

However, greater transparency of allocations practices and trends will help to address concerns about agencies selecting those applicants with relatively higher incomes and lower needs, and therefore not sharing the load of accommodating tenants with the greatest needs. Moreover, the importance of transparency will grow as the sector changes, and diverse entity types become registered agencies (Chapter 5). Having registered agencies demonstrate to the regulator that allocations practices align with their allocation strategies and missions will provide a minimum level of accountability. The regulator would also be able to monitor trends and anomalies in allocation practices.

Recommendation 2.2: Assess registered agencies' allocation practices against their allocation strategies

Victorian Housing Register allocations data should be provided to the regulator to monitor and report on:

- alignment of registered agencies' allocation practices with allocation strategies
- sector trends and anomalies.

Research should be undertaken to investigate how Victorian Housing Register data can be used to generate greater transparency in allocation practices across social housing.

Monitoring of allocations to affordable housing should also be undertaken.

2.2.3 Oversight of public and community housing under a common regulator

In Scotland, the Social Housing Regulator is responsible for the performance of both local government authority and not-for-profit providers of social housing. For the not-for-profit providers, its remit also includes governance and financial wellbeing, while for local authorities, these matters are out of scope.⁷⁸

In England, the Regulator of Social Housing is also responsible for oversight of local authorities and non-government providers (both not-for-profit and for-profit). It regulates with respect to four consumer standards (home, tenancy, neighbourhood and community, and tenant involvement and empowerment), and three economic standards (governance and financial viability, value for money, and rent). Regulatory oversight of non-government providers includes both consumer and economic standards. For local authorities, only the consumer standards apply, because the regulator has no power to set economic standards for these entities (except for regulation of rents, which it has the power to oversee).⁷⁹

A single social and affordable housing regulator in Victoria should follow this model. The regulator should oversee providers of both public and community housing for service delivery and asset management, but for community housing, it would also regulate for governance and financial viability (as the Housing Registrar does currently).

Homes Victoria, being a government entity, is already accountable to the government through the parliament, and is overseen for financial management and governance by various bodies, such as VAGO, the Victorian Ombudsman and parliamentary committees. However, Homes Victoria could be deemed to be a registered agency for the purposes of activity regulation (noting though 'de-registration' of Homes Victoria would not be contemplated under those arrangements). The role and functions of the single regulator are discussed in Chapter 7.

The new regulator would oversee activity regulation for both sectors, but entity regulation would be restricted to community housing agencies.

Box 2.1: How does activity-level regulation differ from entity-level regulation?

Activity-level regulation focuses on the activities that all social housing providers must perform in the interests of responsive, good quality services to tenants, fair allocation of properties and sound asset management, and to ensure accountability for performance.

Activity level regulation can be conceptualised through the following categories:⁸⁰

- tenant and housing services, which includes:
 - determining and managing eligibility, allocation, and terminations
 - determining and managing rents
 - setting and meeting relevant housing service standards
 - supporting tenant and resident engagement
 - facilitating access to support for social housing applicants and tenants with complex needs
 - maintaining satisfaction with the overall housing quality
 - managing and addressing housing complaints and appeals.
- management of housing assets, which includes:
 - determining changing housing needs and planning asset acquisitions, disposals and reconfiguration to respond (strategic asset management)
 - setting and meeting relevant property condition standards
 - planning and undertaking responsive, cyclical and life-cycle maintenance to maintain property conditions (asset maintenance)
 - planning and delivering its housing development program (asset development).
- community engagement, which includes:
 - promoting community housing to local organisations that work with potential clients and agencies
 - contributing to place renewal and social inclusion partnerships and planning relevant to the agency's community housing activities.

Entity-level regulation focuses on the governance and financial viability of social housing entities. It gives the regulator powers to step in to protect tenants and taxpayer-funded assets when the entity's viability is at risk. These powers are vital to manage risks associated with growth, and to ensure service continuity for tenants where providers are non-government entities. It cannot, however, apply to Homes Victoria because it is subject to a distinct governance regime, and to the direction and control of the Housing Minister.

Entity-level regulation can be conceptualised through the following categories:⁸¹

- management, which includes:
 - demonstrating use of assets and funding to meet business goals

- implementing appropriate management structures, systems, policies and procedures to ensure the operational needs of the business can be met (including having people with the right skills and experience and the systems and resources to achieve the intended outcomes of the business).
- governance, which includes:
 - ensuring coherent and robust strategic, operational, financial and risk planning
 - ensuring effective, transparent and accountable arrangements and controls are in place for decision making to give effect to strategic, operational, financial and risk plans
 - complying with legal requirements and relevant government policies
 - ensuring that the governing body has members with appropriate expertise or that such is available to the governing body.
- probity, which includes:
 - establishing and administering a code of conduct
 - establishing and administering a system of employment and appointment checks
 - establishing and administering a system for preventing, detecting, reporting on, and responding to, instances of fraud, corruption and criminal conduct
 - maintaining the reputation of the community housing sector.
- financial viability, which includes:
 - ensuring a viable capital structure
 - maintaining appropriate financial performance
 - managing financial risk exposure.

Further work will be required to determine the appropriate delineations of activity and entity, noting that certain functions will be performed at both individual housing office and entity levels. For example, housing offices may engage in asset management, in relation to repairs and maintenance, or disposals and acquisitions, according to local need, but other aspects of asset management will be undertaken at a whole-of-system level. Similarly, there will be overlaps in areas of management and community engagement.

In determining the distinction between activity-level regulation versus entity-level regulation, the Panel notes a considerable lack of clarity about which functions are currently performed by Homes Victoria, which are performed by DFFH on behalf of Homes Victoria, and which are conducted by DFFH, independently of Homes Victoria.

Functions, such as the operation of the Victorian Housing Register, including the creation of allocation rules for registered agencies, is ideally not provided by an entity that is also a social housing provider. As a result, it is not straightforward to determine which functions ought to be shifted from one entity to another.

2.2.4 More transparency of public housing financial management is needed

Without reliable information on services, government cannot assess the degree to which objectives are being met, nor make sound decisions on where to devote scarce resources.

There are considerable differences in the level of transparency between public and community housing data. Financial information, including costs and assets, are published in aggregate for the community housing sector through the Housing Registrar's Sector Performance Reports, and

the individual financial statements of each registered agency are collected by the Registrar for scrutiny.

The Housing Registrar also publishes metrics relating to financial health and performance, taken from operating statements and balance sheets.⁸² It adds further analysis and commentary in annual executive summaries on financial health for each agency, which are published against performance standard indicators.

This breadth of financial information is absent for public housing. Publicly available financial information on Homes Victoria is currently combined with DFFH in its annual report, such that Homes Victoria's costs cannot be separated from those of the broader department, particularly for overheads.

More transparent financial information would allow for assessment of the financial health of public housing. It would shed light on the cost of providing public housing, including identification of the most pressing cost drivers, how assets are being used, and where improvements can be made. When combined with performance indicators relating to service delivery, it would also allow for an assessment of what government gets for what it pays.

Moreover, as revenues attributable to the provision of public housing will be clearly identifiable, rents paid by public housing tenants can more easily be quarantined for purposes related to the provision of their housing. They can be properly apportioned and distinguished from other system wide costs. The purposes of any additional funding can be made transparent.

Public housing cost metrics should be analysed at the housing office level, rather than at departmental level, since this would allow for more powerful analysis of local conditions. It may also allow for relevant comparisons to be made across the system including with community housing agencies, particularly since the profile of tenant and dwellings can differ significantly across different parts of the state.

When making comparisons across sectors, it is important to note that differences in policies, tenant profile, dwelling types and dwelling condition contribute to differences in costs. Public housing tends to house a greater share of complex and high-needs tenants, and this affects levels of rent arrears, neighbourhood disputes, and the cost of making accessibility modifications. There are also funding differences, such as the lack of access to Commonwealth Rent Assistance.

Regardless of these structural differences, transparency of financial information in public housing is needed to inform decisions on how best to use the public assets and allocate public subsidies. Policy makers should have access to publicly available financial statements to allow for cross-sector comparisons.

Other financial metrics should be reported (like those currently compiled by the Housing Registrar) to indicate financial health. Government should take care to ensure metrics are presented in an accessible, plain language format, informed by the needs of tenants.

Recommendation 2.3: Strengthen the transparency of financial performance information for public housing provision

Publish financial statements for public housing that are comparable with those for registered community housing agencies.

Performance data relating to public housing costs and expenditure should be disaggregated by housing office.



⁶³ The Housing Registrar's performance standards include: 1. Tenant and housing services; 2. Housing assets, 3. Community engagement, 4. Governance, 5. Probity, 6. Management, 7. Financial viability. Housing Registrar. 2015, *Performance standards for registered housing agencies*, Victorian Government Department of Treasury and Finance.

⁶⁴ Victorian Public Tenants Association (submission 15, p. 9); Tenants Victoria (submission 29, p. 25); Housing for the Aged Action Group (submission 65, p. 6).

⁶⁵ Such as Unison Housing.

⁶⁶ Common Equity Housing Limited applies a 15 per cent rate only to dependent Youth Allowance payments (unless the dependent has other income greater than the value of Youth Allowance, in which case both Youth Allowance and the other income is assessed at 25 per cent).

⁶⁷ Domestic Violence Victoria and Domestic Violence Resource Centre Victoria (submission 28, p. 6).

⁶⁸ Community Legal Centres Joint Response (submission 5, p. 4).

⁶⁹ Department of Health and Human Services. 2018. *Public Housing Allocations Operational Guideline*.

⁷⁰ Housing Registrar. 2015. *Performance standards for registered housing agencies*, p. 3, Victorian Government Department of Treasury and Finance.

⁷¹ For example, Housing for the Aged Action Group (submission 65); Victorian Public Tenants Association (submission 60); Inner Melbourne Community Legal (submission 56).

⁷² Victorian Auditor-General's Office. 2017. *Managing Victoria's Public Housing*, p. ix, available at: <https://www.audit.vic.gov.au/report/managing-victorias-public-housing?section=>.

⁷³ Mallee Family Care (submission 42, p. 2).

⁷⁴ Community Housing Industry Association Victoria (submission 4, p. 3).

⁷⁵ Australian Housing and Urban Research Institute (submission 17, p. 4).

⁷⁶ Housing Registrar. 2015. *Performance standards for registered housing agencies*, pp. 3–6, Victorian Government Department of Treasury and Finance.

⁷⁷ Victorian Council of Social Services (submission 13, p. 2); Victorian Public Tenants Association (submission 15, p. 8); Tenants Victoria (submission 28, p. 27).

⁷⁸ The Scottish Housing Regulator. 2019. *Regulatory Framework*, available at: <https://www.housingregulator.gov.scot/for-landlords/regulatory-framework>

⁷⁹ Regulator of Social Housing. 2020. *Regulatory Standards*, available at: <https://www.gov.uk/guidance/regulatory-standards>.

⁸⁰ Housing Registrar. 2015. *Performance standards for registered housing agencies*, Victorian Government Department of Treasury and Finance.

⁸¹ Housing Registrar. 2015. *Performance standards for registered housing agencies*, Victorian Government Department of Treasury and Finance, pp. 3–6.

⁸² Housing Registrar. 2021. *Housing Registrar reports*, available at: <https://www.vic.gov.au/housing-registrar-reports>.

3. Regulation that drives better standards of social housing delivery

Key issues

- There are aspects of tenancy management and management of dwellings where new performance standards are needed.
- Improvements in these areas and the success of regulatory reforms will be highly dependent on the quality of implementation by the workforce.
- *Energy efficiency* – many social housing tenants have high energy costs and poor thermal comfort due to poor energy efficiency in their homes, or inadequate heating and cooling.
- *Property condition* – minimum standards prescribed by the *Residential Tenancies Act 1997* apply at the point of reletting and this means that many social housing properties are not covered.
- *Maintenance processes* – poor management of maintenance means tenants have difficulty organising repairs and getting jobs completed satisfactorily.
- *Fire safety* – preventable house fires occur at a higher rate in social housing than in other tenure types.
- *Accessibility* – tenants with disability can have difficulty finding suitably accessible homes or having necessary modifications installed in their existing home.
- *Tenancy sustainment* – tenancies in social housing can end prematurely for a range of reasons. In these cases, the costs to the tenant, housing providers and the community are high. It was found that:
 - there is a wide variance in approaches taken by social housing providers to sustain tenancies
 - current approaches to measure performance in tenancy sustainment have critical limitations. There is a need for a new approach that takes account of the complexities of why people leave social housing, as well as tenant mix
 - a requirement for providers to do everything reasonable, over the course of the tenancy, to avoid evictions into homelessness would provide a clear goal for the sector. This policy would need to be implemented in a practical way.
- *Cultural safety* – culturally safe practices for Aboriginal tenants are important, but not always implemented. These practices must be embedded in performance standards.
- *Workforce capability* – successful implementation of stronger standards is largely reliant on workforce capability and capacity. The social housing workforce faces many pressures, including high caseloads, high levels of turnover and low pay. A stronger culture of professional development and a workforce development strategy will support workers to deliver a service delivery uplift in what is a complex and challenging environment.
- Routine and ad hoc inspections by the regulator will support compliance with tenancy and dwelling management standards (Chapter 5 and 7).

The previous chapter outlined the need for development of a consistent set of performance standards, covering both public and community housing sectors. There are specific areas where the performance standards are not currently adequate in either or both.

This chapter examines standards and guidance relating to:

- regulation that relates to dwelling standards and features (section 3A)
- the sustainment of social housing tenancies (section 3B)
- service delivery and implementation of reforms: workforce professionalisation (section 3C).

An additional performance standard in relation to tenant voice and involvement is recommended in Chapter 1.

3A. Dwelling standards and features

3.1. (A) What is the problem?

For people with disadvantage or who have complex needs, a house is not simply a place to sleep. It is the starting point from which they can receive consistent support, and it can be a prerequisite to improving health and other personal outcomes over time. Although social housing provides much-needed shelter, the build quality, condition, fixtures and other features can contribute significantly to the tenant's health and wellbeing, including financial.

This section identifies issues where reforms are needed in relation to:

- energy efficiency
- the application of minimum standards under the *Residential Tenancies Act 1997* in social housing
- maintenance processes in public housing
- fire safety
- accessibility modifications

3.1.1 (A) *Energy efficiency: Poor energy efficiency and lack of thermal comfort disproportionately affects social housing tenants*

Poor energy efficiency and thermal comfort is a problem that affects both private rental and social housing tenants. For social housing providers, income-based rent-setting makes it difficult to recover the cost of making homes more energy efficient. This issue is compounded for public housing tenants where properties are older, and where a lack of ongoing investment has left a large share of houses in relatively poor condition.

Recent data from the *Parliamentary Inquiry into Homelessness in Victoria* show public housing stock is ageing, with 65 per cent of dwellings now older than 30 years.⁸³ Older buildings are not as thermally efficient as newer dwellings, which leaves tenants vulnerable to heat and cold. Where heating or cooling has been installed, those appliances need to be kept running for longer, increasing energy costs. Some may avoid using heating/cooling altogether to save on energy.

Recent tenant surveys commissioned by this Review showed that about 58 per cent of public housing tenants⁸⁴ and 38 per cent of community housing tenants⁸⁵ were unhappy with their dwelling's energy efficiency or heating and cooling.

There have been some moves to improve the energy efficiency of existing dwellings. For example, the Social Housing Energy Efficiency Program was recently introduced to upgrade 35,000 public, community and Aboriginal housing properties in Victoria's north and west.⁸⁶ The program installs reverse-cycle air-conditioning for more efficient heating and cooling, as well as installing ceiling insulation and draught proofing on up to 2,000 properties, where it is deemed necessary.

There is also the EnergySmart Public Housing program, an initiative that finished in 2020, which focused specifically on public housing.⁸⁷ This program undertook upgrades for thermal comfort and environmental outcomes, including the replacement of hot water and heating systems with new energy efficient versions, and building thermal shell upgrades, such as draught sealing and insulation.

Looking to the future, the Victorian Government's commitment to achieving net zero carbon dioxide emissions by 2050 creates an imperative for changes to the built environment, including greater energy efficiency for residential properties.

Social housing providers can implement a range of solutions as part of their asset management strategies. Efforts could be simple and maintenance-based (such as repairing broken windows and patching insulation gaps in walls or ceilings) or could be more substantial, such as improving airtightness, installing ceiling and roof insulation, or fitting double-glazed windows.

The Department of Families, Fairness and Housing (DFFH) and the Department of Health recently released a *Draft Climate Change Adaptation Action Plan*, which included several actions to increase energy efficiency in social housing to help tackle climate change.⁸⁸ Specifically, it noted the Social Housing Energy Efficiency Program, as well as the maintenance and upgrade works included in the Big Housing Build.

Organisations outside government have also put forth suggestions for improvements to social housing. One recent report details potential options for retrofitting, ranging from the simple and cost-effective to the more complex.⁸⁹ A chapter on supporting tenants gives guidance on actions they can take themselves, including advice on lighting, energy efficient appliances, internal window coverings to trap heat, airtightness adaptations (draft stoppers/door snakes) among others.

As properties become more air-tight, there is greater risk of mould build-up if properties are not properly insulated.⁹⁰ However, there are resources available to manage these risks, including a guide released by the Tasmanian Government on managing condensation and mould.⁹¹

Energy efficiency is largely a policy and funding issue. However, the regulator has a role in monitoring the efforts of social housing providers to improve energy efficiency, such as through public reporting or by scrutiny of asset management plans.

3.1.2 (A) *Property condition: Minimum standards for rental properties under the Residential Tenancies Act 1997 only apply at the point of re-letting*

Changes to rental laws that commenced on 29 March 2021 include 14 minimum standards that all properties must comply with at the time they are leased.⁹² These apply to all rental properties, including social housing, and are designed to cover basic features that are considered essential for rented residential dwelling, such as bathrooms, kitchens, laundry facilities, ventilation, structural soundness, being mould and damp free, heating and electrical safety.

Under section 65A of the *Residential Tenancies Act 1997*, a residential rental provider must ensure that rented premises comply with prescribed rental minimum standards, on or before the day on which the renter enters into occupation of the premises. The provisions apply only to new tenancy agreements entered into on or after 29 March 2021 or can apply to existing fixed term agreements at the time they roll over to periodic agreements on or after 29 March 2021.

This allows a gradual upgrading of properties to the new benchmark as tenancies expire. In the private market where properties are re-let more often, there can be a steady upgrading to the new standards.

One of the features of social housing is longer tenancies due to the comparatively low turnover.⁹³ Given the longer average length of social housing tenancies, the trigger for compliance with the standards for long-term pre-existing tenancies will not occur, and re-letting of the property may not occur for many years, sometimes decades. As a result, under the current provisions of the Residential Tenancies Act, those properties do not need to comply with the minimum standards and therefore, tenants may be living in dwellings that are not considered fit to be leased.

3.1.3 (A) Tenants rate maintenance issues a key concern

Managing maintenance issues forms a considerable part of social housing providers' long-term asset management. A recent study noted that across both public and community sectors, maintenance backlogs produce unacceptable conditions for many tenants.⁹⁴

Where there is inadequate data, it is less likely that problems will be detected until a crisis occurs. At this point, the cost of rectifying the problem could be considerably higher than if uncovered earlier. In some cases, the backlog can be so serious that it results in the premature disposal of assets, financial losses and a reduction in available dwellings at times of growing demand.⁹⁵

Research with public and community housing tenants commissioned by this Review found that management of maintenance ranked as the top issue of concern. Tenants reported waiting considerable time for repairs to be scheduled, contractors failing to attend scheduled maintenance jobs, ineffective repair work, and poor communication from contractors and the landlord.⁹⁶ These complaints related predominantly to public housing.

Some tenants reported good experiences, but most stated poor follow-through on requests for maintenance and repairs, particularly for issues such as mould, broken windows/rotting wood frames, vermin and common area disrepair. One tenant noted a poor attitude and reluctance to help on the part of contractors sent to deal with urgent repairs.⁹⁷

A public housing tenant and submitter to this Review noted the lack of information available for incoming tenants on maintenance history and expected needs for future repairs.⁹⁸ Such documentation would give tenants a basis for dealing with the property and a means of anticipating potential issues. The submitter also noted the absence of follow-through mechanisms with tenants, which allowed scheduled repairs to go unattended or remain incomplete.

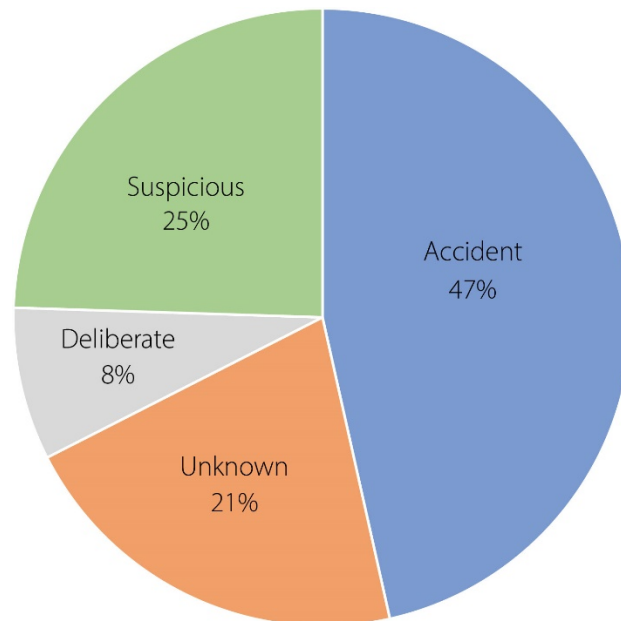
3.1.4 (A) Fire safety: social housing properties and tenants are disproportionately impacted by house fires

Data on fire fatalities suggests social housing tenants represent a disproportionate share of victims of *preventable* house fires. Six of 44 fatalities (or about 14 per cent) from June 2016 to September 2021 in Victoria, were living in public housing,⁹⁹ which is a large proportion, considering public housing comprises 2.5 per cent of Victorian housing stock.¹⁰⁰ Another report

found, for all deaths between 2003 and 2017 Australia-wide, about eight per cent were people in public housing and three per cent were people in community housing.¹⁰¹

Public housing fire incident data over the last five years records 800 fires, an average of 160 fires per year.¹⁰² Over this five-year period, 14 people were injured, seven died and an estimated \$60 million was lost in damage (or \$75,000 per fire).¹⁰³ Approximately half of these fires were accidents, 10 per cent were deliberately lit and a further 25 per cent were suspicious (Figure 3.1).

Figure 3.1: Fires in Victorian public housing, 2016–17 to 2020–21



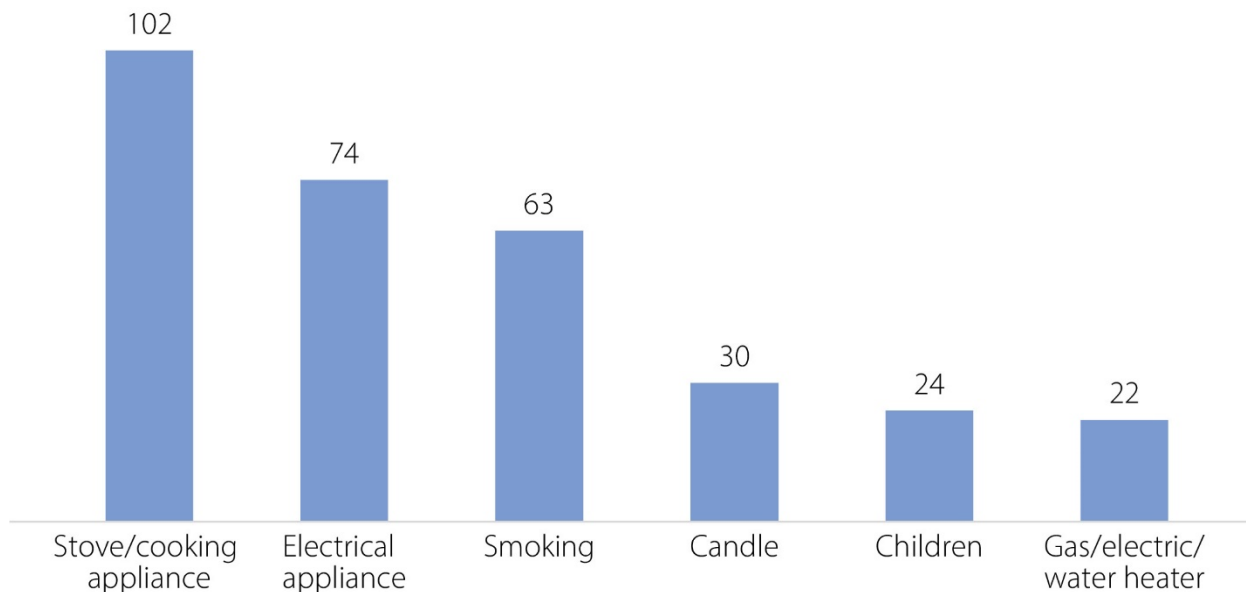
Source: Homes Victoria. 2022. *Fire Incidents at Department of Families, Fairness and Housing Properties 2016–17 to 2020–21* (unpublished data).

The most common cause of accidental fires was the stove top or cooking appliance, which accounted for more than a quarter of fires. A common theme was cooking that had been left unattended (Figure 3.2). Other causes were electrical fires, including electrical appliances, which often began from faulty appliances or wiring. Sometimes appliances or electrical wiring had been installed by uncertified contractors, or even by friends. Smoking and candle use also features as causes of fires, and often came about from tenants falling asleep with a lit cigarette or from unattended candles.

Other factors that can be attributed to the higher incidence of house fires in social housing include:

- hoarding, recorded as an issue in around eight per cent of properties, which increases the fuel load available to any fire and assists fire to spread. It can also make escape difficult
- chronic illness, mental and physical disability and old age, which can contribute to the starting of fires and can also make escape difficult.¹⁰⁴

Figure 3.2: Causes of accidental fires in Victorian public housing, 2016–17 to 2020–21



Source: Homes Victoria. 2022. *Fire Incidents at Department of Families, Fairness and Housing Properties 2016–17 to 2020–21* (unpublished data).

The importance of non-combustible building materials has also been brought into focus following the fire at Grenfell Tower in London, and locally, a 2014 fire at a Docklands apartment tower. A Senate inquiry launched in response to the Docklands fire resulted in an audit of building cladding by the Victorian Building Authority.

The Cladding Rectification Program was one of the outcomes of the audit, which targets high-risk buildings in the private and public sector to reduce the risk posed by combustible cladding. In February 2021, a ban was imposed on high-risk cladding products for new multi-storey buildings.¹⁰⁵ This ban, however, does not apply to class 1 buildings,¹⁰⁶ which are single building dwellings (detached, semidetached or attached) or rooming houses for up to 12 residents.¹⁰⁷

3.1.5 (A) *Accessibility*: many social housing tenants cannot get needed accessibility modifications to their properties

There are over one million people in Victoria who are considered to have a disability.¹⁰⁸ Many of them live in private rental, owner occupied or supported accommodation, such as specialist disability accommodation, but a sizeable proportion live in social housing. There were about 25,000 people aged over 15 with a disability living in public housing in 2018, and roughly 8,000 of those were considered to have a severe core activity limitation.¹⁰⁹ Across Australia, 41 per cent of social housing tenancies have at least one person with a disability.¹¹⁰

New housing builds will need to comply with accessibility standards in the National Construction Code from 2022 (such as step-free entries and step-free showers).¹¹¹ However, the existing stock of housing may not meet these standards.

Review participants raised concerns that:

- requests for modification of a dwelling were not treated as a priority by providers of social housing, and that disputes over modification requests were often not resolved to tenants' satisfaction¹¹²
- there is a lack of suitably accessible dwellings.¹¹³

Results from the latest National Social Housing Survey suggest that Victoria's performance is declining in this area, particularly in community housing, with 77 per cent of community housing tenants noting that modifications met their needs in 2018, compared with 88 per cent in 2016.¹¹⁴

Different policies apply to modifications in public and community housing properties, including that:

- all landlords (including private landlords) must allow a person with a disability to make reasonable alterations to meet their needs, at the expense of the tenant (unless there is a good reason for refusing the request)¹¹⁵
- public housing policies and procedures note that modifications to properties based on demonstrated need will generally be approved if possible, or a priority transfer would be granted. Homes Victoria is responsible for funding accessibility modifications that are considered reasonable adjustments in public housing¹¹⁶
- registered community housing agencies are required to have a publicly available policy on accessibility modifications. The content of these policies varies, particularly in relation to who bears the costs. Some providers will pay for reasonable modifications on a case-by-case basis (with cost and funding implications forming part of what constitutes what is reasonable), while other policies note that the organisation will not bear the costs of modifications.¹¹⁷

Together, these rules mean that tenants in public and community housing should be able to seek reasonable modifications, but those in community housing will often need to secure an alternative funding source. The primary funding sources for such modifications are the National Disability Insurance Scheme (NDIS) and My Aged Care packages.

The NDIS rules note that it will fund home modifications for people in legacy public and community housing stock on a case-by-case basis, but note that it is ultimately the responsibility of the housing authority to develop and refurbish stock to meet the needs of people with a disability. Further, the NDIS will not fund new stock to meet the new accessibility standards.¹¹⁸ Finally, some people with a disability may not qualify for access to NDIS funding.¹¹⁹

The net result of this is that tenants in community housing may not be able to receive the modifications they need. From the provider's point of view, they are not funded to deliver modifications, so any change in this area would need to consider the funding implications.

3.2. (A) What is recommended and why

3.2.1 (A) Energy efficiency reporting

New homes built as part of the Big Housing Build will meet a seven-star energy efficiency rating,¹²⁰ but raising the energy efficiency of existing housing stock, particularly public housing, would involve a considerable cost. Accountability and oversight of public housing asset management will be strengthened by the application of common social housing regulation, as recommended in Chapter 2.

Reporting by social housing providers on the energy efficiency of their housing stock and their heating/cooling facilities would provide additional accountability and a comparative indication of how comfortable dwellings are for tenants. Registered agencies should not find such a reporting requirement onerous given they are already required to keep an updated inventory of their housing stock, although it may have funding implications that would need to be quantified.

In addition to data for monitoring, social housing providers should include any tenant needs for thermal regulation in a general tenant needs and risk assessment to be completed at the beginning of each tenancy (Recommendation 3.8). There is already considerable information on

tenant characteristics and possible risk factors in the Victorian Housing Register (for example, demographic information and disability status), which could be combined with dwelling characteristics. These could be updated periodically to ensure that the risk assessment keeps up with the tenant's changing circumstances.

Recommendation 3.1: Monitor and report on energy efficiency in social housing

Require social housing providers to report on the energy efficiency of their housing stock, as well as heating and cooling facilities, as part of their requirement to maintain an accurate and current list of properties owned and managed.

3.2.2 (A) Specify timing for compliance with minimum standards under the *Residential Tenancies Act 1997* for social housing

The Panel recommends that a date be nominated in the Residential Tenancies Act for when social housing properties must comply with the minimum standards. This would address the issue that compliance may not be triggered for a large number of social housing tenancies until they are re-let.

The Panel considers that it is reasonable for all social housing properties to be required to comply with the minimum standards by January 2027 (except where an earlier date is specified in the Act). The regulator should oversee the transition and publish annual reports showing progress. In the meantime, providers should prioritise tenant requests for their properties to comply with minimum standards.

Large landlords, including Homes Victoria and some community housing associations, may have difficulty meeting this timeline, even with a five-year transition period. There should be provision for landlords to request time-limited exemptions, in cases where meeting the deadline is not feasible, such as where a large number of heaters need to be upgraded to meet energy efficiency requirements.¹²¹ Extensions from the regulator could be applied for, and if accepted, published and monitored. Other issues like mould and damp in most cases need to be addressed without delay for health and safety reasons. Critical safety measures like gas and electricity safety checks should also be prioritised. Extra funding may be required to ensure providers can comply with the changes.

Similar provisions are available in other jurisdictions. In the United Kingdom, providers of social housing must comply with the Decent Homes Standard – a set of requirements relating to accommodation quality, as well as repairs and maintenance for social housing.¹²² The standards for decent homes are high, but the provider and regulator can agree on a period of non-compliance with the standard where reasonable.

Similar to the approach taken in the United Kingdom, any exemptions to the minimum standards could be accompanied by a requirement for the provider to ensure tenants are aware of the reasons for delays, produce a plan to achieve compliance and then report on progress against that plan.

Recommendation 3.2: Require social housing properties to comply with minimum standards prescribed by the *Residential Tenancies Act 1997* by January 2027

Require under the *Residential Tenancies Act 1997* all social housing properties to comply with minimum standards in the *Residential Tenancies Regulations 2021* by January 2027 (except where any earlier date/s are specified for individual standards).

This requirement should not preclude providers from meeting the standards earlier.

Individual risk assessments to be undertaken at the start of new tenancies and at regular intervals (Recommendation 3.8) should take account of any outstanding repairs required for the health and safety of the tenant.

The creation of any additional minimum standards and phase-in provisions in the future should take issues relating to their application to social housing into account.

3.2.3 (A) Review the management of maintenance requests

The introduction of common service delivery and asset management standards (Recommendation 2.1) will assist in raising the standard for maintenance issues. Registered agencies are already required to adhere to the Housing Registrar's performance standards on asset management, including provisions for maintenance and repairs. With considerable maintenance and repair backlogs, the harmonisation of performance standards will improve the tenant experience in public housing.

In the meantime, Homes Victoria should review current maintenance systems and practices. As noted above, public housing tenants in particular raised concerns at the degree to which repair and maintenance work was not satisfactory, either with long waits before work can be done, contractors not showing up, poor repair work or communication issues.

Recommendation 3.3: Review maintenance systems and processes for public housing

Review the current systems and processes for the management of maintenance and repair requests in public housing.

3.2.4 (A) Address fire safety in social housing

Given that social housing tenants make up a disproportionate share of preventable housefires, there is an imperative to do more to mitigate risk. Social housing providers and the regulator should pay particular attention to fire safety risks and building safety in general, since building factors and tenant factors jointly contribute to the risk and severity of fires.

Data collection on the outcomes of fire incidents needs improvement. While fire incident data at Fire Rescue Victoria can be disaggregated for public housing, the same is not true for community housing. To obtain data for fires in community housing, dwelling data from the Housing Registrar would need to be matched with fire incident data from Fire Rescue Victoria. However, this level of analysis cannot be easily done on an ongoing basis and is not a viable reporting mechanism. By contrast, Homes Victoria keeps a rich data set of incidents and outcomes from fires on its properties. It would be useful for fire authorities to have dwelling

markers for both community housing and public housing, enabling them to conduct analyses on all social housing dwellings, not just public housing.

There are also opportunities for preventative efforts. For example, when new tenancies are created, providers should conduct a risk assessment of the tenant and their dwelling, and provide general reports to the regulator on the status of work in this area. This should be done as part of a general tenant needs and risks assessment (Recommendation 3.8).

Other jurisdictions have guidance that can inform action in Victoria. For example, the Scottish Government recently published practical guidance for existing specialised housing and other premises, covering person-centred risk assessment, premises-based risk assessment, ongoing management control, and fire safety law.¹²³

Similar action has been triggered in England as a result of the Grenfell Fire, where changes are being made to the regulator's statutory objective to support the provision of social housing that is well-managed, safe, and of appropriate quality. This means they will have a responsibility to check whether providers are up to date with fire risk assessments. (W. Perry, personal communication, 11 March 2022).

Fires and their associated outcomes should be reported to the regulator as a matter of course. The Housing Registrar already requires registered agencies to report any event that may hinder their capacity to comply with performance standards.

In addition to the collection of data and analysis of fire risk, extra fire safety measures may be appropriate, particularly for new builds where the cost of installation is lower (compared to retrofitting). These include measures such as greater use of sprinklers in all building types, tamper-proof smoke alarms and automatic cut-off switches for stoves. Policy makers should consider the merits of these features for new dwellings built as part of the Big Housing Build.

Recommendation 3.4: Regulator to monitor fire safety in social housing properties

Require social housing providers to notify the regulator of all reported fires (including causes and consequences).

The regulator should make and publish any related findings, including the degree to which the provider assessed the fire risk associated with the tenancy, and what actions were taken to address the risks. Recommendations should be included.

Require social housing providers to assess fire risk as part of the general needs assessment at the beginning of a tenancy and at reasonable intervals throughout (Recommendation 3.8).

3.2.5 (A) Simplify accessibility modifications processes for tenants

The application of common performance standards (Chapter 2) will help generate greater consistency in the services provided to public and community housing tenants. Social housing tenants with accessibility requirements must be able to obtain appropriate modifications to their property. The current situation offers more certainty for public housing tenants because modifications can be funded by the provider.¹²⁴

There is uncertainty for community housing tenants, particularly if they are unable to fund the modifications independently or through an external funding source such as the NDIS. If common standards are to be applied across social housing (Recommendation 2.1) a solution

will need to be found to enable accessibility modifications for both public and community housing tenants.

The Panel considers that social housing tenants should not face the difficulties of securing funding for modifications, while living in a property that is not sufficiently accessible. The need to modify a property should not impact the continuation of a tenancy or create barriers for applicants.

The Panel acknowledges there are complicated issues related to state and Commonwealth funding responsibilities, particularly in relation to the NDIS, and there are risks associated with making registered agencies responsible for accessibility modifications in the first instance.

Work is required as a priority to create a mechanism that enables necessary modifications to be made without delay and without the onus on tenants to provide funding. This will necessitate working with the Commonwealth to obtain clarity around NDIS eligibility criteria for modifications funding, and delineation of jurisdictional responsibilities.

To ensure social housing providers adequately prepare for tenants who may need modifications, providers should include accessibility needs in their general tenant needs and risk assessment to be completed at the beginning of each tenancy (Recommendation 3.8).

Recommendation 3.5: Ensure needed accessibility modifications to social housing properties are made promptly

Require through performance standards that all social housing providers undertake accessibility modifications without delay, to be accompanied by funding from the Victorian Government, in the absence of an alternative funding source.

Work with the Commonwealth to establish a mechanism that will allow needed accessibility modifications to be undertaken without delay by social housing providers, and which ensures funding by the appropriate source.

3B. Service delivery and tenancy management

3.1. (B) What is the problem?

3.1.1 (B) Tenancy sustainment measurement and practices are not fit for purpose

The likelihood of homelessness following a failed social housing tenancy is high, given that tenants exiting social housing can face barriers to renting privately.¹²⁵ Tenants can enter a 'revolving door' of homelessness, whereby they are housed, subsequently evicted into homelessness (or leave for other negative reasons), and return as priority applicants to the social housing system.¹²⁶ Beyond the physical deprivations associated with homelessness, it can have lasting impacts on a person's mental and physical health and wellbeing.

The cost of homelessness to the community is also high. For example, people who are homeless are more likely to suffer ill health and use government services. Estimates of these costs are generally in the region of \$25,000 per person, per year.¹²⁷ If the number of preventable exits into homelessness from social housing were as low as 100 exits, based on the estimate above, the costs to the community would already be in the millions of dollars, in addition to the substantial costs to the individuals affected.

3.1.2 (B) Data on social housing exits is limited

Data that provides an understanding of the extent of the problem helps incentivise strong performance and identify which approaches to tenancy sustainment do (and do not) work. Currently, the performance data on tenancy sustainment presented by the Housing Registrar for community housing focuses on two key metrics:

- total exits
- evictions as a proportion of all exits.

These metrics provide little insight into performance of housing providers in sustaining tenancies. Measures of total exits do not take into account that not all exits are equal. Some people may exit social housing because they have found accommodation that better suits their needs, while others may exit into unstable accommodation or homelessness. Similarly, using evictions as a proportion of all exits does not take into account the other negative reasons people may leave social housing. For example, they could leave due to safety concerns, or because they think eviction is imminent.

Importantly, these metrics do not take the mix of tenants in each community housing organisation into account. As an example, those providers that house tenants with prior experience of homelessness are more likely to have difficulties sustaining tenancies, but this is not reflected in the data.

Definitions of a 'failed' tenancy or a positive or negative exit will be imperfect. However, improvements can be made to the approach to measurement of tenancy sustainment. It is worth noting that there is data available on exit reasons that has driven research in this area (Box 3.1), but the data are generally not publicly available, and often not consistent across providers.

Box 3.1: Who leaves social housing and why?

There were roughly 2,700 exits from public housing properties in 2020–21 (and about 1,600 transfers into other public housing properties). Most had been in their housing for a substantial period – 37 per cent of exiting tenants had been in their property for more than 10 years, and about 11 per cent had been in their property for less than a year.

Based on data from the Department of Families, Fairness and Housing, where exit reasons are placed into three broad categories:

- about 40 per cent of exits were loosely categorised as ‘positive’ – these are generally tenants moving into alternative accommodation such as private rental
- about 13 per cent of exits were negative – including, for example, eviction, tenants moving due to violence, safety issues, anti-social behaviour, or where the property is abandoned
- about 48 per cent of exits were due to deceased tenants or tenants moving into a nursing home.¹²⁸

Categorising exits as positive and negative is difficult due to their complexity, and the above should be treated with caution. People exiting into private rental may exit into a worse housing situation and face rental stress. Alternatively, people who leave due to a neighbourhood issue may go on to a stable housing situation.

In community housing, 1,926 tenants exited in 2018–19.¹²⁹ There is not as much data on why people leave community housing. Research from Unison Housing Research Lab suggested that about half of exits from Unison Housing between 2014 and 2016 were for negative (or ‘push’) reasons.¹³⁰ About 170 tenants were evicted from long-term community housing in 2018–19.¹³¹

A recent study by the Australian Housing and Urban Research Institute¹³² examined patterns of entry and exit from social housing across Australia using the Priority Investment Approach dataset. The authors found that most social housing tenants have stable tenancies, and those who do leave often transfer into the private market (and remain there). However, there is a subset of people who have unstable tenure.

About three per cent of social housing tenants in the sample briefly exited social housing, before re-entering. About 8.5 per cent had multiple instances of entry then exit from social housing. An assessment of Household, Income and Labour Dynamics in Australia data by this study also found that about a third of people leaving social housing do so to tenures that are likely to be more precarious than private rental or social housing.

3.1.3 (B) There is wide variation in tenancy sustainment performance

The Panel heard some positive examples of successful approaches to tenancy sustainment from providers. For example, some providers routinely transfer tenants and provide them with support to settle into their new home, rather than evicting them.

An assessment by West Heidelberg Community Legal, based on previously published Housing Registrar data, suggests there is wide variance in eviction rates across housing associations.¹³³ Review participants generally believed that community housing tenants have weaker security of tenure than public housing tenants.¹³⁴ Some participants stated that this was due to the financial imperatives faced by community housing providers.

Another factor could be that public housing providers are less likely to evict or transfer tenants who cause issues for their neighbours. In any case, the available data suggest that more can be done to help tenants sustain tenancies over the long term.¹³⁵ Participants also highlighted examples of social housing tenants being evicted into homelessness (Box 3.2).

Several participants highlighted the importance of consistency in approaches to tenancy sustainment. For example, the Southern Homelessness Services Network noted that:

“The approach would have limited efficacy if, for example, one housing provider continued to evict tenants when all other housing providers were trying to implement a ‘no evictions policy’.”¹³⁶

Box 3.2: Examples of evictions into homelessness

Some Review participants highlighted examples where they considered that an unnecessary eviction into homelessness has occurred.

John is a 48-year-old family violence victim-survivor and community housing renter, who has a history of extensive homelessness since he was a teenager and faces significant mental health issues, including schizoid tendencies. During COVID-19, John’s CHP [Community Housing Provider] was seeking his eviction through VCAT [Victorian Civil and Administrative Tribunal] for allegedly breaching a compliance order that related to playing loud music. More recently, John had been working with his social worker to reduce the noise he was making and engage with supports.... Justice Connect was told that the CHP planned to apply for a warrant of possession based on VCAT....VCAT eventually listed both review applications, but by this time, John had already been evicted into homelessness in the pandemic, and we understand he is still yet to secure new housing.¹³⁷

Tina attended WHCL [West Heidelberg Community Legal] after her community housing landlord served her with a Notice to Vacate. The Notice to Vacate was based on an allegation that she had failed to comply with a compliance order related to allegations of a minor nature (no violence was alleged) about the behaviour of one of her visitors. Tina had a serious mental health condition....Tina and her lawyer attended the landlord’s offices a few days later where Tina had a lengthy and productive discussion with the team leader before signing an agreement prepared by the landlord in which she promised to comply with her general tenancy obligations. The agreement acknowledged that the landlord would renew its application for possession if she did not comply...Around three weeks later Tina returned to WHCL having received notice that the landlord had renewed its application for possession....Despite the lawyer asking to speak with the team leader involved in making the agreement with Tina, the team leader did not ever return her call. Tina was evicted into homelessness less than a week before Christmas.¹³⁸

3.1.4 (B) There are complexities and trade-offs associated with sustaining tenancies

Sustaining tenancies for some tenants can have negative impacts on neighbours. Several participants highlighted costs involved in not taking action to evict, including for tenants who feel unsafe or otherwise distressed in their homes, due to the behaviour of a neighbour.¹³⁹ In many cases, the tenancies of those impacted by neighbour disputes or antisocial behaviour end up failing. Tenants have a responsibility to be 'good neighbours' and act in ways that promote community cohesion, and these expectations should be made clear at the outset of the tenancy.¹⁴⁰ Approaches to resolve disputes between neighbours are discussed in Chapter 4.

Safe and Equal expressed caution at the effect a singular focus on sustaining tenancies could have on victims of domestic violence, if it means the perpetrator remains in the home for an extended period.¹⁴¹ Similarly, many tenants told the Panel that they had concerns for their personal safety and that of their families due to the behaviour of neighbours. This issue is also considered in Chapter 4.

While sustaining tenancies is important, social housing organisations must weigh this up against the costs of managing rent arrears, anti-social behaviour, impacts on the safety of other tenants and neighbours, and property damage. An increased focus on sustaining tenancies could lead to increases in factors such as rent arrears, or organisations avoiding allocating properties to tenants perceived to be 'high risk'. These trade-offs would need to be considered in the design of any sustaining tenancies standard.

3.1.5 (B) There is ambiguity in how human rights principles are applied to decision making in community housing

The consideration of human rights is particularly important in the context of evictions and tenancy sustainment. The Panel considers that social housing providers need tools and guidance to help make decisions or enact processes that to apply human rights principles.

Public authorities in Victoria, including the provider of public housing, must observe the *Charter of Human Rights and Responsibilities Act 2006*. The Charter has been used to offer protections to tenants in social housing and prevent unnecessary evictions.

Several Review participants recommended that registered community housing agencies be deemed public authorities for the purposes of the Charter, so that it can be clearly applied to them.¹⁴² Prior to this, the *Parliamentary Inquiry into Homelessness in Victoria* recommended the right to housing be included in the Charter and that community housing providers be recognised as public authorities for the purpose of the Act. Other reviews have identified the need to clarify the role of the Charter in relation to registered agencies.¹⁴³

The Panel agrees that housing is a human right, and that application of a human rights approach to decision making in community housing is important, particularly in the context of eviction. The Panel understands that in general registered community housing agencies accept the Charter principles and seek to apply the framework, but that there is some confusion about how the principles should be applied in practice. There is also ambiguity of its applicability at law and how registered agencies would be considered public authorities for the purpose of the Act.¹⁴⁴ Any legislative change would require consideration of the full range of implications, which could extend beyond social housing.

3.1.6 (B) Support services are critical for tenancy sustainment

A key aspect of tenancy sustainment is access to suitable support services. Defining exactly what support is needed remains challenging,¹⁴⁵ but it can include tenancy management services designed to respond to the needs of tenants, services directly targeted at sustaining a tenancy (such as support with financial management or managing antisocial behaviour), as well as supporting tenants to access other assistance, such as mental health services (Box 3.3).

Box 3.3 What support is available for tenants?

The Victorian Government offers funding for a range of support services targeted at higher needs tenancies. These supports include:

- *Tenancy Plus* — provides assistance for social housing tenants who have a high risk of tenancy failure¹⁴⁶
- *Support for High-Risk Tenancies* — coordinates support for public housing tenants with complex needs that place their tenancy at risk¹⁴⁷
- *Multiple and Complex Needs Initiative* — assists eligible Victorians with combinations of extremely complex needs (such as mental illness and an acquired brain injury, for example)¹⁴⁸
- *From Homelessness to Home* — designed in response to COVID-19 to help 1,845 people who had been homeless to find and sustain long-term housing¹⁴⁹
- *Indigenous Tenancies at Risk* — offers flexible support to Aboriginal tenants in social housing.¹⁵⁰

The support offered through these programs ranges from the development of support plans and referral to other services, through to brokerage and case management of complex needs.

Social housing tenants also have access to the broad range of services available to all Victorians in need, such as healthcare, child and family support, and support for older people.

Support services are shown to be crucial to sustaining tenancies and reducing evictions.¹⁵¹ Tenants who participated in this Review highlighted support services as one of the key components of social housing.¹⁵² Despite this, many tenants raised issues with availability, including:

- services are seen as disjointed and tenancy supports are not well integrated with related types of assistance such as for mental health, or for people who have experienced homelessness or trauma¹⁵³
- services can be difficult to access and lack continuity, including when a person first enters social housing¹⁵⁴
- it can be difficult for tenants and housing providers to navigate the system of available supports and there is no central database of support services for Victoria.¹⁵⁵

3.1.7 (B) Cultural safety in the management and delivery of social housing is not mandatory

Aboriginal Victorians¹⁵⁶ are disproportionately reliant on social housing, with one in four households living in social housing compared with one in 50 households from the general population. About one in five Aboriginal Victorians are applicants on the Victorian Housing

Register.¹⁵⁷ In part, these numbers reflect the historical, complex disadvantage that Aboriginal tenants face, and issues that Aboriginal Victorians face in the private rental market.

Cultural safety¹⁵⁸ is not formally embedded in the system for the delivery of social housing to Aboriginal clients, and there is no requirement in the performance standards for registered housing providers to implement culturally safe practices. Cultural safety requirements are now standard across other human services, making housing an exception. Housing is a significant area of need and many Aboriginal social housing tenants rent from providers that are not Aboriginal Community Controlled Organisations (ACCOs). At June 2021, there were 5,500 Aboriginal identified households living in social housing, over 3,000 of whom rented in public housing or from a non-ACCO community housing provider.

Some organisations have made positive changes already. For example, the Community Housing Industry Association of Victoria (CHIA Vic) recently released its Aboriginal Cultural Safety Framework, designed to support providers of community housing to understand and work toward embedding Aboriginal cultural safety.¹⁵⁹ It has also partnered with the Victorian Aboriginal Community Services Association to deliver cultural awareness training to assist the sector in embedding culturally safe practices in their organisations.

The Housing Registrar has also undertaken a body of work in Aboriginal cultural safety through its involvement on the steering committee developing CHIA Vic's framework and in assisting Homes Victoria in the development of an Aboriginal Housing Registration Framework (D. Schreuder, Personal Communication, 11 May 2022). It has also undertaken outreach work to help ACCOs become registered.

Though welcome, the requirement for culturally safe practices needs to be formalised, as has occurred in other human services. A consultation process for Aboriginal housing was conducted as part of this Review, which found that culturally safe practices were highly valued, but often not implemented. Aboriginal tenants highlighted issues such as a lack of fairness in allocations and a lack of culturally appropriate repair services.¹⁶⁰

3.2. (B) What is recommended and why

3.2.1 (B) Improve measurement of tenancy sustainment

A first step to measuring performance is a robust approach to the measurement of tenancy sustainment. Review participants agreed that better performance data is needed, for providers and the regulator to assess approaches to tenancy sustainment and to develop guidance on good practice. In general, participants considered that existing data offered little meaningful information.

Unison Housing Research Lab undertook research for this Review, which provides an approach that can be used (and built on) to improve data collection (Box 3.4).¹⁶¹ This work outlines how survival analysis techniques, combined with data on exit reasons, could be used to measure provider performance. The output would allow providers to compare their performance to an average, which could be adjusted to take into account the range of tenant characteristics that make it more or less likely a tenancy will be sustained.

As noted, any approach will be imperfect due to the complexity of circumstances associated with housing. In particular, it is difficult to determine which exits are negative, without an assessment of the tenant's living conditions following the exit. Nonetheless, the Panel considers that the proposed approach would enhance understanding of tenancy sustainment outcomes and should be developed in consultation with the sector.

The administrative burden associated with additional data collection should be relatively minor because much of the data is already collected by providers and the Victorian Housing Register. Some changes would be needed for consistency in recording exit reasons.

The Panel considers that the output of this analysis should be made publicly available once the approach has been fully developed. Consistent with placing users at the centre of the system, this would allow current and prospective tenants access to providers' performance, which would inform their input and advice to providers and the regulator (Chapter 1). Data would need to be presented in a way that addresses privacy concerns.

Box 3.4: Sustaining tenancies – measuring performance

The report prepared by Unison Housing Research Lab for this Review ¹⁶² outlines an approach to measuring tenancy sustainment performance, based on a number of key principles, including that:

1. some social housing tenancies are more likely to be sustained than others
2. tenant age is a strong predictor of tenancy sustainment, to the extent that comparisons without age-adjustment are problematic
3. evictions are not the only unfavourable tenancy outcome for social housing tenancies.
4. social housing tenants can and do exit for a variety of reasons, but very early exits and exits in unfavourable circumstances are costly to individuals, providers and the community
5. some social housing tenancies are more likely to end in unfavourable circumstances than others
6. social housing providers can improve their tenancy sustainment outcomes and avoid unfavourable exits by improving housing quality, design and maintenance, but also by choosing tenants with higher probabilities of tenancy sustainment and lower probabilities of unfavourable exit
7. it is preferable to encourage the former (improving housing and services), rather than the latter (selecting tenants based on their risk profile).

The report recommends combining techniques of survival analysis with a framework of distinguishing between favourable and unfavourable exits. This framework aims to use data that is already collected where possible, acknowledging that some data may be incomplete. This approach would also consider the probability of different cohorts sustaining housing, and moderating for this, would provide insights into the success of a housing provider in sustaining tenancies relative to its peers.

Recommendation 3.6: Enhance the measurement of tenancy sustainment

Develop an approach to measuring performance in tenancy sustainment, which:

- draws on the principles of survival analysis, to account for differences in tenant mix across providers, and durations of maintained and exited tenancies
- accounts for the positive and negative reasons that tenants leave social housing
- uses data that is already collected where possible.

This approach should be developed by the regulator in consultation with providers and other relevant stakeholders.

Performance of social housing providers in relation to tenancy sustainment should be published.

3.2.2 (B) Introduce a standard for tenancy sustainment

Registered community housing agencies are required to have a policy on sustaining tenancies, and evictions must be treated as a last resort. A 'no evictions into homelessness' policy was put forward for consultation in this Review's Interim Report. Under such a policy, tenants facing eviction (as a last resort) would be offered a transfer to another social housing property, with support as an alternative to eviction.

In general, participants were in favour of this direction. For example, the Council to Homeless Persons stated that:

"If social housing is to be successful where private rental is not, and truly sustain tenancies where past attempts have failed, then a no evictions into homelessness policy must be seen as fundamental to social housing's mission."¹⁶³

Notwithstanding this support, many participants raised practical concerns with such an approach including that:

- the shortage of social housing stock would make timely transfers difficult
- the policy could make it difficult to remove perpetrators of family violence from the home
- the policy would be conditional on appropriate support services being available
- the policy could affect the bottom line of housing providers if, for example, rental arrears became more common and protracted
- tenants who have negative impacts on their neighbours may cause other tenants to leave their housing and potentially become homeless.¹⁶⁴

The policy would need to be applied carefully and include the appropriate exceptions, noting that some evictions into homelessness will be unavoidable. Nonetheless, the exceptions should be limited. At a minimum, where evictions are used, the provider's chief executive officer and board should have oversight of the process, which will raise the importance of these matters within each organisation.

This approach to tenancy sustainment would also require broader policy settings to be in place, including that:

- support services would need to be adequate for those at risk of eviction (discussed further below)

- community housing agencies may require funding to account for the costs of supporting high-needs tenants to remain in tenancies
- sufficient stock would aid the quick transfer of tenants to other suitable housing
- amendments to the Residential Tenancies Act may be required for social housing providers to transfer tenants as an alternative to eviction.

Practical considerations regarding transfers would need to be worked through, and appropriate safeguards put in place. For example, processes similar to those for evictions, such as the reasonable and proportionate test, would be applicable.

3.2.3 (B) Support to establish a tenancy is important for tenancy sustainment

The research on sustaining tenancies is consistent in the view that tenancies are most at risk in the early stages. On this basis, there is a clear role for early support to be offered.

Views among participants varied about where a social landlord's¹⁶⁵ role begins and ends.¹⁶⁶ The Panel heard that many providers offer supports for which they are not funded, and which are generally considered beyond the responsibilities of a tenancy manager. Some tenant groups also thought there should be separation in the role of tenancy manager and tenancy support provider, to avoid conflicts of interest.¹⁶⁷

There is no 'one size fits all' approach. Some housing providers offer support services, and do so effectively, while others have established partnerships with external support providers. However, there are some areas where housing providers should offer support, including:

- with establishing utilities connections
- checking on any material aid requirements (such as bedding)
- checking for any property issues
- linking tenants with appropriate specialist supports.

The Panel considers that tenancy sustainment would be bolstered by an individual tenancy risk assessment at the outset of a tenancy and at regular intervals as appropriate. This would involve identifying support needs, including social and health supports, accessibility modifications and cultural safety, and take risk factors relating to building or fire safety into account.

The Victorian Housing Register contains data on tenants' (self-assessed) needs, but this is not made available to providers for the purposes of supporting tenants. Access to this data (with an opt-out option for the tenant) would help providers assess support needs.

Greater clarity of the roles and responsibilities of providers would help to ensure those things that are critical to sustaining tenancies are provided by tenancy managers. Guidance on this should be provided by the regulator.

3.2.4 (B) Apply human rights principles in decision making

Social housing providers should have in place human rights aligned practices and robust processes for implementing them, particularly in the context of evictions.

The Panel recommends that a human rights framework adapted for housing be developed in consultation with tenants, providers, advocates and legal experts. This framework should provide a practical tool and give clear guidance to providers with case studies and examples. This will provide structure to the balancing of rights of multiple people who may be impacted by a decision. Decision-making processes and governance should support the implementation of

the framework, including senior management and board oversight of any evictions processes. CHIA Vic noted that continuous improvement is needed to support a human rights approach and pointed to their current work reviewing practices in the sector.¹⁶⁸

The framework and associated processes should form part of the guidance that is included in a new tenancy sustainment standard (Recommendation 3.8). These tenancy sustainment measures will be supported by other reforms. These reforms include the shift to a user-centred system (Chapter 1); the welcoming of complaints and feedback as a way to improve (Chapter 4); and better resourcing and skilling of the workforce (Chapter 3). Recourse to a specialist dispute resolution service (Recommendation 4.4) that works closely with the regulator will provide resolutions to individual tenants, while fostering a strong culture of good practice in the sector.

Despite the issues associated with using the Charter for Human Rights and Responsibilities as a legislative tool to bring about compatibility of decisions, there would be some merit in clarifying the status and applicability of the Charter to registered community housing agencies.

Whichever legislative tool or mechanism is used, the public housing provider, as a public authority, will continue to be subject to the Charter of Human Rights and Responsibilities Act. In keeping with the streamlined and consistent approach to regulation and equitable treatment of all social housing tenants (Chapter 2), the arrangements for community and public housing should align.

Recommendation 3.7: Require registered community housing agencies to apply human rights principles in decision making

Require registered agencies to apply a human rights framework that is relevant and adapted to housing, and to put in place processes within their organisation to support its application.

The framework and processes should be developed through a consultative process with the regulator, tenants, providers, and sector advocates, and adapted for the provision of social housing

Clarify the status and applicability of the *Charter of Human Rights and Responsibilities Act 2006* to registered community housing agencies.

Recommendation 3.8: Strengthen tenancy sustainment practices in social housing

Create a tenancy sustainment performance standard consistent with a 'no evictions into homelessness' policy, which includes:

- guidance on roles and responsibilities in establishing tenancies
- a requirement to undertake individual risk assessments to identify support needs and risks for the particular tenant and their household when establishing a tenancy and at regular intervals, that includes but is not limited to:
 - support services
 - cultural safety
 - dwelling features and facilities, including thermal regulation
 - accessibility needs
 - fire and building safety, including outstanding essential repairs
- a requirement to apply a framework that reflects and gives effect to human rights principles to decision making about evictions and transfers
- provision for tenancy transfers with support as an alternative to eviction

As part of this process the broader policy settings needed to minimise evictions into homelessness should be considered, including any amendments to the *Residential Tenancies Act 1997* to allow providers to transfer tenants to alternative accommodation.

Data collected on the support needs of tenants through the Victorian Housing Register should be made available to housing providers to allow them to assess the support needs of tenants (with privacy safeguards in place).

3.2.5 (B) There is significant scope to improve support services

The Housing First approach is based on the idea that providing housing in the first instance enables people to benefit from other support services they may need. This approach, with wrap around services that enable people to sustain their home, were highly regarded by Review participants.¹⁶⁹ However, access to services can be difficult as they are often in short supply, and some services are not offered once a recipient obtains permanent accommodation.

These issues relate to the funding, design and availability of support programs, which go beyond the scope of this Review. The recent *Parliamentary Inquiry into Homelessness in Victoria* made a range of recommendations to improve early intervention homelessness support, including:

- mapping available services to identify gaps
- supporting greater coordination between homelessness services
- prioritising funding for early intervention programs to prevent homelessness
- assisting those who have direct contact with tenants (such as service providers) to identify risk factors.¹⁷⁰

Work commissioned for this Review also offered options for improving support services, including:¹⁷¹

- providing standardised induction kits for new tenants, which include support for them to establish their tenancy
- more intensive support in the tenancy establishment phase
- additional capacity in the support programs offered

- a centralised database of support services that could be used by tenants and providers
- strengthened capacity and capability of frontline housing staff (discussed further below).

3.2.6 (B) Cultural safety should be included in performance standards

*Mana-na worn-tyeen maar-takoort*¹⁷² is Victoria's Aboriginal Housing and Homelessness Policy Framework. It was developed by the Aboriginal community, and its implementation is jointly governed by the community with the Victorian Government.

The vision of *Mana-na worn-tyeen maar-takoort* is that every Aboriginal person has a home. Its recommendations and actions reflect the priorities of Aboriginal Victorians and respond to those priorities through a self-determination approach. The Panel has given particular attention to Objective 5.2, which aims to make the broader housing and homelessness system culturally safe by:

- *workers in the mainstream system understanding and implementing culturally safe practices; and housing providers having culturally safe policies and practices*
- *the housing registration system ensuring a culturally safe community housing sector for Aboriginal clients; having the flexibility to register Aboriginal housing providers, recognising their particular strengths, and providing activity and outcomes reporting back to the Aboriginal community*
- *the public housing system being culturally safe, and providing activity and outcomes reporting back to the Aboriginal community*
- *the data and evidence base being reviewed to ensure that it enables continuous improvement and accountability, and provides activity and outcomes reporting, including back to the Aboriginal community.*¹⁷³

In 2019, the then Department of Health and Human Services published an Aboriginal and Torres Strait Islander cultural safety framework to support both the department and mainstream Victorian health, human and community services, to create culturally safe environments, services and workplaces.¹⁷⁴ Complementing that framework is the Community Housing Aboriginal Cultural Safety Framework developed for the community housing sector by CHIA Vic.¹⁷⁵ The Panel acknowledges that the CHIA Vic framework and its implementation by members, provides a solid platform on which the sector can build.¹⁷⁶

The Panel also notes the advice of the Housing Registrar that all staff completed cultural safety training by the end of 2021, and that this has been a priority, given its role in engaging with the Aboriginal housing community as part of the delivery of the Big Housing Build's Aboriginal Housing Round that commenced in late 2021.

Building on this base, cultural safety should be embedded in the performance standards for social housing providers – community and public. This would ensure that cultural safety is prioritised and drives continuous improvement. Cultural safety should also form part of the customer service standards charter (Chapter 1). Participants to the Review, including CHIA Vic and the Victorian Public Tenants Association supported this proposal.¹⁷⁷

Recommendation 3.9: Require social housing providers to provide culturally safe services

Include culturally safe practices in the performance standards for registered housing agencies, building on the cultural safety frameworks published by the previous Department of Health and Human Services and the Community Housing Industry Association of Victoria.

3C. Implementation of reforms: Workforce professionalisation

3.1. (C) What is the problem?

To a large extent, the quality of service delivery depends on the capacity and capability of the workforce, and implementation of the recommended reforms will demand more from workers in the sector. Moreover, a culture of professionalism in the workforce can reduce the need for prescriptive regulation and monitoring.

Social housing in Victoria is highly targeted to applicants with the greatest need. Therefore, an increasing proportion of people in the system have complex health, social and personal needs.¹⁷⁸ Many tenants require a high level of assistance to sustain their tenancies and manage complex problems that can impact their housing security. This, in turn, has seen a change in the depth and diversity of skills required for frontline social housing work in recent years.

As well as managing tenancies and properties, social housing workers are often called on to perform other tasks to support tenants and their communities.¹⁷⁹ However, frontline staff¹⁸⁰ are not always equipped with the skills to manage such a high degree of need. This is compounded by large tenancy lists, particularly in public housing,¹⁸¹ which can lead to job dissatisfaction, burnout and staff turnover.¹⁸² This was noted in the 2017 Victorian Ombudsman's report on public housing,¹⁸³ which recognised that the sheer volume of clients for each staff member made it difficult to provide adequate client service.

While large tenancy lists are difficult to properly service, even in a transactional manner, they impair genuine tenant-centred approaches to service delivery,¹⁸⁴ particularly services that need a worker to listen, discuss and negotiate with applicants or tenants, or to build rapport with tenants needing extra support. The workload also impacts the ability of staff to set aside time for training, where it may be offered.

Beyond this, the issues faced by the workforce are compounded by several key issues:

- Formal training opportunities for frontline housing staff and tenancy managers in public housing have declined over the years, and workplace-based professional development and identity in the sector is ad hoc.¹⁸⁵
- Levels of remuneration of frontline housing staff, at least in government sector positions, are low and not commensurate with other services needing equivalent skills,¹⁸⁶ and career progression opportunities are limited.¹⁸⁷
- Many frontline housing staff are often confronted with threatening behaviours by tenants, face dangerous situations alone for which they feel ill-equipped to handle. Some also reported instances of workplace bullying.¹⁸⁸

A survey of workers in social housing and community services was commissioned for this Review. A total of 83 responses were received with the majority (57) from people working in, or who had worked in, the homelessness sector. In the remaining group, most responses (28)

were from community housing sector workers, and six responses from government-sector housing workers. When asked what they saw as the most challenging part of their work within the social housing system, and what they saw as the biggest workforce issues impacting on successful housing outcomes, the responses included:

- finding safe and appropriate housing options for clients and the long wait times for housing
- a lack of client-focused ethos and the lack of capacity to engage with clients beyond the initial contact
- that some housing staff are ignorant, racist, judgemental, lack empathy and discriminate
- workforce shortages, lack of funding, poor pay conditions, high staff turnover and burnout
- housing teams that are undervalued, overworked and under-skilled
- occupational violence and experiences of vicarious trauma
- lack of support services and their capacity to provide active ongoing case management
- poor communication from 'head office'
- client complexity and a lack of trauma-informed practice by housing providers.

It is important to note that discussion of workforce professionalisation does not seek to downplay the value of experience and personal disposition of workers in this sector, nor is it intended that any measures proposed create unnecessary barriers to entry into the sector. There are many highly skilled and experienced individuals, but the current social housing workforce is collectively ill-equipped to perform the demanding role of social landlord.

3.2. (C) What is recommended and why

The suite of recommendations aims to provide tools to strengthen the capability and capacity of the social housing workforce, and address the concerns described. The Review's Interim Report presented a detailed rationale for each recommendation.

Social housing providers must ensure that staff are able to access and undertake ongoing professional development, so they are better equipped with the skills they need.¹⁸⁹ For new staff, a comprehensive induction program is critical. The Panel is aware that CHIA Vic currently offers a program for new housing and tenancy workers, as they start their careers in the community housing sector. The Panel encourages Homes Victoria to make this program available to its new frontline housing staff, rather than develop its own program.

The Panel also heard from staff it visited in the public housing offices that there can be a disconnect between them and senior executives and other central coordination and policy staff in DFFH and Homes Victoria.

Strengthened service delivery standards for social housing, and the inclusion of public housing in the regulatory framework, as recommended by this Review, will demand an uplift in provider performance. Providers will be required to support staff to deliver on expectations. Tools and training for existing workers can go some way towards this aim, although more staff will be required.



Recommendation 3.10: Create a workforce development strategy for the social housing sector

Develop and implement a workforce development strategy for the social housing sector, which includes but is not limited to:

- a review of the workforce capability framework
- a review of classification levels for public housing workers
- a package of micro-credentials that form or contribute to formal qualifications at the certificate, diploma and degree levels, beginning with induction and with each level nested into the higher levels
- appropriate accreditation mechanisms
- consideration of a minimum qualification (such as a Certificate IV in Community Services or Social Housing)
- developing tools to support workers who are at risk of, or have been subjected to, occupational violence and aggression
- developing a sector-wide code of conduct observable by all housing providers — with individual provider codes of conduct that are consistent with this framework.

This strategy should be developed by Homes Victoria, in consultation with community housing organisations, the regulator, other areas of government, union/s and any other expertise required.

Victoria could seek agreement from other jurisdictions to set this as a project to be undertaken with the Australian Housing and Urban Research Institute, with appropriate advisory bodies appointed, including tenants.

Recommendation 3.11: Require providers to embed a culture of ongoing professional development

Require all registered housing agencies to embed a culture of ongoing professional development for frontline housing staff and managers, which supports them to access formal training opportunities as well as informal, workplace-based professional development.

⁸³ Parliament of Victoria, Legislative Council, Legal and Social Issues Committee. 2021. *Inquiry into Homelessness in Victoria: Final Report*, Victorian Government Printer, Melbourne.

⁸⁴ RedRoad Consulting. 2021. *Social Housing Regulation Review: Public Housing Tenants' Engagement, Findings Report*, p. iii, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

⁸⁵ 89 Degrees East. 2021. *Social Housing Regulation Review. Community Housing Tenant Engagement Project*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>

⁸⁶ Victorian Government. 2020. *Media Release: Energy Efficient Social Housing*, available at: <https://www.premier.vic.gov.au/energy-efficient-social-housing>.

⁸⁷ Department of Families, Fairness and Housing. 2017. *EnergySmart Public Housing Project*, available at: <https://www.housing.vic.gov.au/about/housing-news/energysmart-public-housing-project>.

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- ⁸⁸ Department of Health and Department of Families, Fairness and Housing. 2021. *Draft Climate Change Adaptation Action Plan 2022–2026*, available at: <https://engage.vic.gov.au/aaps-healthandhumanservices>.
- ⁸⁹ Daly, D., Tibbs, M., Harada, T., Waitt, G. and Cooper, P. 2019. *Guide to Implementing Low Carbon Retrofits for Social Housing*, Low Carb Living CRC.
- ⁹⁰ Victorian Building Authority. 2022. *Assessment of mould growth risk in regulatory compliant 6 and 7 star new homes in Victoria (in progress)*, available at: <https://www.vba.vic.gov.au/about/research/assessment-of-mould-growth-risk-in-regulatory-compliant-6-and-7-star-new-homes-in-victoria-in-progress>.
- ⁹¹ Tasmanian Department of Justice. 2019. *Condensation in Buildings – Tasmanian Designers’ Guide - Version 2*, available at: https://www.cbos.tas.gov.au/__data/assets/pdf_file/0004/463630/Condensation-in-buildings-guide-2019.pdf.
- ⁹² Consumer Affairs Victoria. 2021. *Rental properties — minimum standards*, available at: <https://www.consumer.vic.gov.au/housing/renting/repairs-alterations-safety-and-pets/minimum-standards/minimum-standards-for-rental-properties>. A number of individual standards have specified dates of application.
- ⁹³ Wiesel, I., Pawson, H., Stone, W., Herath, S. and McNelis, S. 2014. *Social housing exits: incidence, motivations and consequences*, AHURI Final Report No.229, Australian Housing and Urban Research Institute Limited, Melbourne.
- ⁹⁴ Sharam, A., McNelis, S., Cho, H., Logan, C., Burke, T. and Rossini, P. 2021. *Towards an Australian social housing best practice asset management framework*, AHURI Final Report No. 367A, p. 2, Australian Housing and Urban Research Institute Limited, Melbourne, available at: <https://www.ahuri.edu.au/research/final-reports/367>, doi: 10.18408/ahuri532400.
- ⁹⁵ Sharam, A., McNelis, S., Cho, H., Logan, C., Burke, T. and Rossini, P. 2021. *Towards an Australian social housing best practice asset management framework*, AHURI Final Report No. 367A, p. 2, Australian Housing and Urban Research Institute Limited, Melbourne, available at: <https://www.ahuri.edu.au/research/final-reports/367>, doi: 10.18408/ahuri532400.
- ⁹⁶ Social Change Projects. 2021. *Social Housing Regulation Review: Report on Tenant Submissions*, p. 10, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.
- ⁹⁷ RedRoad Consulting. 2021. *Social Housing Regulation Review: Public Housing Tenants’ Engagement, Findings Report*, p. 13, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.
- ⁹⁸ Cheesman, B. 2021. *Tenant response to survey*, 25 October 2021.
- ⁹⁹ Fire Rescue Victoria. 2021. *Fire Fatalities at DFFH Properties 2016-17 – 2020-21* (unpublished data).
- ¹⁰⁰ Australian Bureau of Statistics. 2017. *2016 Census QuickStats*, available at: https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/2?opendocument; Australian Government, Productivity Commission. 2021. *Report on Government Services 2021*, Table 18A.3, available at: <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/housing-and-homelessness/housing>.
- ¹⁰¹ Coates, L., Kaandorp, G., Harris, J., van Leeuwen, J., Avci, A., Evans, J., George, S., Gissing, A., van den Honert, R. and Haynes, K. 2019. *Preventable residential fire fatalities in Australia July 2003 to June 2017*, p. 71, Bushfire and Natural Hazards CRC.
- ¹⁰² Homes Victoria. 2022. *Fire Incidents at DFFH Properties 2016-17 – 2020-21* (unpublished data).
- ¹⁰³ Damage estimates are conducted by the firefighter on site or by departmental staff, not from an assessor or actuary. Such estimates are likely to be considerably lower than the final damage toll and should be treated as minimum estimates.
- ¹⁰⁴ Homes Victoria. 2022. *Fire Incidents at Department of Families, Fairness and Housing Properties 2016–17 to 2020–21* (unpublished data).
- ¹⁰⁵ Premier of Victoria. 2021. *Banning Dangerous Cladding And Keeping Victorians Safe*, available at <https://www.premier.vic.gov.au/banning-dangerous-cladding-and-keeping-victorians-safe>.
- ¹⁰⁶ Australian Building Codes Board. 2020. *National Construction Code, Building classifications*, available at: https://www.abcb.gov.au/sites/default/files/resources/2020/UTNCC_Building_classifications.PDF.
- ¹⁰⁷ Regulatory Impact Solutions. 2020. *Options to ban combustible cladding in Victoria: Cost benefit analysis*, Department of Environment, Land, Water and Planning.
- ¹⁰⁸ Australian Bureau of Statistics. 2020. *Disability, Ageing and Carers, Australia: Summary of Findings, 2018, Victoria*, Table 6.1, available at: <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4430.02018?OpenDocument>. Note that the estimate of people with a severe core activity limitation has a high standard error and should be treated as a broad estimate only.
- ¹⁰⁹ Australian Bureau of Statistics. 2020. *Disability, Ageing and Carers, Australia: Summary of Findings, 2018, Victoria*, Table 6.1, available at: <https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4430.02018?OpenDocument>. Note that the estimate of people with a severe core activity limitation has a high standard error and should be treated as a broad estimate only.
- ¹¹⁰ Australian Institute of Health and Welfare. 2020. *People with disability in Australia: 2020 in brief*, p. 168, available at: <https://www.aihw.gov.au/reports/disability/people-with-disability-in-australia-2020-in-brief/contents/about-people-with-disability-in-australia-2020-in-brief>.
- ¹¹¹ Department of Industry, Science, Energy and Resources. 2021. *Building Ministers’ Meeting: Communique April 2021*, available at: <https://www.industry.gov.au/news/building-ministers-meeting-communique-april-2021>; Victorian

Building Authority. 2021, *Building regulator welcomes accessible housing reforms*, available at:

<https://www.vba.vic.gov.au/news/news/2021/building-regulator-welcomes-accessible-housing-reforms>.

¹¹² Community Legal Centres Joint Response (submission, 5, p. 6); Tenants Victoria (submission 29, p. 41); Action for More Independence and Dignity in Accommodation (submission 32, p. 4); Housing for the Aged Action Group (submission 65, p. 6).

¹¹³ Victorian Council of Social Service (submission 39, p. 12); National Disability Service (submission 43, p. 4).

¹¹⁴ Australian Institute of Health and Welfare. 2019. *National Social Housing Survey 2018*, p. 34, available at: <https://www.aihw.gov.au/reports/housing-assistance/national-social-housing-survey-2018-key-results/contents/table-of-contents>; Australian Institute of Health and Welfare. 2017. *National Social Housing Survey 2016*, p. 22, available at: <https://www.aihw.gov.au/reports/housing-assistance/national-social-housing-survey-detailed-2016/contents/table-of-contents>.

¹¹⁵ *Equal Opportunity Act 2010*, s. 55; *Residential Tenancies Act 1997*, s. 64.

¹¹⁶ Department of Health and Human Services. 2020. *Tenancy management manual — Special accommodation requirements for public housing tenants operational guidelines*, available at: <https://providers.dffh.vic.gov.au/tenancy-management-manual-special-accommodation-requirements-public-housing-tenants-operational>.

¹¹⁷ For example, Launch Housing's alterations and modifications policy notes that the cost of alterations and modifications will be borne by the tenant, unless alternate arrangements are made and agreed in writing. Haven; Home Safe's property modifications policy states that Haven; Home Safe is not responsible to pay for property modifications requested by the tenant. Uniting Housing's alterations and disability modifications policy notes that Uniting Housing may fully or partially finance modifications in certain circumstances.

¹¹⁸ *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Cwth), ss. 7.19; 7.20.

¹¹⁹ The Community Legal Centres Joint Response (submission 5, pp. 6-7) noted the example of a tenant who had a disability that was considered non-permanent and thus could not access National Disability Insurance Scheme funding.

¹²⁰ Victorian Government. 2020. *Victoria's Big Housing Build*, available at: <https://www.premier.vic.gov.au/victorias-big-housing-build>.

¹²¹ Consumer Affairs Victoria. 2020. *Rental properties – minimum standards*, available at:

<https://www.consumer.vic.gov.au/housing/renting/repairs-alterations-safety-and-pets/minimum-standards/minimum-standards-for-rental-properties>. The minimum standards require that a functioning heater be present in the main living area of the dwelling, but from 29 March 2023 this heater must have a minimum 2-star energy rating.

¹²² Regulator of Social Housing. 2012. *Guidance: Home Standard*, available at:

<https://www.gov.uk/government/publications/home-standard/home-standard-2015>.

¹²³ Scottish Government. 2020. *Practical fire safety for existing specialised housing and similar premises*, available at: <https://www.gov.scot/publications/practical-fire-safety-guidance-existing-specialised-housing-similar-premises/>

¹²⁴ Victorian Department of Families, Fairness and Housing. 2022. *Making modifications and alterations to your home*, available at: <https://www.housing.vic.gov.au/making-modifications-and-alterations-your-home>.

¹²⁵ Peninsula Community Legal Centre (submission 40, p. 6) highlighted that social housing renters who are evicted can have a high likelihood of homelessness.

¹²⁶ The recent inquiry into homelessness in Victoria highlighted the high costs of homelessness (Parliament of Victoria, Legislative Council, Legal and Social Issues Committee. 2021. *Inquiry into Homelessness in Victoria, Final Report*, pp. 28-29, Victorian Government Printer, Melbourne).

¹²⁷ For example, Witte, E. 2017. *The case for investing in last resort housing*, MSSJ Issues Paper No. 10, Melbourne Sustainable Society Institute, The University of Melbourne; Zaretzky, K. and Flatau, P. 2013. *The cost of homelessness and the net benefit of homelessness programs: a national study*, AHURI Final Report No. 218, Australian Housing and Urban Research Institute Limited, Melbourne.

¹²⁸ Homes Victoria. 2022. *Public housing terminations 2020-21* (unpublished data).

¹²⁹ Housing Registrar. 2020. *Sector Performance Report 2018-19*, p. 12, available at:

<https://www.vic.gov.au/housing-registrar-reports>.

¹³⁰ These negative reasons include evictions, unsuitable housing, neighbour conflict and incarceration. See Johnson, G., McCallam, S. and Watson, J. 2019. *Who Stays, Who Leaves, and Why? Occupancy Patterns at Unison Housing Between 2014 and 2016*, Research Report No. 2, Unison Housing, Melbourne.

¹³¹ West Heidelberg Community Legal (submission 52, att. 1).

¹³² Baker, E., Leishman, C., Bentley, R., Pham, N.T.A. and Daniel, L. 2020. *Social housing exit points, outcomes and future pathways*, Australian Housing and Urban Research Institute Limited, Melbourne, Final Report no. 326, available at: <http://www.ahuri.edu.au/research/finalreports/326>, doi: 10.18408/ahuri-3119901

¹³³ West Heidelberg Community Legal (submission 52, att. 1).

¹³⁴ Tenants Victoria (submission 29, p. 20); Geelong Housing Action Group (submission 38, p. 5); West Heidelberg Community Legal (submission 52, p. 5).

¹³⁵ Jesuit Social Services (submission 41, p. 5) noted the importance of protections for people with complex needs who may otherwise cycle in and out of social housing.

¹³⁶ Southern Homelessness Services Network (Interim Report submission 7, p. 8).

¹³⁷ JusticeConnect (submission 61, p. 25).

¹³⁸ West Heidelberg Community Legal (submission 52, p. 13).

- ¹³⁹ See RedRoad Consulting. 2021. *Social Housing Regulation Review: Public Housing Tenants' Engagement, Findings Report*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>; 89 Degrees East. 2021. *Social Housing Regulation Review. Community Housing Tenant Engagement Project*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>. Security and safety were the top issues raised about social housing in the individual submissions to this Review. See also Social Change Projects. 2021. *Report on individual submissions: Social Housing Regulation Review*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.
- ¹⁴⁰ McNeill, J. 2014. Regulating social housing: expectations for behaviour of tenants, in: Harrison, M. and Sanders, T. (eds.) *Social policies and social control: New perspectives on the 'not-so-big society*, pp. 137–148, Policy Press.
- ¹⁴¹ Safe and Equal (Interim Report submission 19, p. 6).
- ¹⁴² For example, Joint Legal Assistance Sector (Interim Report submission 23); Victorian Public Tenants Association (Interim Report submission 8).
- ¹⁴³ Brett Young, M. 2015. *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006*, Michael Brett Young, Melbourne; Parliament of Victoria, Legislative Council, Legal and Social Issues Committee. 2021. *Inquiry into Homelessness in Victoria, Final Report*, Victorian Government Printer, Melbourne.
- ¹⁴⁴ In particular, *Metro West V Sudi* [2009] VCAT 2025; *Goode v Common Equity Housing Ltd* [2016] VCAT 93; and *Director of Housing v Sudi* [2011] VSCA 266 and *Durney v Unison Housing* [2019] VSC 6.
- ¹⁴⁵ Watson, J. 2021. *Staying in place: Social housing and support services*, Unison Housing, Melbourne.
- ¹⁴⁶ Department of Families, Fairness and Housing. 2021. *Tenancy Plus support program*, available at: <https://www.housing.vic.gov.au/tenancy-plus-support-program>.
- ¹⁴⁷ Department of Families, Fairness and Housing. 2022. *Complex needs services*, available at: <https://providers.dffh.vic.gov.au/complex-needs-services>
- ¹⁴⁸ Department of Families, Fairness and Housing. 2022. *Complex needs services*, available at: <https://providers.dffh.vic.gov.au/complex-needs-services>.
- ¹⁴⁹ Department of Families, Fairness and Housing. 2021. *From Homelessness to a Home initiative*, available at: [https://fac.dffh.vic.gov.au/news/homelessness-home-initiative#:~:text=The%20From%20Homelessness%20to%20a,\(COVID%2D19\)%20pandemic](https://fac.dffh.vic.gov.au/news/homelessness-home-initiative#:~:text=The%20From%20Homelessness%20to%20a,(COVID%2D19)%20pandemic).
- ¹⁵⁰ Bendigo and District Aboriginal Co-operative. 2020. *Aboriginal Tenants at Risk*, available at: <https://www.bdac.com.au/aboriginal-tenants-at-risk>.
- ¹⁵¹ For example, Zaretzky, K. and Flatau, P. 2015. *The cost effectiveness of tenancy support programs for formerly homeless people*, AHURI Final Report No. 252, Australian Housing and Urban Research Institute Limited, Melbourne, note that tenancy support programs have proven successful at enabling formerly homeless people to access and sustain housing and reduce evictions.
- ¹⁵² Social Change Projects. 2021. *Report on individual submissions: Social Housing Regulation Review*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>
- ¹⁵³ Australian Housing and Urban Research Institute (submission 17, p. 5) stated that integration would improve tenancy sustainment rates, increase access to healthcare and other services, and ultimately improve tenants' quality of life. Other participants who raised integration as an issue included Domestic Violence Victoria and Domestic Violence Research Centre Victoria (submission 28, p. 4); Tenants Victoria (submission 29, p. 46); and Eastern Homelessness Service System Alliance (submission 37, p. 1).
- ¹⁵⁴ See for example, Eastern Homelessness Service System Alliance (submission 37, p. 1); Tenants Victoria (submission 29, p. 46); Salvation Army Tenancy Plus Program (submission 22, p. 2).
- ¹⁵⁵ Victorian Healthcare Association (submission 20, p. 4); Housing for the Aged Action Group (submission 65, p. 8); Uniting Vic Tas (submission 67, p. 3).
- ¹⁵⁶ In this Report 'Aboriginal' refers to Aboriginal people and Torres Strait Islanders
- ¹⁵⁷ Social Housing Regulation Review. 2021. *Review of Social Housing Regulation: Aboriginal Victorians and Social Housing Regulation: Findings and Options*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.
- ¹⁵⁸ "Aboriginal and Torres Strait Islander cultural safety is defined as an environment that is safe for Aboriginal people and Torres Strait Islanders, where there is no assault, challenge or denial of their identity and experience" (Williams, 2008, cited in Community Housing Industry Victoria. 2020. *Community Housing Aboriginal Cultural Safety Framework*, p. 14, available at: <https://chiavic.com.au/wp-content/uploads/2021/06/CHIA-Vic-Cultural-Safety-Framework-FINAL-1.pdf>). The Panel recognises that concerns for cultural safety extends beyond the Victorian Aboriginal community to many other groups that have cultural aspects which require different approaches to tenancy management (for instance, Middle Eastern and African communities have different gender, religious and dwelling use attributes).
- ¹⁵⁹ Community Housing Industry Association Victoria. 2022. *Aboriginal Cultural Safety Framework*, available at: <https://chiavic.com.au/resources/aboriginal-cultural-safety-framework/>.
- ¹⁶⁰ Social Housing Regulation Review. 2021. *Review of Social Housing Regulation: Aboriginal Victorians and Social Housing Regulation: Findings and Options*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.
- ¹⁶¹ Taylor, S. & Johnson, G. 2022. *Sustaining tenancies: Measuring performance*. Unison Housing, Melbourne, available at: <https://engage.vic.gov.au/download/document/24708>.

¹⁶² Taylor, S. & Johnson, G. 2022. *Sustaining tenancies: Measuring performance*. Unison Housing, Melbourne, available at: <https://engage.vic.gov.au/download/document/24708>

¹⁶³ Council to Homeless Persons (Interim Report submission 15, p. 18).

¹⁶⁴ For example, Southern Homelessness Services Network (Interim Report submission 7); Community Housing Association Victoria (Interim Report submission 24); Safe and Equal (Interim Report submission 19).

¹⁶⁵ The requirements under the *Housing Act 1983* are consistent with those for social landlords such as having an interest in tenant wellbeing, having arrangements to assist tenants sustain tenancies, address rent arrears and the like. See Social Housing Regulation Review. 2021. *Social Housing in Victoria, Consultation Paper 1: Background and Scoping Paper*, p. 18, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

¹⁶⁶ It was noted through the consultation process that it is often unclear what support role the tenancy manager should play, particularly in the early stages of the tenancy.

¹⁶⁷ Several participants raised concerns about providers also delivering support services (see for example: Housing for the Aged Action Group (submission 65, p. 8); Council to Homeless Persons (submission 35, p. 7)). These concerns are valid, and it is important that tenants have someone outside the housing organisation with whom to raise concerns. Nonetheless, there is no one size fits all model to delivering housing support, and there are examples of positive practice where housing organisations are qualified to deliver wrap around support.

¹⁶⁸ Community Housing Industry Association Victoria (Interim Report submission 24, p. 3).

¹⁶⁹ See for example, Australian Association of Social Workers (submission 33, p. 8); South Port Community Housing Group (submission 47, p. 7).

¹⁷⁰ Parliament of Victoria, Legislative Council, Legal and Social Issues Committee. 2021. *Inquiry into Homelessness in Victoria: Final Report*, Victorian Government Printer, Melbourne.

¹⁷¹ 89 Degrees East. 2021. *Social Housing Regulation Review. Mapping Support Services for Social Housing Tenants*, (unpublished report).

¹⁷² Aboriginal Housing Victoria. 2020. *Mana-na woorn-tyeen maar-takoort, Every Aboriginal Person Has A Home: The Victorian Aboriginal Housing and Homelessness Framework*, available at: https://www.vahhf.org.au/cms_uploads/docs/victorian-aboriginal-housing-and-homelessness-framework_complete_26_02_20.pdf.

¹⁷³ Aboriginal Housing Victoria. 2020. *Mana-na woorn-tyeen maar-takoort, Every Aboriginal Person Has A Home: The Victorian Aboriginal Housing and Homelessness Framework*, p. 81, available at: https://www.vahhf.org.au/cms_uploads/docs/victorian-aboriginal-housing-and-homelessness-framework_complete_26_02_20.pdf.

¹⁷⁴ Department of Health and Human Services. 2019. *Part 1: Aboriginal and Torres Strait Islander cultural safety framework for the Victorian health, human and community services sector*, available at: <https://www.dhhs.vic.gov.au/publications/aboriginal-and-torres-strait-islander-cultural-safety-framework>.

¹⁷⁵ The framework explains that Aboriginal cultural safety is about:

- shared respect, shared meaning and shared knowledge
- the experience of learning together with dignity and truly listening
- strategic and institutional reform to remove barriers to optimal health, wellbeing and safety outcomes for Aboriginal people. This includes addressing unconscious bias, racism and discrimination, and the ability to support Aboriginal self-determination
- individuals, organisations and systems taking responsibility for ensuring their own cultural values do not negatively impact on Aboriginal peoples, including a responsibility to address their potential for unconscious bias, racism and discrimination
- individuals, organisations and systems taking responsibility to support self-determination for Aboriginal peoples – this includes sharing power (decision making and governance) and resources with Aboriginal communities, and is especially relevant for the design, delivery and evaluation of services for Aboriginal peoples, (Phillips. 2015. cited in Community Housing Industry Victoria. 2020. *Community Housing Aboriginal Cultural Safety Framework*, p. 14, available at: <https://chiavic.com.au/wp-content/uploads/2021/06/CHIA-Vic-Cultural-Safety-Framework-FINAL-1.pdf>).

¹⁷⁶ Key elements of culturally safe workplaces and services articulated in the Framework (Community Housing Industry Victoria. 2020. *Community Housing Aboriginal Cultural Safety Framework*, p. 14, available at: <https://chiavic.com.au/wp-content/uploads/2021/06/CHIA-Vic-Cultural-Safety-Framework-FINAL-1.pdf>) are:

- Knowledge and respect for self
- Awareness of how one's own cultural values, knowledge, skills and attitudes are formed and affect others, including a responsibility to address their unconscious bias, racism and discrimination
- Knowledge of and respect for Aboriginal people
- Knowledge of the diversity of Aboriginal peoples, communities and cultures, and the skills and attitudes to work effectively with them
- A commitment to redesigning organisations and systems to reduce racism and discrimination
- Strategic and institutional reform to remove barriers to optimal health, wellbeing and safety outcomes for Aboriginal people
- Understanding that cultural safety is an ongoing learning journey and an ongoing and responsive learning framework that includes the need to unlearn unconscious bias and racism and relearn Aboriginal cultural values.

¹⁷⁷ See for example, Community Housing Industry Association Victoria (submission 68) and Victorian Public Tenants Association (submission 60).

¹⁷⁸ For example, Jacobs, K., Burke, T., Flanagan, K. and Levin, I. 2021. *Public housing as a social landlord: challenges and solutions*, Australian Housing and Urban Research Institute, (Forthcoming publication); Salvation Army Tenancy Plus Program (submission 22, p. 2); Victorian Council of Social Service (submission 39, p. 26).

¹⁷⁹ Tenants Victoria (submission 29, p. 44).

¹⁸⁰ This paper focuses on frontline social housing staff. The Panel recognises that the broader social housing workforce comprises staff with a broad range of responsibilities, skills and capabilities including accounting, asset management and human resources. The Panel anticipates that those staff will be afforded professional development opportunities like their frontline colleagues.

¹⁸¹ Jacobs, K., Burke, T., Flanagan, K. and Levin, I. 2021. *Public housing as a social landlord: challenges and solutions*, Australian Housing and Urban Research Institute (Forthcoming publication); Anonymous respondents to the survey of social housing and support workers commissioned by the Panel.

¹⁸² Anonymous respondents to the survey of social housing and support workers commissioned by the Panel.

¹⁸³ Victorian Ombudsman. 2017. *Investigation into the management of maintenance claims against public housing tenants*, Victorian Government Printer, Melbourne. Data provided to the Victorian Ombudsman indicated that housing staff manage, on average, 230 public housing tenancies a year. If each of these staff worked 38 hours per week over 46 weeks in the year (allowing for leave, illness, and other allowable absences), they would have an average of 7.9 hours available to them, per year, to attend to all tasks required to manage each individual tenancy for which they are responsible, not just the end of tenancy function. This equates to 10.3 minutes per tenancy per week. This caseload was compared with community housing officers who have caseloads of about 50 properties each.

¹⁸⁴ In its submission to the Review, the Victorian Public Tenants Association (submission 15, p. 6) suggested that existing caseloads managed by Homes Victoria Housing Officers would make it impossible for Officers to fully apply the Department's Social Landlord Principles.

¹⁸⁵ Milligan V., Pawson, H., Phillips, R. and Martin, C. with Elton Consulting. 2017. *Developing the scale and capacity of Australia's affordable housing industry*. AHURI Final Report No. 278, Australian Housing and Urban Research Institute Limited, Melbourne, available at: <http://www.ahuri.edu.au/research/final-reports/278>, doi:10.18408/ahuri-7108402.

¹⁸⁶ Jacobs, K., Burke, T., Flanagan, K. and Levin, I. 2021. *Public housing as a social landlord: challenges and solutions*, Australian Housing and Urban Research Institute (Forthcoming publication).

¹⁸⁷ Australian Housing and Urban Research Institute (submission 17, p. 4).

¹⁸⁸ Anonymous respondents to the survey of social housing and support workers commissioned by the Panel.

¹⁸⁹ Victorian Council of Social Service (submission 13, pp 4–5).

4. Complaints and dispute resolution arrangements that work for tenants

Key issues

- Complaints handling and dispute resolution arrangements for social housing are unclear and convoluted.
- There is scope to improve provider complaints handling processes, noting that:
 - there are multiple decision points in public housing complaints processes that can add to delays and confusion
 - community housing complaints processes vary and changes to regulation could help to standardise and strengthen these.
- Tenants are often hesitant to make complaints due to the power imbalance between tenants and providers. External support and assistance for tenants to make a complaint to their provider should be available.
- Despite multiple external dispute resolution bodies, there are gaps and overlaps in their jurisdictions. There is no external resolution mechanism for public or community housing for matters that are not referable to the Victorian Civil and Administrative Tribunal (VCAT). This is not user-centred and does not reflect the complexity of 'real-life' tenancy issues.
- There is a need for low-cost, accessible, speedy and non-adversarial external dispute resolution arrangements that:
 - assist tenants to navigate complaints and dispute resolution processes, through support and referrals, including support to raise a complaint with their provider where needed
 - provide comprehensive independent resolutions to the full range of housing-related disputes, using the appropriate tools according to the point of escalation, including determinations and payment plans.
- Any new function should be streamlined, provide a single point of escalation and have the authority to provide resolutions, avoiding protracted disputes and the need for parties to attend VCAT.
- Governance arrangements for an external resolution service should be appropriate for a mixed (government and non-government) sector to cater to an evolving social housing sector.
- Navigation, support and advocacy functions should be provided by a tenant-focused body. This could be the recommended social housing tenant advocacy body (Recommendation 1.6).
- A dispute resolution service of the type recommended could be created as a stand-alone body and would not be substantially more costly than if housed within an existing body.
- Many tenants, housing providers and service providers raised neighbourhood disputes as a key issue. Early intervention and the use of restorative justice approaches would be appropriate and could help to sustain tenancies (Chapter 1).

4.1. What is the problem?

Complaints handling and dispute resolution systems are avenues for tenants to communicate any dissatisfaction in relation to their tenancy and provider, and to exercise their legal rights if necessary. They are also a way of holding providers accountable for their service delivery obligations, and for identifying systemic issues or issues arising from particular 'hot spots' of service provision.

Research suggests that tenants (including those renting privately) can be hesitant to express dissatisfaction or make complaints.¹⁹⁰ The Review's consultations revealed that many social housing tenants are fearful of making complaints, as social housing is the last step between them and homelessness. This highlights the need for a speedy, non-adversarial system of complaints and external dispute resolution.¹⁹¹

Overall, the complaints and dispute resolution processes for social housing are complex, and there are gaps in coverage (Box 4.1).

Box 4.1: The process for complaints and dispute resolution in social housing

Internal public housing complaints processes

Public housing tenants are advised to direct complaints to a staff member or housing officer in their local housing office as a first step. If the matter is unresolved or not resolved to the tenant's satisfaction, they may request a review from a senior manager in the housing office. If the matter is still unresolved tenants are advised to lodge their complaint through the Department of Families, Fairness and Housing Feedback Management System. The department's central office will then assist to resolve the matter with the housing office.

The Housing Appeals Office considers a subset of decisions about tenancy matters and decisions related to the Victorian Housing Register.¹⁹² In most cases the Housing Appeals Office will not consider matters that are not referable to the Victorian Civil and Administrative Tribunal (VCAT), although there are some exceptions. There are two tiers in the process. The first tier involves requesting a review by the housing office that made the decision. The second tier is an independent review by the Housing Appeals Office which occurs automatically if the appeal was unsuccessful at the first tier.

Internal community housing complaints processes

The *Housing Act 1983* requires all registered agencies to have a complaints management process, and the Housing Registrar requires that complaints policies and procedures are accessible to current and prospective tenants. While policies differ across providers, processes typically provide for internal review of decisions after an initial complaint is made about any matter relating to a tenancy. The processes, complaints cultures and outcomes are monitored by the Housing Registrar, and registered agencies are subject to continuous improvement measures. Performance standards require that complaints and appeals are managed promptly, fairly and efficiently and that registered agencies maintain acceptable levels of tenant and resident satisfaction.

In 2019–20, registered agencies received 1,143 complaints, of which 428 were from tenants or prospective tenants (many complaints also come from outside the system).¹⁹³

External dispute resolution mechanisms

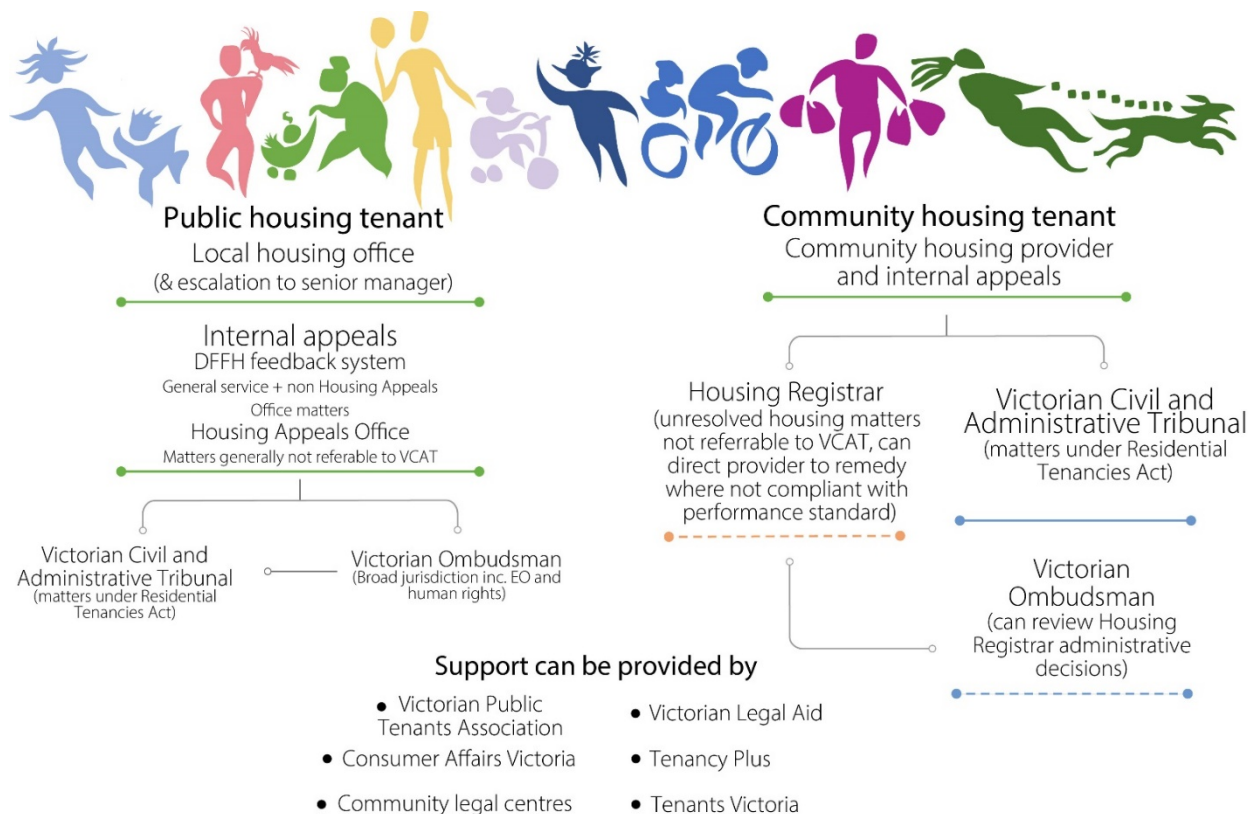
The pathways for external third-party assistance and dispute resolution differ for public and community housing tenants:

- Public housing tenants have recourse to the Victorian Ombudsman, which received 1,029 complaints relating to public housing in 2020–21.¹⁹⁴ According to the Ombudsman’s website, it deals with complaints about maintenance and repairs, evictions and enforcement actions. It is not able to affect decisions relating to eligibility, transfers and rental rebates.¹⁹⁵ Complaints generally relate to maintenance issues, a lack of heating, and safety concerns.¹⁹⁶
- The Housing Registrar can investigate complaints from community housing tenants about housing matters that have not been resolved by a registered agency within 30 days and are not otherwise referable to VCAT. The Housing Registrar received 113 enquiries and complaints in 2020–21, of which 5.3 per cent required a regulatory response.¹⁹⁷ The Ombudsman received 67 complaints relating to community housing in 2020–21. However, its jurisdiction does not clearly include community housing.¹⁹⁸
- Tenants also have recourse to VCAT for matters that fall within the *Residential Tenancies Act 1997*. It is not known how many social housing tenants lodge disputes with VCAT, although, in general, tenants are much less likely than landlords to do so. In 2018–19, there were over 50,000 applications to VCAT in relation to residential tenancies, of which about 6,700 were lodged by tenants (including tenants in private rental accommodation). In that same year, 8,628 applications were lodged by the Director of Housing.¹⁹⁹ There have been fewer applications to VCAT, and uncharacteristically few applications lodged by the Director of Housing, including since the end of the COVID-19 rental and income support measures.

Other support and advocacy services

- Both public and community housing tenants can access generally available services, such as through Consumer Affairs Victoria (which received 1,288 queries relating to public housing in 2018–19).²⁰⁰
- Victorian Legal Aid and Tenants Victoria can provide support for tenants in pursuing unresolved complaints. Support and advocacy can also be provided through services such as Tenancy Plus and the Victorian Public Tenants Association.

Figure 4.1: Current complaints and dispute resolution arrangements for social housing



4.1.1 There is scope to streamline and strengthen providers' complaints management processes

Regulation requires registered community housing agencies to have a complaints and disputes mechanism that is accessible and provides for prompt and effective resolution of complaints.²⁰¹ The processes vary across agencies, but in general, complaints will be referred to a complaints officer, and escalated to senior management if the complainant is unhappy with the decision. In public housing, individual housing offices also have their own respective internal complaints processes, which must comply with departmental policies and procedures.

There is some dissatisfaction with the way complaints are handled. Of tenants surveyed as part of this Review, and who made a complaint in the past 12 months:²⁰²

- 32 per cent of community housing tenants were unhappy with the way their complaint was handled.²⁰³
- about half of public housing tenants were unhappy with the way their complaint was handled.²⁰⁴

At least in part, these issues seem to arise from unclear processes. In community housing, while providers do offer information on how to make a complaint, it is unclear whether tenants have been able to access and understand the information. Many tenants who participated in this Review indicated a lack of awareness of where to escalate complaints. Tenant experience in making complaints varies greatly, depending on their housing provider.

In public housing, issues raised included a lack of awareness of the complaints process, and confusion about the process. There are multiple levels of decision-making in the internal review process after an initial complaint is made to the housing officer. If the officer's decision is not satisfactory to the tenant, they can request review by a senior manager in the local housing office. The complaint can be further escalated to the Department of Families, Fairness and Housing's (DFFH) central complaints management function or the Housing Appeals Office, both of which go back to the original decision makers in the housing offices in the first instance, before making a decision (Table 4.1).

Some of the issues relating to complaints processes can be linked to workload pressures on staff, who are unable to dedicate the time required to address individual complaints. More generally resourcing issues and frontline staff capability and capacity can impact the extent to which complaints arise in the first instance. These issues (which are considered further in Chapter 3) highlight that implementation capacity is as important as system design.

4.1.2 The external dispute resolution pathways are overly complex and there are gaps

As highlighted by Box 4.1, multiple entities deal with social housing complaints and disputes. Yet consistent themes from the Review's consultations have been that tenants are hesitant to raise complaints, lack awareness of options, and consider that the available pathways do not suit their needs. A closer examination of the escalation pathways reveals that, in most cases, the bodies involved in the process can only examine certain complaints:

- The Victorian Ombudsman has jurisdiction to investigate complaints relating to public bodies, which cover public housing and some community housing (although it is not clear which agencies and activities are covered). The Ombudsman's jurisdiction does not explicitly extend to community housing under its Act.
- According to its website, the Victorian Ombudsman can help resolve complaints about maintenance and repairs and eviction and/or enforcement actions whether human rights have been appropriately considered, and whether the public body's decision is lawful, reasonable and fair. It is generally unable to influence a decision about eligibility for housing, an application for priority housing or transfer, or calculation of rental rebates.²⁰⁵
- The Housing Registrar has a limited and discretionary complaints function to investigate complaints not referable to the Victorian Civil and Administrative Tribunal (VCAT) from current and prospective tenants about unresolved rental housing matters that have not been successfully resolved through a registered agency's complaint system within 30 days.
- VCAT can make decisions and orders in relation to matters that fall within the provisions of the *Residential Tenancies Act 1997*.

VCAT's jurisdiction in the context of social housing is confined to the Residential Tenancies Act. There are a number of functions that are specifically for matters not referable to VCAT, such as the Housing Appeals Office (within DFFH) and the Housing Registrar's complaint function. However, the Residential Tenancies Act confers a broad jurisdiction on VCAT in that a residential rental agreement under section 3(1) of that Act means any agreement, whether written or not and whether express or implied, under which a person lets premises as a residence. In addition, it is understood that VCAT can take account of a broad range of matters under section 330A of the Residential Tenancies Act when considering whether an application for possession is reasonable and proportionate. Therefore, there is some ambiguity about which social housing matters are not referable to VCAT. As a point of reference, the Housing Appeals Office lists in its Business Practice Manual those decisions that it cannot review (that is, that fall within the Residential Tenancies Act or are referable to VCAT) and those that it can (Table 4.1).

Table 4.1 Housing Appeals Office: decisions that can and cannot be appealed

Matters that can be appealed via the Housing Appeals Office	Matters that cannot be appealed
<p>Matters that can be appealed include:</p> <ul style="list-style-type: none"> • decisions about housing applications, such as: <ul style="list-style-type: none"> ○ eligibility for social housing ○ eligibility for priority access housing ○ requests for special accommodation requirements ○ revival of applications • offers of public housing • relocations • mutual swaps • rental rebate policy assessments, such as: <ul style="list-style-type: none"> ○ cancellation of a rebate ○ backdating a rebate assessment ○ rental subsidies • bond assistance, such as eligibility for bond assistance • outstanding bond charges • car parking matters, such as: <ul style="list-style-type: none"> ○ allocation of a car parking bay ○ requests for disability modifications ○ temporary absence ○ transfers of tenancy ○ tenant responsibility maintenance charges • movable units • tenant house sales 	<p>Matters that cannot be appealed (which fall within the <i>Residential Tenancies Act 1997</i> and are referable to VCAT) include:</p> <ul style="list-style-type: none"> • rental arrears recovery procedures, such as: <ul style="list-style-type: none"> ○ orders for possessions ○ evictions ○ notices to vacate ○ legal agreements • requests for emergency and responsive maintenance • breaches of the Residential Tenancies Act or tenancy agreement • subletting • water charges

Source: Department of Health and Human Services. 2017. *Business Practice Manual – Housing Appeals*, available at: <https://providers.dffh.vic.gov.au/business-practice-manual-housing-appeals-word>.

As a practical example of how this gap may be experienced, if a public or community housing tenant wished to challenge a provider’s decision in relation to their rental assessment and has exhausted their internal provider’s complaints process, their options for external review are unclear. Tenant entitlements relating to rent are underpinned at a high level by the *Housing Act 1983* and their details are contained in public housing guidance manuals, performance standards for registered agencies, and registered agencies’ own policies and procedures, rather than in legislation or regulation. These matters can be complex given that calculation of rent payable and rental rebate assessments are based on household income, which can vary with changes to household composition, relationship status and employment.

According to its website, public housing tenants can contact the Victorian Ombudsman for advice, however in most cases it is unable to influence a decision about calculation of rental rebates or transfers. The Housing Registrar may be able to consider the matter on behalf of a community housing tenant under its complaints function. If the complaint is upheld, the Registrar can direct the agency to remedy the matter or take other action to reduce the likelihood of future complaints. In this sense, it is not well suited as a mechanism to provide resolutions for individual tenants.

Review participants noted that overall the process was confusing and convoluted.²⁰⁶ Over half the complaints received by the Victorian Ombudsman in 2020–21 relating to public housing were closed, because the tenant had not gone through the internal complaint process.²⁰⁷ The Victorian Ombudsman informed the Panel that, with its new conciliation jurisdiction and the adoption of a warm referral policy, it expects these numbers to reduce. However, this point demonstrates that tenants often require support to approach their providers to make a complaint in the first instance.

The net result under existing arrangements is that tenants can be deterred from making a complaint in the first place.²⁰⁸ If they do, they may be referred from one service to another, with little support available at each step. Community housing tenants noted that the lack of a clear resolution pathway exacerbated issues that could not be dealt with internally, especially in light of the power imbalance between landlords and tenants.²⁰⁹ Finally, there may be gaps in the avenues to obtain external review and enforceable decisions.

4.1.3 Culturally appropriate dispute resolution options for Aboriginal tenants are needed

The consultation process undertaken with Aboriginal tenants for this Review identified weaknesses in the cultural safety of complaints handling and dispute resolution options. It also noted difficulties for Aboriginal tenants in navigating the system.

These issues were also identified through the Aboriginal Housing and Homelessness Framework. It noted that Aboriginal tenants needed advocacy, support and a dispute resolution process that is non-adversarial, responsive to Aboriginal concerns and culturally safe.²¹⁰

4.1.4 Neighbourhood disputes have been identified as a major source of disputes

Many participants in the Review's tenant consultations raised intra-tenant disputes in both public and community housing as a significant issue.²¹¹ Tenants cited violence and safety issues, as well as other neighbourhood conflicts. These are often complex situations that can be difficult for tenancy managers to effectively respond to or assist to resolve. Often there is no 'evidence' of wrongdoing that parties can act upon, and in any case, taking formal actions can be inflammatory and counterproductive, if the parties are to have an ongoing relationship as neighbours.

Providers can and should take action to deal with these disputes, however, at least in the first instance. This is a critical area for workforce training (Chapter 3), as tenancy managers and other frontline staff are in a position to influence the development and outcomes of these situations.

Although the Dispute Settlement Centre of Victoria could handle such disputes, its mediation processes appear to have rarely been used by social housing tenants. There is a gap in the system which leaves tenants with little recourse to resolve disputes that significantly affect their quality of life. It is not unusual for tenants to leave their housing on account of unresolved and seemingly intractable neighbourhood issues.

4.2. What is recommended and why

4.2.1 Improving social housing providers' complaints management processes

By the time an issue reaches an external dispute resolution body it has become messy and complex and is likely also to have become adversarial. Therefore, the starting point for complaints should be an effective provider complaints process. The tiered process used in public housing is consistent with good practice in ensuring that complaints are properly considered. However, it is regarded as confusing, with numerous steps in the process.

While these steps can provide safeguards against poor decision making, they can also frustrate tenants seeking a resolution. Currently, there are up to three steps: an initial hearing at the local office, a management review and then the lodgement with either DFFH's central complaints system or the Housing Appeals Office, (depending on the nature of the complaint (Table 4.1).

It may be wiser to set a shorter time period for complaints to be heard and settled (for example, five working days), and for management to triage matters to determine what would be the best process to settle the complaint within that time period.

The current system is heavily focused on whether officers have complied with the policy and procedure manuals. This may add to feelings of unnecessary red tape and delay, from the point of view of tenants. It detracts from the substance of the complaint and the tenant's circumstance or lived experience.

It could be beneficial to redesign the system so that rather than a focus on getting resolutions in order to close matters (which may be favourable or unfavourable from the tenant's point of view), complaints are welcomed as healthy information to inform and enable practice improvements. This would extend to the policy and procedure being tested.

Recommendation 4.1: Streamline public housing complaints management processes

Redefine the complaints handling process of the Department of Families, Fairness and Housing so that its objective is seen to be gathering welcome feedback to improve system performance.

The complaints handling system should be streamlined, including the Housing Appeals Office.

Tenants should be engaged as part of the redesign, to help ensure that the new system operates more effectively and efficiently according to their needs.

The Housing Act requires registered community housing agencies to have a complaints process, take all reasonable steps to resolve complaints within 30 days, and maintain a register of complaints. In addition, the performance standards require that:

- information on complaints and appeals is readily available and promoted to tenants
- the registered agency manages complaints and appeals promptly and fairly
- the registered agency regularly monitors the effectiveness of the complaints and appeals system.

The Housing Registrar monitors and reports on performance against these standards and requires agencies to demonstrate continuous improvement across a range of service delivery outcomes. For example, 93 per cent of complaints lodged by tenants or prospective tenants in

2019–20 were resolved within 30 days.²¹² Lessons can be drawn from other providers, including the Scottish Housing Regulator, which has undertaken a review of complaints management processes (Box 4.2).

Box 4.2: Improving complaints management processes

In 2017, the Scottish Housing Regulator undertook a review of providers' complaints management processes.²¹³ The review recommended that they embed a culture that welcomes and values complaints as a way of improving services. It noted that, as part of this, providers should:

- ensure information on making a complaint is visible and easy to understand
- ensure front line staff understand the complaints process and their role in it
- ensure systems for effective recording, management and performance monitoring of complaints are in place
- have methods of informing senior management about complaints handling performance
- publish up-to-date information on complaints management performance for tenants, including how complaints have been used to improve services
- consider using the Scottish public ombudsman's self-assessment indicators to monitor complaints handling performance.

Compared to requirements in other human services, the requirements for the complaints management practices of registered community housing agencies are not onerous. For example, the *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018* outlines several requirements for registered National Disability Insurance Scheme (NDIS) providers, including that:

- reasonable steps are taken to ensure that any person who makes a complaint to the provider, and each person with disability affected by an issue raised in such a complaint, is advised how that complaint or issue may be raised with the Commissioner
- appropriate support and assistance in contacting the Commissioner is provided to any person who makes a complaint and each person with disability affected by an issue raised in a complaint
- a person who makes a complaint, or a person with disability affected by an issue raised in a complaint, is not adversely affected because of the making of the complaint
- persons making a complaint are appropriately involved in the resolution of the complaint
- the system must also provide for the periodic review of the system to ensure its effectiveness.²¹⁴

In addition, the NDIS Quality and Safeguards Commission has issued guidance for effective complaints management for registered NDIS agencies.²¹⁵ Similar guidance is not currently available for registered housing agencies.

The performance standards should require registered housing agencies to adopt principles of effective complaint handling in their organisations, such as the principles outlined in the Australian/New Zealand standard (which are based on the international standard for complaints handling in organisations (Box 4.3)), and report on how they have adopted the principles. There

should also be a requirement for housing providers to make tenants aware of their options for external resolution.

Box 4.3: International standard ISO 10002 – Guiding principles for complaints handling in organisations*

1. Commitment – of the organisation to defining and implementing a complaints process
2. Capacity – sufficient resources are dedicated to complaints handling
3. Transparency – the process is communicated to all parties and complainants provided with adequate information about their complaint
4. Accessibility – information is accessible to all complainants, easy to understand and in relevant languages and formats
5. Responsiveness – the organisation addresses the needs and expectations of customers with respect to complaints handling
6. Objectivity – each complaint is addressed in an equitable, objective and unbiased manner
7. Charges - the process is free of charge to the complainant
8. Information integrity – information about the process is accurate, and data are relevant, correct, complete, meaningful and useful
9. Confidentiality – personally identifiable information is only be used for the purposes of addressing the complaint in the organisation
10. Customer-focused approach – the organisation adopts a customer-focused approach to complaints handling and welcomes feedback
11. Accountability- the organisation is accountable for, and reports on, decisions and actions relating to complaints handling
12. Improvement – increasing efficiency and effectiveness is ongoing
13. Competence – personnel have the personal attributes, skills, training, education and experience needed to handle complaints
14. Timeliness – complaints are handled promptly

Source: International Organization for Standardization. 2018. *ISO 10002:2018 Quality Management — customer satisfaction — Guidelines for complaints handling in organisations*, Third Edition.

*Explanatory text has been adapted from original

Recommendation 4.2: Strengthen complaints management processes for registered community housing agencies

Base the performance standards for registered agencies on the Australian/New Zealand standard for complaint handling.

Require agencies to report on how they have implemented the principles.

Require agencies to link tenants making a complaint with advocacy support and inform them of their options for external dispute resolution.

4.2.2 Reforms to external dispute resolution arrangements

The Panel recommends external dispute resolution arrangements be simplified and made more supportive to tenants. These should reflect the recognised best practice benchmarks for external dispute resolution systems developed by the Commonwealth Government (Box 4.4).

Box 4.4: Commonwealth Government principles for industry-based customer dispute resolution²¹⁶

The 2015 Commonwealth Government's Benchmarks for industry-based customer dispute resolution, which aim to encourage best-practice, industry-based dispute resolution services, include the following principles:

- Accessibility – the body promotes knowledge of its services, is easy to use and has no cost barriers.
- Independence – the decision-making processes of the body are independent from participating organisations.
- Fairness – the procedures of the body are fair and seen to be fair.
- Accountability – the body publishes its final determinations, and reports information about any systemic problems to participating organisations, policy agencies and regulators.
- Efficiency – the body keeps track of complaints, ensures complaints are dealt with by the appropriate process, and regularly reviews its performance.
- Effectiveness – the body has an appropriate and comprehensive jurisdiction and has periodic independent reviews of its performance.

Figure 4.2 contains an overview of the system envisaged, which consists of two new components:

Component 1 – A support and referral function to assist tenants navigate the system and provide support and warm referrals to the appropriate bodies and advocacy services.

Component 2 – An external specialist dispute resolution service with a broad remit that can handle all matters relating to social housing and tenancy management, whether or not they fall under the Residential Tenancies Act. It should employ a range of tools including informal assistance and formal determinations.

The Panel considered whether the dispute resolution services for social housing tenants should also be made available to tenants of affordable housing (Chapter 5). Affordable housing is targeted to those primarily with affordability needs rather than the broader set of needs of those who meet the eligibility criteria for priority social housing. However, given the limited supply of social housing, it is likely that affordable housing will be seen as an option for many applicants on the Victorian Housing Register, including those in the priority access categories.

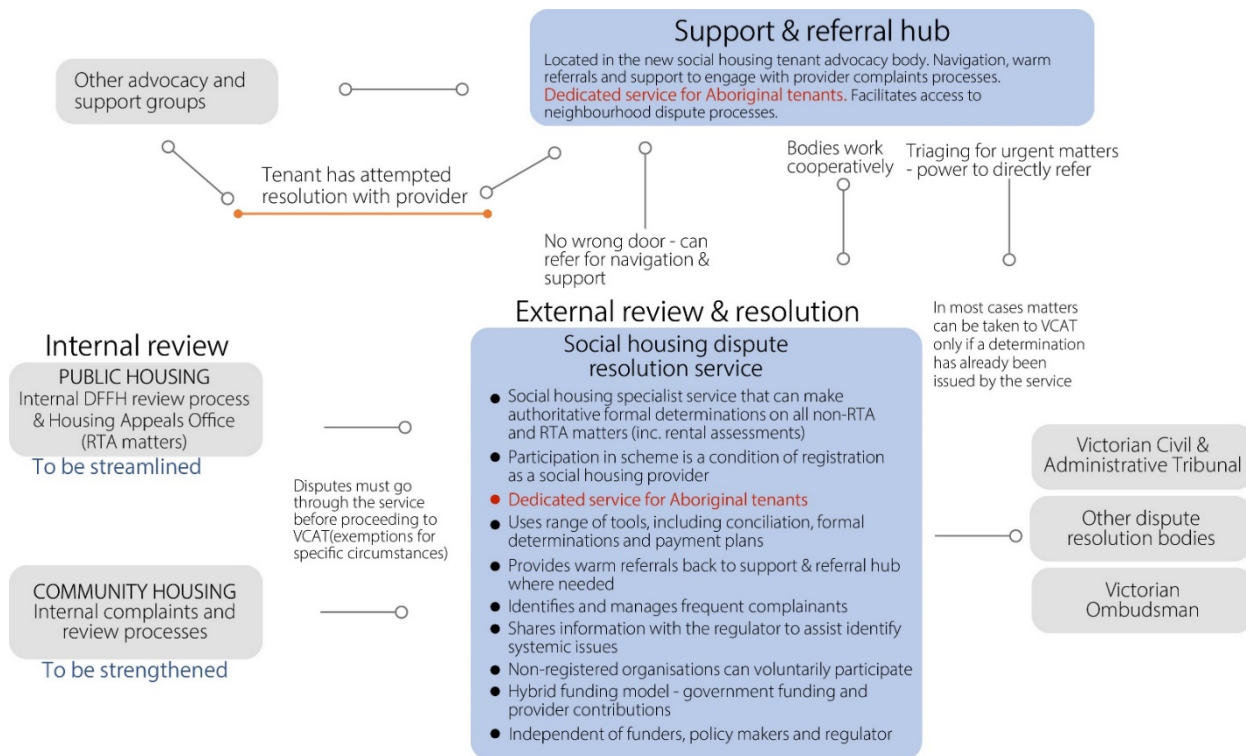
Other considerations included whether requiring affordable housing providers to participate in, and contribute to, a formal dispute resolution scheme (Recommendation 4.4) is proportionate to the consumer needs and risks for the cohort of tenants. The extent to which mainstream residential tenancies systems and services should be fragmented to cater to specific groups was also questioned.

Any services that are established to cater to the social housing system, would need to be equipped and resourced to also handle affordable housing matters, noting that different obligations will apply to social and affordable housing providers. Given what little is currently known about the affordable housing sector – and the needs of tenants and providers – the Panel has not made a definitive recommendation in this regard. The monitoring of functions

recommended elsewhere in this report, in relation to allocations and fulfilment of affordable housing provider contracts (Chapters 2 and 5), would help to inform this position over time.

Both of the components in this model should provide dedicated, culturally safe and appropriate services for Aboriginal social housing tenants.

Figure 4.2: A reformed complaints management and dispute resolution system that welcomes complaints as valuable feedback for improving performance



Component 1: A support and referral service for social housing tenants would improve accessibility

It is clear the complaints and dispute resolution system for social housing is complex, and while there is scope for simplification, some complexity will remain. The vulnerability of many social housing tenants adds complexity to the issues that arise. The recommended approach acknowledges there will continue to be multiple bodies involved in dispute resolution in the social housing system. Housing providers should continue to be the first to consider a complaint. The Panel considers that significant improvement can be made without displacing existing mechanisms.

There is a clear role for a referral and support service to assist social housing tenants both to make complaints to their provider in the first instance and escalate them to external bodies where needed. The functions of this service, represented at the top of the diagram in Figure 4.2, should include providing:

- assistance to navigate the system
- support, if needed, for tenants to lodge complaints with their provider

- guidance on an escalation pathway – for example, some matters may be dealt with through conciliation in the first instance, while other urgent matters may be referred directly to the external dispute resolution function
- referrals to other advocacy and support bodies – such as legal support through community legal centres.

The support and referral function should be a ‘front door’ to the system, assisting tenants and referring them (with support) to the most appropriate body.

Recommendation 4.3: Establish a support and referral service for complaints and disputes

Establish a support and referral service for complaints and dispute resolution. This function could sit within the social housing advocacy body (Recommendation 1.6).

The support and referral service should:

- provide navigation, warm referrals and support to tenants to engage with their providers’ complaints processes and the dispute resolution system
- include a dedicated service for Aboriginal tenants, which is staffed by Aboriginal people
- be able to triage and escalate urgent matters for immediate resolution to the external dispute resolution service (Recommendation 4.4) or the Victorian Civil and Administrative Tribunal as appropriate.

Component 2: A external dispute resolution service for all social housing tenants

The need for a specialist external dispute resolution service received broad support from Review participants. The Victorian Public Tenants Association (VPTA), Australian Housing and Urban Research Institute, Council to Homeless Persons, Community Housing Industry Association Victoria, and the Joint Legal Assistance Sector all supported this proposal.²¹⁷

The Panel recommends an independent service that can provide authoritative resolutions for social housing tenants on all matters related to their housing – regardless of whether these fall under the Residential Tenancies Act or the broader obligations of providers (for example under the Housing Act). It is expected that, over time, the assistance and determinations made by the service will reinforce improvements to providers’ own complaints management processes.

4.2.3 Features of an external dispute resolution service

A broad remit and effective referrals to avoid matters falling through the cracks

The remit of the new service should be broad. A key issue with the current system is that tenants are often referred from one service to another due to the narrow jurisdictions of existing bodies. While the service should have the capacity to refer tenants to other bodies where they are better placed to assist, there should be limited exclusions to its remit.

Where the service does provide a referral, it is important that tenants are not deterred from pursuing the complaint. It should adopt a process of ‘warm referrals’, which it will continue to monitor and be informed of the outcome of that referral.

The New Zealand Health and Disability Commission provides an example:

“New Zealand’s Health and Disability Commissioner Act 1994 is a useful model. It provides that where the Commissioner refers a complaint to another agency or person, that agency or person must promptly acknowledge the complaint, and advise the Commissioner of any significant step taken in considering the complaint and of the outcome of that consideration.”²¹⁸

This type of mechanism would allow the new body to ascertain any deficiencies in the referral process and provide support to the tenant if the matter is unable to be resolved.

An external dispute resolution service with the ability to consider the full range of social housing provider obligations could better deal with complex disputes where a combination of factors has contributed to the dispute at hand, some which can be assessed according to the provisions of the Residential Tenancies Act and some which cannot. As discussed, this is currently a gap in the system.

VCAT’s jurisdiction in relation to matters specific to social housing tenancies should be clarified. Enshrining social housing performance standards in regulation (Recommendation 2.1) would assist to clarify their legal status, including in relation to residential rental agreements under the Residential Tenancies Act.

A broad range of tools to facilitate resolution, including formal determinations

The external dispute resolution body should be able to use a range of dispute resolution approaches. As an example, the Health Complaints Commissioner can undertake early resolution processes and conciliation, as well as formal resolution. Many issues are resolved by early resolution, reducing the cost and improving the effectiveness of the process. The Joint Legal Assistance Sector noted the need for fast-track dispute resolution processes for issues such as bond disputes.²¹⁹

Dispute resolution approaches based on industry ombudsman or similar models are generally well supported by participants. For example, a review of the Electricity and Water Ombudsman of Victoria (EWOV) found that it enjoyed strong support from both consumer organisations and providers.²²⁰ The Victorian Access to Justice Review has noted that ombudsman schemes appear to employ the best elements of alternative dispute resolution: they are accessible, low cost, flexible, offer support and can address power imbalances.²²¹

The Panel notes that the Victorian Ombudsman already has a broad jurisdiction in relation to public housing complaints. In cases where it does not consider that a complaint can or should be determined by VCAT or another tribunal or court, it can enquire, investigate, conciliate, conduct complaint reviews, and provide education and training in relation to administrative actions and improper conduct.

As there is a mixed system of public and non-government social housing providers and community housing agencies are independent not-for-profit organisations, there are broader questions and policy matters for government to consider in relation to whether providers of community housing should be included within the Victorian Ombudsman’s jurisdiction.

In order to address a gap in the system, the external dispute resolution service will be able to issue formal determinations, similar to other schemes such as the Victorian Small Business Commission (VBSC) for disputes relating to retail leases.²²² Except where an urgent decision or injunction is required, parties to a dispute must use the VSBC dispute resolution service in the first instance. Proof of the VSBC process is required to pursue a matter at VCAT (or otherwise a certificate, if the other party refuses to participate). In contrast to that model, the social housing

dispute resolution service would not be based on reaching mediated agreements but would make decisions with reference to the rights and obligations of the parties.

It is expected that most disputes would be resolved at the external dispute resolution service. Exemptions will need to be clearly defined where an order from VCAT is required or considered more appropriate. Possession orders would continue to be sought from VCAT. These arrangements seek to divert providers from VCAT where possible and provide authoritative resolutions in a non-adversarial setting but should not create barriers to access to justice.

All providers of social housing would be required to participate in the scheme as a condition of registration (or as a contractual condition if affordable housing were to be included, for example). This would include the public housing provider, on the basis that its activities would be deemed to be registered (Chapter 2).

Ensuring that complaints management and dispute resolution arrangements work well for tenants means also developing a mechanism that will assist tenants who complain frequently, and potentially draw resources away from others, perhaps unnecessarily.

Dedicated and appropriate services for Aboriginal tenants

The dispute resolution service should be equipped to provide culturally safe and appropriate services to Aboriginal tenants, including support to navigate the system and access advocacy.

The Aboriginal Housing and Homelessness Forum noted that the Koori support teams, recently introduced at VCAT provided a good model. The support teams assist with understanding VCAT processes, can connect people to legal and support services, and can support people at their hearing. Aboriginal users also have the option of booking Koori hearing rooms at VCAT.²²³

Within the new support and dispute resolution service, it is recommended that dedicated services are provided by trained Aboriginal staff and conciliators, and there is involvement of Elders. The details of the remit, functions and approach should be determined through a consultative process with the Aboriginal community.

Appropriate governance and funding arrangements for a mixed sector

The dispute resolution arrangements would need to cover public housing (fully government owned and operated) as well as registered and non-registered providers of community housing. The aim is to provide a streamlined user experience because the existing fragmented system is not adequate for social housing tenants. For the service to be effective, however, it must provide value and credibility to all users, including tenants and providers.

The service should be independent of the bodies responsible for funding and regulating social housing, to build trust amongst both tenants and providers. While the dispute resolution service would provide a supportive environment for tenants, having the advocacy and support functions provided separately in the social housing tenant advocacy body (Figure 1.2) is also consistent with this aim.

Taking account of the mixed sector and the need for a credible and authoritative resolution service, the Panel recommends arrangements where providers must participate in the scheme as a condition of registration (or alternatively contract where applicable). This is similar to other industry dispute resolution schemes, such as EWOV, where members participate as a condition of their business licence. Voluntary membership could also be made available to unregistered providers.

On this basis, there is an option for the service be funded according to a hybrid model, where government provides the base funding and members (which would include the Director of

Housing and community housing agencies) contribute a base fee. Additional fees could be charged to members for complaints that cannot be resolved with initial assistance and need to be escalated, noting such cases would likely be an exception. This model is employed in several industry ombudsman schemes.

The Panel is conscious this would have a financial implication for providers, and that some smaller providers may have difficulty paying contributions. However, the model is intended to provide an appropriate incentive to resolve complaints early and speedily, and it is envisaged that fees would be nominal.

Dispute resolution service resourcing considerations

The dispute resolution service could operate either as a standalone entity or be attached to an existing body, provided such a body were sufficiently compatible with its aims and purpose, and could:

- issue formal determinations
- consider and provide formal determinations on all matters relevant to social housing tenancies
- accommodate a mixed sector with a government provider, registered community housing agencies (private and partly government funded) and unregistered community housing (and potentially other private sector affordable housing) providers
- foster a constructive culture and non-adversarial approach to complaints and disputes.

The Panel considers that the cost of establishing and operating a standalone service would not be significantly greater than if it were attached to an existing body. The latter would allow the sharing of some corporate costs (such as finance, IT and human resources).

Regardless of its location, any such service will require:

- governance arrangements including an independent chair and board with provider and tenant representation
- approximately 10 to 12 dispute resolution staff (based on an estimated 5,000 cases per year, which is a reasonable estimation from the annual case numbers dealt with by the Victorian Ombudsman, the Housing Registrar and Consumer Affairs Victoria, with the addition of unmet demand and growth in social housing)
- complaint and dispute management software adapted for social housing (plus licensing and data storage, etc.).

Recommendation 4.4: Establish a specialist external dispute resolution service

Establish a support and dispute resolution service for social housing which:

- can investigate all tenancy disputes related to social housing
- uses a range of tools to resolve disputes
- can provide formal determinations (including for rental payment plans) where needed
- provides culturally safe support and dispute resolution services for Aboriginal tenants, performed by respected Aboriginal community members
- works closely with the support and referral service and provides warm referrals where appropriate, including to restorative justice services (Recommendation 4.5)
- has a governance structure appropriate for a mixed sector, which will provide value, credibility and authoritative determinations for both tenants and providers, where needed
- requires the participation of all registered community housing agencies and the public provider as a condition of registration or funding
- provides for voluntary membership by unregistered providers of housing
- requires participants to obtain a determination for most matters, prior to pursuing the matter with the Victorian Civil and Administrative Tribunal (VCAT)
- could be funded based on a hybrid model, which includes government funding, member base-fees and contributions per escalated dispute
- fosters a constructive culture and non-adversarial approach to complaints and dispute resolution in the sector
- implements strong information-sharing arrangements with the regulator.

It is recommended that clarity be provided regarding social housing matters that are not referable to VCAT, with a view to ensuring social housing tenants have access to justice in relation to all aspects of their housing.

4.2.4 The regulator to continue to monitor for systemic issues

The Panel considers that the regulator (whether the Housing Registrar or a new social and affordable housing regulator) should not seek to resolve individual complaints, but should focus on matters of a broader systemic nature that affect its regulatory functions. The Panel understands that although many of the complaints the Registrar receives are not within its jurisdiction, or would otherwise not require specific action, considerable time is spent investigating, making referrals and attempting to assist the complainant. This diverts resources from its primary function of regulating housing providers.

In relation to complaints, the regulator's focus should be on ensuring providers have in place appropriate and effective complaint-handling mechanisms that are supported by positive cultures. Consistent with best-practice regulation, it is generally preferable to separate regulation and external dispute resolution functions.

The regulator should retain an ability to be notified directly about serious breaches or performance failures by the dispute resolution body or tenants directly, similar to the Scottish

regulator.²²⁴ There should be clear lines of communication and strong information-sharing arrangements between the external dispute resolution service and the regulator, to ensure that it can continue to investigate systemic issues. As an example, the Scottish regulator has a memorandum of understanding with the Public Services Ombudsman to allow them to consult and cooperate in performing their functions.²²⁵

4.2.5 A restorative justice approach to neighbourhood disputes

Any dispute resolution arrangements for social housing must consider neighbourhood conflicts and disputes, particularly given feedback from tenants and providers, regarding the extent and scale of impact these have on individuals and communities. Neighbour and neighbourhood conflicts and disputes can be particularly complex and challenging to resolve, and a multipronged approach is likely to be needed. This is particularly the case where issues are not of a legal nature, and the parties are to have ongoing contact (as neighbours).

Restorative justice is a broad term that refers to engagement between parties where wrongdoing or harm has taken place, in a safe, structured and facilitated way, to talk about what happened, how they were impacted and how the harm can be repaired or addressed.²²⁶

Restorative justice is used successfully in a range of settings including between individuals (such as victims and perpetrators of wrongdoing or crime), in corporate and organisational settings and other community settings. It is a flexible approach that responds to the needs of those involved and seeks to obtain outcomes that are meaningful to those who have experienced harm. These outcomes could include, for example, listening to the impacted person's story, an apology, an explanation, an agreement to cease a certain behaviour, or some other remedial action.

For neighbourhood disputes, where the parties typically have an ongoing relationship (in the case of social housing, as neighbours), this approach offers a promising option. That is because the outcomes sought are conducive to improving and preserving relationships after the process. Unlike other traditional formal and legal options where resolution may involve punitive action for one of the parties, the outcomes sought and offered by restorative justice approaches aim to do no further harm to either party.

The use of restorative justice should not preclude the use of other legal options, and the traditional legal avenues should always be open to the parties. For example, a victim or aggrieved party should be able to seek formal compensation or another remedy through the court system.

The VPTA's submission supports the restorative justice approach.²²⁷ Others were cautiously supportive, including the Joint Legal Assistance Sector and Safe and Equal, who recognised there will be some circumstances where the approach is not safe or appropriate.²²⁸ Of course, where danger or further harm is a risk, other avenues should be pursued. Importantly, one of the pillars of restorative justice is that engagement must be voluntary and either party can withdraw from the process at any time.

There are small-scale examples of restorative justice being used successfully in Victoria. The Neighbourhood Justice Centre at Collingwood includes restorative justice in its suite of justice and other social and health services. Implementation of a restorative justice approach for social housing would require the availability of, and resourcing for, highly skilled practitioners.

Services should be delivered by specialist providers contracted and coordinated by the dispute resolution service (as above) and should be:

- independent of housing providers

- conducted locally to the parties
- not provided or coordinated by a body that has, or could be perceived to have, conflicting roles
- delivered by trained and experienced providers.

The availability of restorative justice services to social housing tenants across the state would offer benefits to affected individuals and neighbourhoods, as well as cost savings for the system. Savings could be expected in staff time, stress, other service costs, VCAT resources (for example, where the Residential Tenancies Act is invoked in response to nuisance and anti-social behaviour), people leaving housing, and requiring transfers (or going into homelessness).

Recommendation 4.5: Provide restorative justice services for neighbourhood conflicts and disputes

Establish, in consultation with tenant groups and other key stakeholders, a restorative justice program to assist in resolving neighbourhood conflicts and disputes in social housing.

The services should be provided by independent specialist providers, which could be coordinated by the dispute resolution service.

Addressing neighbourhood disputes and the sustaining tenancies approach (Chapter 3) are strongly aligned. The risk factors for neighbourhood conflicts and disputes are related to those for failure of tenancies, and often tenancies can be cut short as a result of these conflicts and disputes.²²⁹ Similarly, the approaches to sustaining tenancies through early intervention and effective support services can also assist in preventing and addressing neighbourhood disputes.²³⁰



¹⁹⁰ For example, Parkinson, S., James, A. and Liu, E. 2018. *Navigating a changing private rental sector: opportunities and challenges for low-income renters*, AHURI Final Report No. 302, Australian Housing and Urban Research Institute Limited, Melbourne, available at: <http://www.ahuri.edu.au/research/final-reports/302>, doi: 10.18408/ahuri-511230, note that the power imbalance between tenants and landlords leads to issues, and complaints can result in a standoff which leads to tenants exiting the property.

¹⁹¹ 89 Degrees East. 2021. *Social Housing Regulation Review. Community Housing Tenant Engagement Project*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

¹⁹² Department of Families, Fairness and Housing. 2021. *Housing Appeals Office, Appeal a decision*, available at: <https://www.housing.vic.gov.au/appeal-decision>, accessed 8 May 2022.

¹⁹³ Housing Registrar. 2021. *Sector Performance Report 2019–20*, p. 16, available at: <https://www.vic.gov.au/housing-registrar-reports>.

¹⁹⁴ Victorian Ombudsman. (unpublished data).

¹⁹⁵ Victorian Ombudsman. *Public housing*, <https://www.ombudsman.vic.gov.au/complaints/public-housing/> accessed 1 May 2022.

¹⁹⁶ Victorian Ombudsman. 2021. *Annual Report 2021*, p. 50, available at:

<https://assets.ombudsman.vic.gov.au/assets/VO-ANNUAL-REPORT-2021.pdf>.

¹⁹⁷ Housing Registrar. 2021. *Regulatory update report 2020–21*, p. 5, available at:

<https://www.vic.gov.au/sites/default/files/2021-09/Regulatory%20Update%20Report%202020-21.pdf>.

¹⁹⁸ Victorian Ombudsman. (unpublished data).

¹⁹⁹ Victorian Civil and Administrative Tribunal. 2020. *Annual Report 2020–21*, p. 97, available at:

<https://www.vcat.vic.gov.au/about-vcat/annual-reports-and-strategic-plan#annual-report>.

²⁰⁰ Commissioner for Residential Tenancies. 2020. *Renting in Victoria: Snapshot 2020*, p. 15, Commissioner for Residential Tenancies, Melbourne.

²⁰¹ *Housing Act 1983*, s. 97; Housing Registrar. 2015. *Performance standards for registered housing agencies*, Victorian Government Department of Treasury and Finance.

²⁰² It should be noted that there is a disconnect between the number of tenants that, in the tenant consultation surveys conducted for this Review, stated that they lodged a complaint, and the Housing Registrar performance data. This may reflect a different definition of complaint — that is, tenants may consider an informal interaction a complaint, even if it has not gone through the organisation’s formal complaints process.

²⁰³ Roughly half of all respondents (219) had made a complaint in the last 12 months. See 89 Degrees East. 2021. *Social Housing Regulation Review. Community Housing Tenant Engagement Project*, p. 15, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

²⁰⁴ Of 310 responses, 142 had made a complaint in the last 12 months. See RedRoad Consulting. 2021. *Social Housing Regulation Review: Public Housing Tenants’ Engagement, Findings Report*, p. 24, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

²⁰⁵ Victorian Ombudsman. 2022. *Public Housing*, available at: <https://www.ombudsman.vic.gov.au/complaints/public-housing/>, accessed 11 May 2022.

²⁰⁶ For example, Jesuit Social Services (submission 41, p. 6).

²⁰⁷ Victorian Ombudsman. (unpublished data).

²⁰⁸ RedRoad Consulting. 2021, *Social Housing Regulation Review: Public Housing Tenants’ Engagement, Findings Report*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

²⁰⁹ 89 Degrees East. 2021. *Social Housing Regulation Review. Community Housing Tenant Engagement Project*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

²¹⁰ Aboriginal Housing Victoria. 2020. *Mana-na woorn-tyeen maar-takoort, Every Aboriginal Person Has A Home: The Victorian Aboriginal Housing and Homelessness Framework*, available at: https://www.vahhf.org.au/cms_uploads/docs/victorian-aboriginal-housing-and-homelessness-framework_complete_26_02_20.pdf.

²¹¹ RedRoad Consulting. 2021. *Social Housing Regulation Review: Public Housing Tenants’ Engagement, Findings Report*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>; 89 Degrees East. 2021. *Social Housing Regulation Review. Community Housing Tenant Engagement Project*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

²¹² Housing Registrar. 2021. *Sector Performance Report 2019–20*, p. 16, available at: <https://www.vic.gov.au/housing-registrar-reports>.

²¹³ Scottish Housing Regulator. 2017. *Complaints Handling by Social Landlords in Scotland: A thematic inquiry*, pp. 8–11, available at: <https://www.housingregulator.gov.scot/landlord-performance/national-reports/thematic-work/complaints-handling-by-scottish-social-landlords>.

²¹⁴ *National Disability Insurance Scheme (Complaints Management and Resolution) Rules 2018*

²¹⁵ NDIS Quality and Safeguards Commission. 2015. *Effective Complaint Handling Guidelines for NDIS Providers*, Commonwealth of Australia, Department of Social Services.

²¹⁶ The Australian Government The Treasury. 2015. *Benchmarks for industry-based customer dispute resolution*, Principles and Purposes, pp.7–8.

²¹⁷ Australian Housing and Urban Research Institute (Interim Report submission 16, p. 16); Council to Homeless Persons (Interim Report submission 15, p. 26); Community Housing Industry Association Victoria (Interim Report

submission 24, pp. 9-10); Joint Legal Assistance Sector (Interim Report submission 23, p. 14); Victorian Public Tenants Association (Interim Report submission 8, p. 8).

²¹⁸ Royal Commission into Aged Care Quality and Safety. 2021. *Final Report: Care, Dignity and Respect, Volume 3B, The new system*, p. 510, Commonwealth of Australia.

²¹⁹ Joint Legal Assistance Sector (Interim Report submission 23, p. 14).

²²⁰ Cameron. Ralph. Khoury. 2019. *Electricity and Water Ombudsman of Victoria, Independent Review 2019, Report*, available at: <https://www.ewov.com.au/uploads/main/2019-Independent-review-final-report.pdf>.

²²¹ Department of Justice and Regulation. 2016. *Access to Justice Review: Volume 1 Report and Recommendations*, available at: <https://vpls.sdp.sirsidynix.net.au/client/search/asset/1293719>.

²²² Victorian Small Business Commission. n.d. *Dispute resolution FAQs*, available at: <https://www.vsbcc.vic.gov.au/fact-sheets-and-resources/faqs/#dispute-resolution-faqs>, accessed 22 May 2022.

²²³ Aboriginal Housing Victoria. 2020. *Mana-na woorn-tyeen maar-takoort, Every Aboriginal Person Has A Home: The Victorian Aboriginal Housing and Homelessness Framework*, available at: https://www.vahhf.org.au/cms_uploads/docs/victorian-aboriginal-housing-and-homelessness-framework_complete_26_02_20.pdf.

²²⁴ Scottish Housing Regulator. 2016. Significant performance failures: information for tenants of social landlords, available at: <https://www.housingregulator.gov.scot/for-tenants/read-our-factsheets-for-tenants/significant-performance-failures-information-for-tenants-of-social-landlords#section-2>

²²⁵ Scottish Housing Regulator. 2015. *MoU between the Scottish Housing Regulator and the Scottish Public Services Ombudsman*, available at: <https://www.housingregulator.gov.scot/about-us/what-we-do/how-we-work-with-other-bodies/memoranda-of-understanding-mou/mou-between-the-scottish-housing-regulator-and-the-scottish-public-services-ombudsman>.

²²⁶ RMIT University, Centre for Innovative Justice. 2018. *What is restorative justice?*, available at: <https://cij.org.au/opencircle/what-is-restorative-justice/>

²²⁷ Victorian Public Tenants Association. 2018. *Victorian Budget 2019/20 Submission*, available at: <https://vpta.org.au/wp-content/uploads/2019/01/VPTA-2019-20-Budget-Submission.pdf>

²²⁸ Safe and Equal (Interim Report submission 19, p. 9); Joint Legal Assistance Sector (Interim Report submission 23, p. 15).

²²⁹ Habibis, D., Atkinson R., Dunbar, T., Goss, D., Easthope H. and Maginn, P., 2007. *A sustaining tenancies approach to managing demanding behaviour in public housing: a good practice guide*, AHURI Final Report No. 103 Appendix, Australian Housing and Urban Research Institute Limited, Melbourne.

²³⁰ Jones, A., Phillips, R., Pasell, C. and Dingle, G. 2014. *Review of systemic issues for social housing clients with complex needs*, Institute of Social Science Research, The University of Queensland, highlighted a range of approaches that can be taken to manage anti-social behaviour in tenancies.

5. Regulation that drives accountability for the use of public funds

Key issues

- The regulatory framework for social and affordable housing needs to be adaptable to a changing investment environment to ensure accountability for the use of public funds.
- The current regulatory regime does not sufficiently enable transparency, accountability and effective oversight of the complex, multi-party, financial and legal entity structures emerging.
- While affordable (discounted rental) housing is being subsidised under the *Planning and Environment Act 1987*, there is no accessible data about the various types of subsidies being allocated, and it is unclear whether any providers are subject to any form of independent scrutiny to ensure the intended public benefits are delivered.
- Homes Victoria will deliver affordable housing funded by the Big Housing Build through the Victorian Affordable Housing Scheme, which will be developed on government land and may be managed by unregistered providers.
- There is no common performance reporting framework for social housing that enables benchmarking of key performance metrics across all providers. A lack of good-quality data about performance limits the scope for public transparency and accountability, and also limits information for potential investors to the sector.
- Transparency and accountability can strengthen sector confidence and growth in social housing.
- Changes to regulation and performance frameworks are required to:
 - enable transparency and effective regulation of complex multi-party arrangements and special purpose vehicles involving registered housing agencies
 - ensure an appropriate level of regulation of all providers of social and affordable housing that receive government support, including enabling greater flexibility where appropriate (also Chapter 6)
 - enable transparency and scrutiny of subsidies for affordable housing
 - strengthen accountability of the system to tenants and the public through a more transparent, complete and comparable performance measurement framework.

5A. Regulation must adapt (and be adaptable) to a changing environment

5.1. (A) What is the problem?

Victoria's social housing system is evolving and changes to the regulatory system are needed to ensure accountability for best use of public funds, while retaining flexibility for sector participants to innovate and take advantage of opportunities for growth in social housing.

The Victorian Regulatory System was designed nearly two decades ago with a traditional model of community service delivery agencies in mind. It is based on the registration of not-for-profit ‘rental housing agencies’ – legal entities that exist specifically to provide ‘affordable housing to people on low incomes’.²³¹ The term ‘low income’ is not defined in the *Housing Act 1983*. Instead, it derives meaning from charities and not-for-profits law, which refers to individuals or households who are unable to fund accommodation that gives them a modest standard of living.²³² The term ‘affordable housing’ has a different meaning for the purposes of the *Planning and Environment Act 1987*, where it is defined as housing, including social housing, that is appropriate for the housing needs of moderate, low and very-low-income households.²³³

In particular, the current regulatory framework does not enable the regulator to oversee and manage risks from the complex financing, procurement and delivery models that are emerging. As noted in the Review’s Interim Report, the entry into the sector of multi-party joint ventures, and the upscaling of development activity poses opportunities as well as risks. The risks are to service delivery, financial stability, governance and probity, and to the reputation of the sector, because the system was not designed to regulate these entity types.

New kinds of publicly subsidised ‘affordable’ rental housing products are also emerging, targeting a different cohort of tenants to those eligible for social housing. ‘Affordable housing’ (in this context, housing priced below market rent, but excluding social housing) is growing to meet the demand for housing priced within the means of workers and households on low to modest incomes.

While affordable housing has largely been delivered by registered agencies, Homes Victoria announced as part of the Big Housing Build, that it will construct affordable housing properties to be managed by contracted rental providers, which may be private businesses. There is a need to ensure visibility and public accountability for the use of affordable housing funding and other subsidies, whether they take the form of financial grants, provision of land, or tax or planning concessions.

The second part of this chapter addresses shortcomings of performance frameworks and data reporting, which are important for accountability. Data currently collected and reported are not adequate for performance measurement. Greater transparency is needed to strengthen the accountability function of regulation.

5.2. (A) What is recommended and why

5.2.1 (A) Adapting regulatory arrangements to growing complexity

In principle, where any taxpayer funds or other forms of government subsidy are allocated for social or affordable housing, the provider should be regulated appropriately, to ensure public accountability for government funding and to enable scrutiny of its performance. The Panel’s recommendations are framed in the context of the current policy settings, and as noted in its Interim Report, any change to the legislation to permit registration of for-profit providers of social housing is a policy decision for government.

As Victoria’s regulatory framework was designed to regulate not-for-profit entities, it relies on other laws and norms of behaviour that regulate the structure, governance and activities of those entities. Had the intent been to allow both for-profits and not-for-profits to be registered, the regulatory framework would have had to cover both for-profit and not-for-profit organisations and would not have been designed with charities law as its foundation.

Registered agencies are subject to some forms of regulation that do not apply to for-profit businesses, including registration and oversight by the national charities regulator, the Australian Charities and Not-for-Profits Commission (ACNC). They must have a purpose (also known as their objects or mission) that is recognised by the law as charitable.

A registered housing agency's charitable objects are the reason for its existence, enshrined in its constitution, and provide clarity to those running the organisation, its volunteers, donors, funders and other stakeholders about what it must work towards achieving. Due to their public purpose, their work is facilitated through various distinct legal and administrative frameworks, for example, taxation benefits, and differing regulatory requirements and exemptions.²³⁴

Specifically, for housing providers to be charitable, their mission must be to advance social or public welfare through relieving poverty, distress or disadvantage, or supporting elderly people or people with disabilities who are in housing need. Relief of poverty or disadvantage includes supporting those who are unable to fund accommodation that provides a modest standard of living in the Australian community.²³⁵ By law, all not-for-profit charities and not-for-profit entities must ensure that any surplus is applied to further their beneficial objects and cannot make distributions to their members or shareholders either during their operation or on winding up.²³⁶

Confining registration to not-for-profit entities is a regulatory tool to help ensure that taxpayer funds invested in social housing are not extracted for private profit and that providers remain focused on their charitable mission. The ACNC has published specific guidance for the not-for-profit housing sector, which states that a registered housing agency involved in partnerships with private sector entities must be able to demonstrate that these arrangements further its objects:

"If a charity wants to enter into arrangements with other parties including private sector entities, it must ensure that doing so furthers its charitable purpose. A charity is more likely to demonstrate that it is furthering a charitable purpose if any debt it enters into is on commercial arms-length terms or if the terms are more favourable to the charity. It is less likely to be furthering its charitable purpose if the debt is more favourable to private sector entities ... An organisation that wants to undertake commercial activities to fund its housing provision should consider how it can evidence that the profits from any commercial activities are used to pursue a charitable purpose."²³⁷

If for-profit providers were able to be registered, they would not be subject to the provisions and restraints imposed by charities law, and any surplus obtained from social housing could be distributed to shareholders. There may then need to be other registration requirements imposed on for-profit providers to ensure their operations and performance are acceptable. For example, ring-fencing requirements could be imposed on for-profit providers to protect assets, as in England.²³⁸

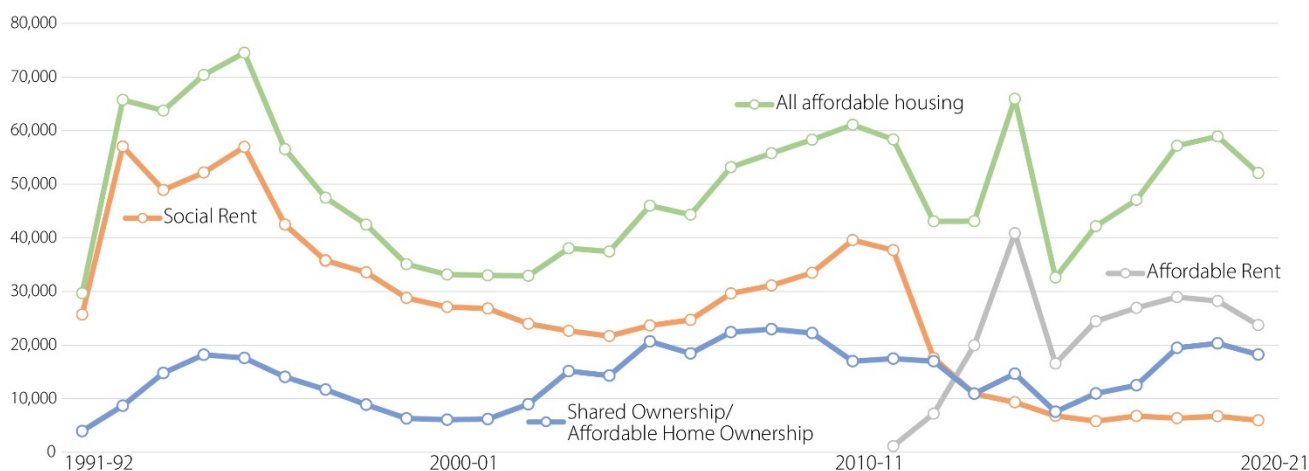
Registered entities have a valuable reputation as a charity or not-for-profit body to uphold, and an incentive to avoid any risk of losing their charitable or not-for-profit status, along with the benefits that flow from it. Loss of this status for a large registered social housing provider would pose a challenge to the financing model, create risks for tenants, and damage the reputation of the social housing sector as a whole.

Nonetheless, 'mission drift', where involvement in commercial activities becomes a focus over time, is a recognised hazard for not-for-profit organisations,²³⁹ and this risk may grow as housing agencies are increasingly incentivised to enter into public/NGO/private partnerships to obtain growth finance. Hyndman has noted the scope for powerful and influential forces to carry a charity away from its core mission:

"Given the 'perfect storm' of reduced funds and increasing demands on services, the temptation may be to 'chase the money' at all costs or allow a particularly powerful funder to exert undue influence."²⁴⁰

In England, the rapid shift from delivering lower 'social rent' housing into higher 'affordable rent' housing in the past decade illustrates how providers may respond to changing financial incentives (Figure 5.1). The key driver of this change was a shift in government policy (Box 5.1).

Figure 5.1: Trends in the supply of affordable housing completions by tenure, England, 1991–92 to 2020–21



Source: Department for Levelling Up, Housing & Communities. 2021. *Affordable Housing Supply: April 2020 to March 2021*, England, p. 3.

Box 5.1: Shifting the focus from social to affordable housing: the English experience

*The big question is, is it better to help a small number of people a lot or more people a little bit?*²⁴¹

- Up until 2011–12, social rent was the most common tenure for new housing supply in England, but ‘affordable rent’ has become the most common tenure since its introduction in 2011–12.²⁴²
- ‘Affordable rent’ can be up to 80 per cent of market rent and is generally considerably higher than social rent which is set according to a government-determined formula and is generally around 50 per cent of market rent.²⁴³ It was described by the government as an ‘intermediate’ tenure, although it was to be let in the same way as social housing and to the same tenants.²⁴⁴
- The Affordable Homes Programme 2011–2016 allocated funds for building new affordable rent properties and reduced the level of government subsidy provided. Housing associations were encouraged to convert their existing housing stock to affordable rent, with permission to convert stock if the extra funds were used to develop new homes. Its aim was to allow for higher housing supply for less government subsidy and provide an offer that is more diverse for the range of people accessing social housing, providing alternatives to traditional social rent.²⁴⁵
- This initiative saw the number of new grant-funded properties for social rent plummeting in the first year and dropping to negligible levels by 2015–16. In addition to building stock for rental at affordable rents, social landlords were able to convert vacant properties they previously let at social rents to affordable rent levels.
- The next iteration of the Affordable Homes Programme between 2016–2021 saw the government reinstating some grants to build social rent homes, but only in areas of high affordability pressure. By 2021, 120,581 housing association homes had been converted from social to affordable rent.²⁴⁶

- Following criticisms that the growth of 'affordable rent' had undermined the ability of the social sector to supply housing that is truly affordable, on 20 April 2022, the English Secretary of State for Housing Levelling Up and Communities announced a policy shift towards enabling housing associations and others to generate the housing at the social rent that they need.²⁴⁷

Mission drift is not the only hazard that not-for-profit organisations may be susceptible to. Like for-profits, they are not immune from unethical or unlawful behaviour, and the regulatory system needs to be alert to these risks. These concerns are more likely to arise when not-for-profit organisations have relatively weak governance arrangements in place.

There have been cases internationally where an influx of government funds attracted new not-for-profit providers who were not motivated to act in the best interests of vulnerable service users. As New York City's expenditure on homelessness services soared, for instance, scandals came to light involving city-funded not-for-profit shelter operators paying themselves exorbitant executive salaries, awarding contracts to for-profit companies controlled by executives or their relatives, employing multiple family members and using city funds for personal expenditure.²⁴⁸

Should such actions or other forms of unethical conduct occur, they would compromise the provider's charitable status and damage not only its own reputation but the reputation of the sector.

Equipping the regulator to effectively regulate complex financing and legal entity structures

Registered agencies are entering into multi-party arrangements that enable for-profit businesses to become involved in not-for-profit housing, beyond the traditional roles played by the private sector in housing construction and lending. These arrangements may take various legal forms and have complex governance structures that differ significantly from the traditional structures of registered housing agencies, including those that are subsidiaries of large community services organisations.²⁴⁹

This model is encouraged by the National Housing Finance and Investment Corporation (NHFIC) which has found that, in combination, provision of government-owned land, mixed-tenure developments, NHFIC finance, plus private sector finance can help address the low rental returns for community housing projects and reduce the level of state investment required.²⁵⁰

As a result, not-for-profit legal entities established for purposes related to multi-party arrangements are now being registered by the Housing Registrar as new development projects are initiated. These registered entities may not meet the legal definition of a subsidiary,²⁵¹ but have board members drawn from both the not-for-profit and for-profit enterprises that form part of a consortium, so their 'partners' should be viewed as related entities for social housing regulatory purposes. It is not clear whether the registered entity or the regulator may be able to seek recourse from a related entity if its financial viability is ever at risk.

The Panel acknowledges these models may facilitate growth in social housing that would not otherwise be possible, particularly where registered agencies are unable to take on further debt. Regulation should enable the sector to take advantage of these opportunities while appropriately controlling for the added risk presented through the introduction of for-profit partners. Not-for-profit entities involved in consortium arrangements can legally be registered under the Housing Act, but the regulator currently only has oversight of the registered entity itself and lacks visibility of the multiplicity of relationships that may exist, or the conduct of third parties that could seek to exert influence over it.

Homes Victoria is also evolving its approach to commissioning social housing, in response to the Big Housing Build. These commissioning and procurement activities will shape Victoria's social housing landscape for the long term, locking the state and registered agencies into long-term financial commitments and potentially affecting the sector's risk profile. Various procurement approaches are being used and, in future, Homes Victoria has signalled that it intends to enter into arrangements with private sector entities to provide affordable housing either directly, or through separate legal entities. Should this occur, it is essential that the regulator has oversight of these arrangements, and appropriate regulation applies.

This report's recommendations are designed to ensure that the regulator will have sector expertise and insights into sector-risk exposure. It should also play a role in mitigating risk through advisory input into government procurement and contractual arrangements at the design stage, rather than having to respond to any risks arising from these arrangements after the fact.

Ensuring the long-term viability of registered housing agencies and the social housing system requires fit-for-purpose regulatory arrangements that can cope with increasingly complex relationships between a regulated not-for-profit housing agency and its partners, influenced by the current funding model. These multi-party arrangements may endure for decades, and it is important to ensure there is no incentive or opportunity for any party to achieve gains by devaluing the assets and service standards to tenants over time.

As noted in this Review's Interim Report, the emergence of multi-party special purpose vehicles, raises some similar issues to the regulation of corporate groups, which has been described as one of the most challenging areas of corporate regulation.²⁵² There is a risk that complex arrangements and integrated financing techniques could potentially be used to avoid the impact of regulatory measures, conceal the true financial position of the parties or avoid liability to creditors and others.

Special purpose vehicles could be 'shell' entities designed primarily to secure benefits for organisations that are not registered housing agencies, leaving the regulator unable to confidently exercise its regulatory powers to protect the interests of tenants or creditors. Leases or fee-for-service contracts between the parties may lock registered agencies into excessive payments to their partners that are higher than would otherwise be the case on commercial arms-length terms.

To be confident about the governance, viability and appropriate conduct of the regulated entity, the regulator will need to have full visibility of what may be a multiplicity of relationships and agreements between the regulated entity and its various partners. This must include the power to access all relevant agreements and other documents, with respect to the relationship between the parties (which will need to override any commercial confidentiality deeds), and explicit power to publish information about any risks to the regulatory system posed by the corporate structure and operations of these multi-party arrangements. Similar new powers were recently announced as part of the social housing reforms in England.²⁵³

If a registered housing agency is involved in a partnership, consortium, joint venture, corporate group or special purpose vehicle (however structured), the regulator must be satisfied that there are no asset transfers to non-registered entities or concealment of the true financial position and risk exposure of the registered entity, and that its decisions are not being controlled or unduly influenced by third parties for their benefit.

The regulator must also be satisfied that the registered entity remains financially viable and can continue to operate, or rapidly transition to new provider arrangements, while maintaining continuity of quality services to tenants, if arrangements with its consortium partners break down. If an administrator is appointed to a registered entity, the administrator will also need power to obtain information from third parties to understand the true financial position of the entity and what steps need to be taken to ensure service continuity.

To maintain public confidence that these entities are acting in the interest of tenants and using taxpayer funds properly, the Panel recommends amendments to ensure transparency of multi-party special purpose vehicles and similar entities. It also recommends augmenting the regulator's powers to minimise the risk of leakage of public funds from social housing provision into private benefit, poor outcomes for tenants, and resulting damage to the reputation of the social housing sector.

Recommendation 5.1: Enable effective regulation in an environment that is increasing in complexity

Amend the regulatory framework to:

- introduce public disclosure requirements on registered entities involved in multi-party arrangements with respect to multiple directorships and related party/entity transactions, with requirements for continuous disclosure to the regulator as circumstances change
- require all registered entities to disclose board and executive remuneration to the regulator, using salary bands similar to those used in departmental annual reports
- give the regulator full visibility of relationships, agreements and transactions between a registered entity involved in a multi-party arrangement and related parties/entities, with the ability to publicly disclose any arrangements or dealings that it considers may promote the breach of regulatory standards or place the entity at risk
- give the regulator enhanced monitoring and investigation powers, including routine and ad hoc inspection powers, and a power to conduct or commission forensic audits
- give the regulator and an administrator appointed under the Act power to obtain documents or information from related entities and any third parties that the regulator considers are relevant to its regulatory functions, with the aim of allowing the regulator to obtain information about funds or assets once they have left the regulated entity, if required.

System redesign would be required to accommodate any policy change away from the not-for-profit model

Reflecting current policy settings, this report's recommendations for regulatory reform are premised on retaining the not-for-profit provider model for social housing, with changes to make the system tenant focused, reduce regulatory burden and enable effective regulation and risk management in a more complex operating environment.

Changing policy to permit registration of for-profit providers of social housing in Victoria would require additional changes to the regulatory framework so it is fit for purpose, to enable effective regulation of both for-profit and not-for-profit providers. In this scenario, the regulatory framework would no longer depend heavily on other laws and norms of behaviour that apply to the not-for-profit sector but would largely be able to treat for-profit and not-for-profit providers alike.

If exploring models for suitable regulation of both for-profit and not-for-profit providers, consideration could be given to the English social housing regulatory framework, as well as other regulatory regimes governing providers of essential services and infrastructure to vulnerable people. Box 5.2 outlines how regulation applies to for-profit and not-for-profit providers in England.

However, it is important to learn from experience if adapting the English model to the Australian context. For example, the statutory definition of social housing in the *Housing and Regeneration Act 2008* (UK) allows for combining housing within the means of people on very low incomes with 'affordable' housing products which can be let at up to 80 per cent of market rent. The English experience of encouraging affordable housing is discussed earlier in this chapter.

Essentially, the same regulatory requirements apply to all registered housing providers within certain-sized categories (Box 5.2). There is little distinction between for-profit and not-for-profit private providers. Recently proposed amendments to strengthen the regulatory framework have been announced. These are particularly in response to the problems highlighted by the Grenfell Tower fire and followed consultation on the Charter for Social Housing Residents, Social Housing White Paper,²⁵⁴ which explored how regulation could be strengthened.

If implemented, those reforms will strengthen the regulator's powers in an increasingly complex environment. They include a new power to require registered providers (both for-profits and not-for-profits) to:

- give tenants access to information from their landlord about how their housing is managed
- enable the regulator to follow money paid to bodies outside the social housing sector
- investigate potential fraud by examining the financial accounts of organisations thought to be deriving profits from the activities of the registered provider.²⁵⁵

The last power would be a particularly useful addition to the Victorian regulator's toolkit, given the growing involvement of registered community housing agencies in more complex multi-party arrangements, which include participation of for-profit entities.

Box 5.2: Regulation of for-profit housing providers in England

- The *Housing and Regeneration Act 2008* (UK) enables for-profit bodies to become registered providers of 'social housing' which is defined to include low cost rental accommodation (the equivalent of what is referred to in this report as 'affordable' or below market rental) for people whose needs are not adequately served by the commercial housing market, as well as low-cost home ownership including shared equity schemes.²⁵⁶ For-profit providers became eligible to be registered on 1 April 2010.²⁵⁷
- As at 14 April 2022, there were 64 registered for-profit, 1,337 not-for-profit and 218 local authority providers.²⁵⁸
- All providers are expected to meet the same standards, but the Social Housing Regulator takes into account differences between for-profits and not-for-profits when assessing registered providers' governance and viability.
- The Regulator's Code of Practice which supports the Governance and Financial Viability Standard, sets out specific expectations of categories of registered providers, including for-profits and providers that are part of corporate groups where the Regulator considers added controls are needed.
- For-profit providers are expected to separate any activities that do not relate to providing social housing from those that do, to ensure that any risk of recourse to the social housing assets from other parts of the business is minimal.
- Only a small amount of activity that is not related to providing social housing is permitted within the for-profit legal entity, to cater for situations where the activity is undertaken for both social housing and non-social housing reasons (such as mixed tenure developments), and the Regulator requires that the non-social housing activity be no more than five per cent of capital or turnover.²⁵⁹

- There are some differences in the Regulator’s enforcement powers applicable to for-profit providers. For example, the Regulator is unable to remove or appoint board members of for-profits or impose restrictions on their dealings and cannot suspend or remove officers and employees of a for-profit company during or following an inquiry. For-profits do not have to notify the regulator of changes to their constitution or structure, or when they dispose of land that is not a dwelling.

Finding 5.1: A policy change away from the not-for-profit model would require system review

The Victorian regulatory regime is designed specifically to regulate the not-for-profit sector and relies on other laws and the norms of conduct that apply to not-for-profit and charitable bodies.

If government policy shifted to allow for-profit entities to become registered social housing providers, further work would be required to develop a fit-for-purpose regulatory scheme.

5.2.2 (A) Affordable housing and its oversight in Victoria

There are varying definitions and interpretations of the term ‘affordable housing’ in Victoria.²⁶⁰ As noted above, for the purposes of this Review, affordable housing refers to below market price rental housing that excludes social housing.

Affordable housing can be delivered by registered community housing agencies and can also be delivered and sometimes managed by the private sector, such as within a build-to-rent development.²⁶¹ Box 5.3 contains a snapshot of the current affordable housing landscape in Victoria, as well as the recently announced Victorian Affordable Rental Housing Scheme.

Box 5.3: Affordable Housing in Victoria

Affordable housing is a relatively small sector in Victoria, a large proportion of which is the result of the National Rental Affordability Scheme (NRAS). As of June 2021, this scheme was providing support for about 5,400 affordable homes in Victoria.²⁶² Approximately 2,800 of these homes were managed by registered community housing organisations, and about 1,500 were managed by for-profit providers (with the remainder managed by other charities). NRAS funding will cease over the next five years. Some participants noted that renters in these properties will face rent increases and may be at high risk of eviction, if they are unable to afford market rents.²⁶³

Beyond this scheme, there has been some affordable housing constructed through mixed-use developments, and some through voluntary planning agreements under section 173 of the *Planning and Environment Act 1987* or agreements between councils and landowners outside the ambit of section 173.²⁶⁴ There has been no comprehensive analysis of the properties constructed under these schemes to date. However, while some local councils actively pursue section 173 agreements to grow affordable housing stock in their areas, the practice does not appear to be widespread.²⁶⁵

The proposed Social and Affordable Housing Contribution, announced in February 2022, would have shifted the focus from section 173 agreements towards a consistent flow of funding to registered agencies for social and affordable housing through the Social Housing

Growth Fund. However, as the Victorian Government has announced that this proposal will not proceed,²⁶⁶ section 173 agreements will remain the predominant ongoing tool to encourage delivery of affordable housing.

The Victorian Government has committed to constructing 2,400 affordable dwellings as part of the Big Housing Build and has announced the details of its affordable housing rental scheme.²⁶⁷ Local governments are seeking to attract affordable housing, particularly as part of a push to construct housing for 'key workers'.²⁶⁸

The Victorian Affordable Housing Rental Housing Scheme

On 1 April 2022, the Victorian Government announced its Affordable Rental Housing Scheme which forms part of the Big Housing Build.

Under the scheme, fixed-term rental agreements of up to three years will be available to qualifying low-to-moderate income households in metropolitan Melbourne and regional Victoria, with rents based on the property's location and number of bedrooms. In Melbourne, rents will be at least 10 per cent below the market rent for the area, subject to a cap set at 30 per cent of median household income. In regional Victoria, rents will not exceed the median market rent for the area, with a cap of 30 per cent of median household income.

Homes Victoria will own the properties, and community sector or private sector agencies will manage the tenancies. Properties will be advertised online once they become available and eligible households on the Victorian Housing Register will also have the opportunity to apply.²⁶⁹

Affordable housing rental scheme income thresholds:²⁷⁰

	Single	Couple	Family
Melbourne Metro	Up to \$62,860	Up to \$94,300	Up to \$132,030
Regional Victoria	Up to \$45,820	Up to \$68,730	Up to \$96,220

In regional Victoria, essential government-funded service delivery workers (such as care workers, teachers, nurses and police) will also be eligible in areas of workforce shortage. The scheme aims to encourage other investors to build or buy affordable rental properties and to strengthen partnerships between Homes Victoria and rental managers in the community and private sectors to support growth of the affordable housing sector.

The case for oversight of affordable housing

Much of the affordable housing that has been delivered in Victoria has received some form of government subsidy either through the NRAS, direct government contributions, or to a lesser extent, local government planning incentives. In this report, the term subsidy is used to describe any form of government benefit that has economic value to its direct recipient. In the affordable housing context, it includes the provision of land, grants and planning or tax concessions (such as the land tax discounts for build-to-rent, some of which will be affordable housing). Even where subsidies take the form of tax or planning concessions, the result is foregone revenue or an advantage to the recipient that is not otherwise available. There is an in-principle case for oversight to ensure that the subsidy provided delivers expected benefits over the long term.

Affordable housing delivered by registered agencies is regulated by the Victorian Regulatory System for community housing. Few concerns were raised about affordable housing provided in this

context, and most participants supported the current arrangements.²⁷¹ However, where affordable housing is delivered by unregistered providers or private sector providers, there is little regulatory oversight to ensure housing is being rented at an affordable rent to eligible tenants (aside from requirements under funding programs such as NRAS).

Not-for-profit providers have some incentive to deliver affordable housing as such over time (through tax incentives and their mission), but some participants raised concerns about whether sufficient assurances existed for affordable housing delivered by private providers.²⁷² This is of concern where a developer has received a government subsidy (including a non-financial subsidy, such as local government planning incentives) to deliver affordable housing. Many of these subsidies are provided upfront or are time limited, meaning there is little incentive for providers to continue to offer the housing at an affordable rent on an ongoing basis.

In particular, section 173 agreements have been subject to little scrutiny. While local governments could enforce these agreements, a number of councils have raised concerns about their ability to do so in practice. There is no central list of section 173 agreements, which makes central oversight difficult, and also makes it difficult to ascertain the benefits associated with the policy.

It is understood that many affordable housing properties generated by section 173 agreements are transferred (in ownership or management) to registered agencies. Local councils have an incentive to do this as it provides an assurance that the properties will be managed by a regulated provider.

This approach is strongly encouraged in the guidance to councils developed jointly by the Municipal Association of Victoria and Community Housing Industry Association Victoria (CHIA Vic):

“Ultimately council (and through delegation — council staff) will be responsible for monitoring and enforcing the requirements of an Affordable Housing Agreement secured by way of a Section 173 Agreement. This is why it is so important that the Section 173 is worded in a way that allows council to discharge its responsibilities effectively and does not lock council into monitoring or enforcing aspects of the Affordable Housing where it does not have sufficient experience or resources to do so. Community Housing organisations (called Registered Housing Agencies) have the processes, resources, and experience to allocate Affordable Housing to eligible households, set rent levels and help tenants sustain their tenancies. For that reason, it is recommended that councils encourage an Affordable Housing contribution to go to a CHO [Community Housing Organisation] and that the housing is managed or owned by a registered housing agency.”²⁷³

Policy is evolving in this area. Some unregistered bodies have also expressed an interest in providing subsidised affordable housing,²⁷⁴ and it is possible that some affordable housing properties developed under section 173 agreements may be managed by private businesses. Although details are still being developed, Homes Victoria has indicated that it may contract with private businesses or other unregistered organisations to manage the 2,400 affordable properties be delivered via the Victorian Affordable Housing Rental Scheme.

Affordable housing generally receives government subsidies on the basis that it will deliver broader societal outcomes. It is reasonable for governments to require the recipient of the subsidy to deliver certain outcomes, and that they can be held to account. For example, the approach in England requires the provider to deliver affordable housing for a specified period of time, with provisions to claw back subsidies if requirements are not met.²⁷⁵ Proponents of affordable housing in Victoria have also called for some compliance requirements.²⁷⁶

As the sector is emerging and policy is under development, the approach recommended here should be reviewed in three to five years. From what is currently understood, a broader cohort of

tenants is to be targeted than that for social housing whose needs are limited to rental affordability. It is reasonable to expect that the magnitude of subsidies going to non-government providers is also lower than for social housing and, in the case of the Victorian Affordable Rental Scheme, government's expenditure will be through management contracts with tenancy managers. Therefore, detailed regulation of the kind applied to providers of social housing does not currently appear to be warranted.

However, there are risks with reliance on agency-level contract management (and enforcement) to ensure owners and/or managers deliver the agreed services to affordable housing tenants. These are distinct from their obligations and responsibilities under residential rental agreements with individual tenants under the *Residential Tenancies Act 1997*. They relate specifically to delivery of the property at affordable rents, to eligible tenants, and of any other services that are agreed to under a management contract (such as security, cleaning, maintenance). In this way, there are gaps in accountability to the tenants, and to the taxpayer. The public interest requires some visibility and some capacity for scrutiny of the various kinds of subsidies and payments provided to providers for affordable housing.

The recommended model for oversight of affordable housing

The two key components in the recommended model for oversight of affordable housing are:

- a central list of government-subsidised affordable housing properties
- a regulatory requirement for the contract issuer (for example, Homes Victoria or the local council) to advise the regulator of the contract and provide evidence that it is being fulfilled according to its terms.

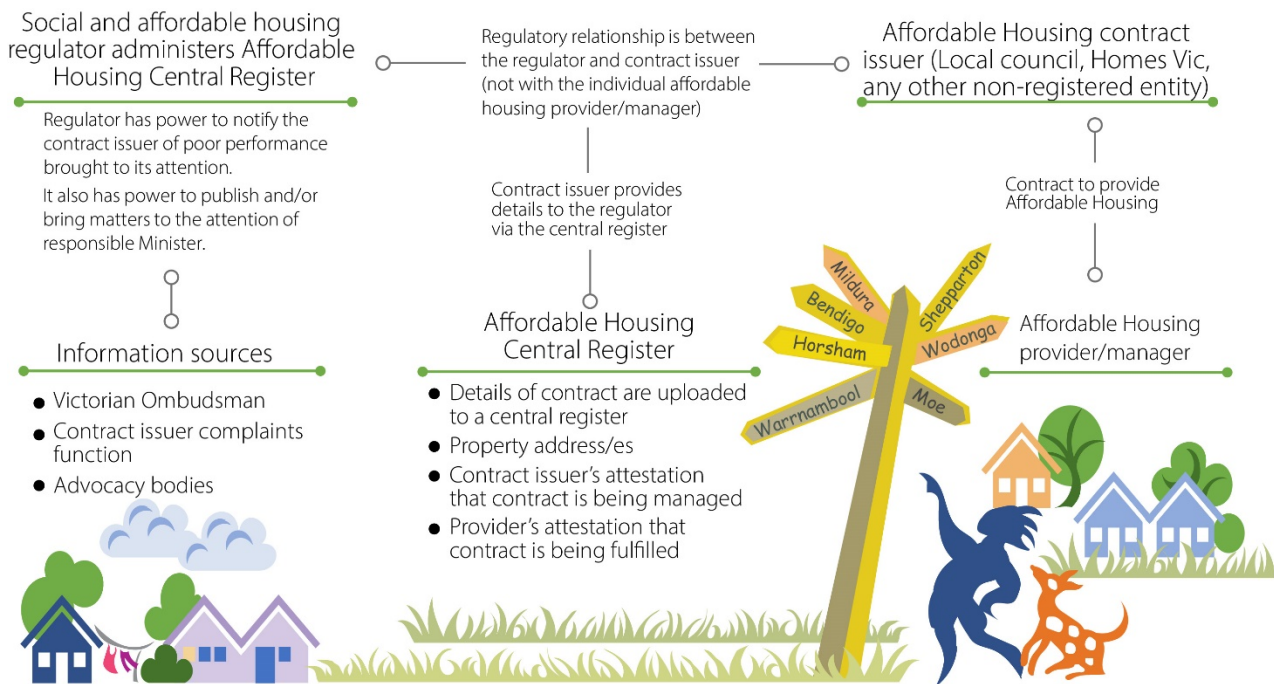
The design of this model avoids subjecting individual affordable housing providers or managers to regulatory reporting requirements. Instead, the regulatory relationship is between the contract issuer and the regulator. It is the responsibility of the contract issuer to provide information and reassurance that the contracts are being fulfilled over time. Figure 5.2 illustrates this concept.

The purpose of the model is to provide an independent and consistent accountability mechanism for the delivery of housing as affordable, and fulfilment of the contracted service delivery arrangements to tenants, rather than to provide any extra consumer protections to tenants over and above the Residential Tenancies Act.

The Panel considers there is a need for such a mechanism, noting that the contract management task, particularly for the Victorian Affordable Rental Scheme, is likely to be significant and long-term, and contract issuers may not always be incentivised to enforce non-performance of contracts, even where this has a potentially material impact for current or prospective tenants.



Figure 5.2: Recommended model for oversight of affordable housing in Victoria



For providers not registered under the regulatory system, a central list of affordable housing dwellings that have received any government subsidy (including local government planning incentives) should be created and maintained. There would be several benefits associated with this:

- It would provide visibility of who receives subsidies and who manages affordable housing tenancies, and an accurate assessment of the amount of affordable housing being delivered with government funds, which will aid policy development.
- It would assist in holding unregistered providers to account for commitments they have made and help ensure that affordable housing is delivered as such for an agreed period to eligible tenants.

In general, the notion of a central list is supported by the sector. The Affordable Housing Industry Working Group supported the proposal, and the Housing All Australians (a body that seeks to develop private sector strategies for affordable housing) model of investment includes:

“... the creation of an Affordable Rental Housing Register which identifies all affordable rental obligations, and this register is audited annually to ensure satisfactory compliance with the agreed obligations.”²⁷⁷

The central list would need to be developed in conjunction with the Department of Environment, Land, Water and Planning, Homes Victoria and local government. Its purpose would be to enable transparency and aid scrutiny of all subsidies provided by Victorian government bodies or local governments, to support the delivery of affordable housing (including any subsequent initiatives to subsidise affordable housing that are introduced over time). It could also give tenants and advocates visibility of whether a dwelling is a subsidised affordable housing property and help to ensure that the landlord delivers on their commitments.

The Panel recommends minimum additional regulation, to avoid red tape for affordable housing providers, and because public bodies and councils granting subsidies for affordable housing have existing obligations to ensure those subsidies deliver the intended public benefits. Affordable housing owned and managed by registered housing agencies would continue to be overseen by the regulator, as is currently the case.

Administration of the central list would best sit with the regulator, rather than with a state public body that is also a provider of subsidies for affordable housing. The public body or local government granting a subsidy would simply be required to record data that it already collects in a standardised format, and electronically transmit it to the regulator, enabling oversight of these arrangements.

As the regulator's relationship would be with the contract issuer, the recommended approach would not displace the obligation on public bodies and councils entering into agreements with respect to a benefit for affordable housing to monitor and, if required, enforce those agreements in accordance with their terms. Should the regulator identify or be notified of any concerns about non-compliance with the terms of a subsidy agreement, the regulator would refer those concerns to the public body or council concerned and request a response, which the regulator could then publish. The regulator would also have the power to notify the Minister/s of an unrectified issue of significance. These are the only powers the regulator would have in relation to the affordable housing list, and the regulator's wider suite of powers governing registered social and affordable housing providers would not apply.

The recommended approach focuses on enabling transparency. Further, it would be inappropriate for the regulator to be made responsible for enforcing obligations that exist because of an agreement entered into between a council or public body and a landowner.

The Panel has also considered whether it would be desirable to introduce a regulatory framework outlining a small number of standard minimum terms and conditions in any agreement entered into by a public body or council involving any form of subsidy for the delivery of affordable rental housing. These could be designed to create obligations to ensure that affordable housing tenants benefit from the subsidy as intended and could potentially include obligations such as to:

- allocate affordable housing properties fairly to eligible tenants using a valid mechanism (see below)
- ensure that terms and conditions of the subsidy for the benefit of tenants (for example, regarding rent setting and the duration of the lease) are reflected in the lease agreement for each affordable housing property, which would make them enforceable under the Residential Tenancies Act
- provide information to current and prospective tenants about the property's status as subsidised affordable housing, what they can expect from the rental provider and how to make a complaint
- require timely notifications to the public body or council of any affordable housing property transfers, disposals and changes of landlord during the life of the agreement.

However, the Panel does not have specific information about the content of section 173 agreements, or any other agreements councils have entered into relating to affordable housing outside the ambit of section 173. Without this information, it is difficult to make informed recommendations for regulatory reform. The Panel understands that section 173 agreements were intended to be a flexible tool to enable councils and landowners to negotiate affordable housing outcomes that have public benefits in a way that best suits them. The terms of each agreement will reflect the negotiated outcome, and they may allow changes to how the landowner's obligation is fulfilled over time. There is merit in retaining appropriate flexibility as it may incentivise councils and

developers to increase the stock of affordable housing in a way that is adapted to local conditions. It is understood that following the government's decision not to pursue the Social and Affordable Housing Contribution, consideration is being given to policy in this area, including how to increase the uptake of section 173 agreements. Further work and consultation with local government is needed to develop policy for affordable housing, which will have implications for any regulatory arrangements.

Recommendation 5.2: Regulation of affordable housing

Develop and implement arrangements for the regulation of affordable housing (or discounted rental housing excluding social housing):

- Establish and maintain a central list of all subsidised affordable housing properties.
- Require any Victorian public body (including Homes Victoria) or local government that allocates a subsidy for affordable housing (the contract issuer) to notify the regulator of key information such as the property/ies affected, the subsidy's terms and conditions, the organisation that received the subsidy and the name of the organisation that is to manage the affordable housing tenancy/ies. This information is to comprise the central affordable housing list.
- The contract issuer is to remain responsible for ensuring that the terms and conditions of their subsidy agreement with the provider are complied with – this responsibility would not be transferred to the regulator.
- The regulator should have powers to notify the contract issuer of lack of performance by the affordable housing provider brought to its attention; and the power to notify the Minister/s and publish findings.
- A distinction between social and affordable housing should be maintained in legislation and for data collection and analysis purposes, to avoid scope for ambiguity in the use of these terms.

It is recommended that the arrangements be reviewed and evaluated in three to five years to determine whether they are proportionate, adequately bring about accountability, and are appropriate for the tenant cohort.

A fair and transparent mechanism is required for the allocation of affordable housing

A fair and transparent allocation method is needed for affordable housing. It is understood that Homes Victoria is developing an allocation mechanism for the Victorian Affordable Housing Scheme.

Affordable housing delivered through the scheme targets two cohorts of tenants: those whose income is below the specified thresholds (general cohort) and 'essential workers' in regional areas experiencing workforce shortages. At this stage, there is no public information about the criteria for selecting tenants in either cohort, or the arrangements proposed to be entered into with employers for housing essential workers in areas of need.

A clearly articulated policy objective for the scheme, together with clear and publicly available allocation criteria will be essential to provide transparent rules for tenancy managers and, along with effective contract management of providers, help mitigate the risk of bias or favouritism in tenant selection. Should significant public concerns emerge about tenant selection, the scheme will rapidly

fall into disrepute, likely leading to demands for more comprehensive regulation of unregistered providers, and/or for government to cease its involvement in the delivery of affordable housing.

Close monitoring and independent evaluation of the scheme will be essential to assess whether it is achieving its articulated policy objective and public value is being delivered for the investment. The evaluation framework should be an integral component of the scheme design, so that appropriate data is captured consistently throughout the program to enable meaningful evaluation.

The Victorian Housing Register offers an established central allocation mechanism for affordable housing properties and use of this platform would enable eligible applicants to apply for both social and affordable housing in the one place. However, the Panel understands that the Register is not a preferred allocation mechanism for affordable housing. Some participants considered that a new allocation mechanism needs to be developed outside the Register. For example, CHIA Vic noted that:

“There would be clear advantages to adapting the current waiting list, however, we understand that affordable housing applicants may prefer a system of allocation that is differentiated from social housing and allows for choice-based-letting.”²⁷⁸

There may be scope to use the underlying platform while differentiating it with a separate user interface. Given the relatively small size of the affordable housing sector at this stage, use of a separate category on the Register could be an efficient approach to allocating affordable housing.

Recommendation 5.3: Develop rules and a mechanism for allocating affordable housing and a methodology for evaluating the Victorian Affordable Housing Rental Scheme

Develop:

- transparent criteria and rules for allocating affordable housing properties both for the general (income-based) cohort and the essential worker cohort, in consultation with prospective tenants and other stakeholders
- the methodology for independent evaluation of the Victorian Affordable Housing Rental Scheme, in parallel with the scheme design, so that appropriate data is captured consistently throughout its operation to enable meaningful evaluation.

5B. Public performance reporting and accessible information is needed to strengthen transparency and accountability

This section is concerned with reporting for the purpose of public transparency and accountability, including the provision of useable performance information for policymakers, social housing providers and the community, and to support an assessment of performance.

Compared to commercial sectors, social housing tenants cannot exercise the same level of choice of provider in the first instance, and do not have the same flexibility to switch providers if they are dissatisfied. Providing greater opportunities for tenants to choose their accommodation would be in line with a stronger tenant focus, although is not practicable, given the lack of supply. Regulation for transparency and accountability however can play a significant role in ensuring a minimum level of service delivery from publicly funded social housing providers.

Performance metrics and transparency can also foster innovation and improvement through competitive benchmarking. The ability for government, social housing providers and tenants to compare providers' costs and outcomes can operate as an incentive for them to raise the quality of service delivery. The more easily comparisons can be made, the more effective benchmarking is as an incentive for quality improvement.

An exemplar in this field is the Scottish performance monitoring regime, which requires providers to submit data and other documents to the Regulator on an annual basis (Box 5.4).

Box 5.4: Performance reporting in the Scottish Social Housing System

The Scottish Housing Regulator publishes 12 performance indicators across five domains for:²⁷⁹

- homes and rents:
 - average weekly rents – aggregate, plus disaggregated by number of bedrooms
- tenant satisfaction:
 - overall service – proportion of tenants satisfied with service overall
 - keeping tenants informed – proportion of tenants who felt that the landlord was good at keeping them informed about its services and outcomes
 - opportunities to participate – proportion of tenants satisfied with the opportunities to participate in this landlord's decision-making
- quality and maintenance of homes:
 - Scottish Housing Quality Standard – proportion of dwellings meeting the Standard
 - emergency repairs – average number of days taken to finish emergency repairs
 - non-emergency repairs – average number of days taken to finish non-emergency repairs
 - reactive repairs 'right first time' – proportion of reactive repairs completed 'right the first time'
 - repair or maintenance satisfaction – proportion of tenants who had repairs or maintenance carried out who were satisfied with the service they received
- neighbourhoods:
 - anti-social behaviour – proportion of antisocial behaviour cases resolved
- value for money:
 - total rent collected – rent collected as a proportion of total expected rent
 - re-let homes – days taken to re-let homes.

The above indicators can be compared to a maximum of four other landlords, using its web-based comparison tool. This tool forms a key strength to its reporting framework, as it is utilised by government, landlords and tenants to readily track performance against other providers.

Other information is provided that does not load into the comparison tool, including:

- landlord details – such as the name and type of social landlord, senior officer of the organisation, annual turnover and staff employed
- housing stock information – the number of self-contained and non-self-contained units, disaggregated by local authority area (similar to Local Government Areas)
- the following reporting documents, including:
 - an engagement plan
 - a regulation plan
 - an assurance statement

- accounts (audited financial statements)
- rules (relating to how the entity is governed and run).

A key standout of the Scottish performance reporting system is its presentation of information and availability of data. All relevant documentation relating to social housing providers is available on the regulator's website, including relevant documents, such as the provider's engagement and regulation plans, assurance statement, accounts and rules. The online comparison tool makes it easy and simple for tenants to track their landlord's performance and gives benchmarking its best chance to generate competitive pressure for service improvement.

Though less useful for tenants, the availability of statistical information on providers is particularly helpful for policymakers and the sector. Data for all providers are available in de-identified, unit record form. There is also an array of aggregate tables taken from the annual financial statements of each provider.

5.1. (B) What is the problem?

Public performance reporting in Victoria differs considerably in scope and quality between public and community housing. Although public housing dominates the sector, comprising roughly 80 per cent of dwellings and tenants,²⁸⁰ the level and relevance of the data published is lacking. By comparison, the data available on the community housing sector is greater in scope and more relevant to both tenants and government agencies.

There are three key problems to overcome in relation to performance reporting for social housing:

- Lack of comparability – annual performance reporting for public and community housing is not comparable. Only performance indicators for customer satisfaction rates for urgent and non-urgent repairs are similar.
- Data gaps – the absence of key data, particularly financial information for public housing, limits the use of performance information to increase transparency and accountability or to improve policy decisions. In particular, the lack of publicly available financial information on public housing hinders attempts to estimate and compare the costs and effectiveness of delivering social housing (Chapter 2). There are also broader data gaps on tenant demographics for both sectors, which would help contextualise differences between and within sectors.
- Presentation of data – public housing performance information is generally not presented in a form that is user friendly.

5.2. (B) What is recommended and why

The recommendations proposed here are intended to operate in tandem with other recommendations to align performance standards across public and community housing (Chapter 2) and align their oversight by a single regulator (Chapter 7).

5.2.1 (B) Performance reporting should be consistent across social housing sectors

Data should allow for sector comparisons. Both public and community housing organisations should provide the same set of performance metrics on a regular basis in the same format, including both financial and non-financial indicators.

Public housing service delivery indicators should be provided for each housing office, since it is the individual housing offices that manage maintenance and repairs and provide other services to

tenants. Additional contextual information can be provided to explain the expected difference in statistics that arises from the sectors' heterogeneity, such as tenant cohort, housing stock profile and services provided (Appendix D).

Several Review participants highlighted the lack of comparable performance information for public and community housing. For example, Tenants Victoria states that publicly available comparisons of public and community housing are limited, requiring investigation of the Director of Housing tenant survey, and individual results from community housing providers.²⁸¹

Public reporting of performance should be simple and functional

One of the objectives of public performance reporting, particularly for rationed service such as social housing, is to better enable system users (current and prospective tenants) to meaningfully engage in and contribute to system design decisions. As argued by the Productivity Commission in its inquiry on choice and competition in human services, improvements to service delivery would follow from performance monitoring and comparison of cost and outcomes. It would also allow social housing providers to compare their own performance with that of the sector and set incentives for providers to engage in self-improvement.²⁸²

It can be difficult to navigate and understand the performance information provided in Homes Victoria's annual reports. The presentation of performance indicators should be as user friendly as possible, using plain English wherever practical, and supported by contextual information to help readers understand its significance. Some progress has been made recently with the release of data on allocations.²⁸³

Performance information for both sectors should be published side by side, particularly financial information, to make sector comparisons simple. It would also be useful to have information on the rationale for certain indicators, including what they illustrate about performance. Data visualisations can also help with readability, as well as helping to digest more complex information. Where complexity is unavoidable, some explanation of the outcomes the indicator attempts to measure can help the reader understand the data and its significance (Chapter 2).

Many elements of the current performance reporting system for community housing have been informed by the Scottish social housing system. Eight of 12 performance indicators used by the Scottish Housing Regulator are reported by the Housing Registrar in its sector performance report and in individual reports published for each registered agency. This includes important tenant satisfaction metrics on overall service, maintenance, and consideration of tenants' views. The Registrar's framework also has useful indicators for the complaints process that are missing in the Scottish framework. One area of improvement for the Registrar's framework is in metrics related to neighbourhood disturbances.

The Housing Registrar has made significant recent improvements to the presentation of performance information on community housing organisations. Performance information already published in the sector performance reports are also published as a dashboard of metrics online.²⁸⁴ There are useful individual performance reports publishing performance metrics for each agency, making comparisons possible.

This Review's Consultation Paper 3 asked about the use of the Scottish regulator's landlord comparison tool. Some Review participants²⁸⁵ noted its value, while Tenants Victoria specifically recommended its use:

"The Victorian Government [should] adopt the social housing provider-specific reporting undertaken in Scotland, including its current reporting metrics and comparison-of-housing-provider tool."²⁸⁶

The web-based comparison tool allows tenants to compare any performance indicator against the sector average, as well as against up to four landlords. Its user-friendliness enhances transparency and accountability, particularly by enabling scrutiny by tenants, not just the regulator.

5.2.2 (B) The performance reporting framework should be regularly reviewed

Performance reporting is an imperfect process. Often the indicators chosen are the best available rather than indicators that wholly and accurately depict performance. Most performance indicators are a proxy for a desired outcome, rather than a direct measure. This is because what is desired (quality services delivered efficiently), often cannot be fully captured in performance metrics, or cannot be measured directly and objectively. Useful performance metrics can hence be thought of as can-openers and conversation starters, rather than a definitive description of performance.²⁸⁷

Adopting certain performance metrics can sometimes have perverse incentives. For example, if the level of rent arrears is adopted as a key measure of performance in isolation, it could create incentives for providers to select tenants from the wait list with more stable incomes, rather than tenants whose needs match the available dwellings.

Additional contextual information, such as tenant demographics and housing profile, can also be provided to help explain natural variation across social housing providers. For example, CHIA Vic²⁸⁸ explained that transitional housing programs are short term and supported housing programs target complex clients; if data from either of these types of services are compared against general long-term housing programs, it can lead to incorrect conclusions about service quality. Data on tenant cohorts could help contextualise these variations (Chapter 1 and Appendix D). With time, new indicator formulations may offer a more accurate indication of performance across a varied sector.

It is also important that indicators are stable, so that they can reflect any changes in performance over time. Constant tinkering would compromise time-based comparison, making it more difficult for the regulator, tenants, and other sector participants to ensure an underperforming organisation is improving over time.

Regular review of the performance reporting framework, including the validity and accuracy of indicators, would allow for periodic updates. The establishment of a single regulator is an opportune time for a wide-ranging review of the performance framework, including a broad consultation process with sector participants, the regulator, frontline workers and tenants.²⁸⁹ The frequency of future reviews should also be determined during this consultation process.

Recommendation 5.4: Develop a uniform performance reporting framework for social housing

Apply a uniform performance reporting framework for public and community housing, building on the Housing Registrar's existing framework and with reference to other jurisdictions (such as the Scottish Housing Regulator's framework). Current and prospective tenant advice should be incorporated.

Require uniform presentation of performance reporting across public and community housing sectors. With the introduction of a single regulator, these statistics could be combined in the same published report.

The regulator should review the performance reporting framework regularly, via a consultative process that includes sector participants and tenants, to make improvements on the performance reporting regime.

- ²³¹ Schedule 7 clause (1)(4) *Housing Act 1983* provides that, to register, a rental housing agency must provide or be established to provide affordable rental housing to people on low incomes. Reference to people on low incomes also appears in ss.73, 103(1)(b) and 130(2)(b) of the Act.
- ²³² Australian Charities and Not-for-Profits Commission. 2021. *Commissioner's Interpretation Statement: Provision of Housing by Charities*, CIS 2014/2, p.6, available at: <https://www.acnc.gov.au/tools/statements/provision-housing-charities>.
- ²³³ *Planning and Environment Act 1987*, s.3AA
- ²³⁴ Hyndman, N. and Jones, R. 2011. Editorial: Good governance in charities – some key issues, *Public Money & Management*, 31 (3), pp. 151–155, doi: 10.1080/09540962.2011.573207.
- ²³⁵ Australian Charities and Not-for-Profits Commission. 2021. *Commissioner's Interpretation Statement: Provision of Housing by Charities*, CIS 2014/2, p.4, available at: <https://www.acnc.gov.au/tools/statements/provision-housing-charities>.
- ²³⁶ Provision of housing is an activity that can be undertaken by an entity with one or more of the charitable purposes set out in the *Charities Act 2013* (Cth). Housing providers that are charities may fund housing by a variety of means. This includes commercial operations if they are carried out in furtherance of the charitable purpose, and the income generated is directed to that charitable purpose. Australian Charities and Not-for-Profits Commission. 2021. *Commissioner's Interpretation Statement: Provision of Housing by Charities*, CIS 2014/2, p.13, available at: <https://www.acnc.gov.au/tools/statements/provision-housing-charities>.
- ²³⁷ Australian Charities and Not-for-Profits Commission. 2021. *Commissioner's Interpretation Statement: Provision of Housing by Charities*, CIS 2014/2, p.14, available at: <https://www.acnc.gov.au/tools/statements/provision-housing-charities>.
- ²³⁸ The English Regulator of Social Housing advises for-profit registered providers to separate any activities that do not relate to providing social housing from those that do. Where it is necessary for non-social housing activity to be carried out in the legal entity, the regulator's advice is that the amount of non-social housing activity should be in the region of no more than 5% capital or turnover. (Regulator of Social Housing. 2015. *Guidance: Governance and Financial Viability Standard Code of Practice*, p.10, available at: <https://www.gov.uk/government/publications/governance-and-financial-viability-standard/governance-and-financial-viability-standard-code-of-practice>).
- ²³⁹ Community housing organisations are subject to regulation by the Australian Charities and Not-for-Profits Commission under the *Charities and Not-for-Profit Commission Act 2012*.
- ²⁴⁰ Hyndman, N. 2017. Editorial: The charity sector – changing times, changing circumstances, *Public Money and Management*, 37(3): pp. 149–153, DOI: 10.1080/09540962.2017.1281608.
- ²⁴¹ McCabe, J. 2021. 10 years of affordable rent, *Inside Housing*, paragraph 40, available at: <https://www.insidehousing.co.uk/insight/insight/10-years-of-affordable-rent-73711>.
- ²⁴² Department for Levelling Up, Housing and Communities. 2021. *Affordable Housing Supply: April 2020 to March 2021, England*, p.4 Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1034043/AHS_2020-21.pdf
- ²⁴³ Wilson, W. and Barton, C. 2022. *What is affordable housing?*, House of Commons Library Research Briefing, p.7 available at: <https://commonslibrary.parliament.uk/research-briefings/cbp-77471>.
- ²⁴⁴ McCabe, J. 2021. 10 years of affordable rent, *Inside Housing*, available at: <https://www.insidehousing.co.uk/insight/insight/10-years-of-affordable-rent-73711>.
- ²⁴⁵ Written statement from the then Housing Minister, Grant Shapps on 9 December 2010, cited in Wilson, W. and Barton, C. 2022. *What is affordable housing?*, House of Commons Library Research Briefing, p.8, available at: <https://commonslibrary.parliament.uk/research-briefings/cbp-77478>.
- ²⁴⁶ McCabe, J. 2021. 10 years of affordable rent, *Inside Housing*, available at: <https://www.insidehousing.co.uk/insight/insight/10-years-of-affordable-rent-73711>
- ²⁴⁷ Delahunty, S. 2022. *Gove vows to explore ways to increase the number of social rent homes*, *Inside Housing*, available at: <https://www.insidehousing.co.uk/news/news/gove-vows-to-explore-ways-to-increase-number-of-social-rent-homes-75161>.
- ²⁴⁸ Harris, A.J. *New York Times*, 22/11/2021. N.Y.C. Severs Ties with Housing Boss Who Earned \$1 Million a Year, available at: <https://www.nytimes.com/2021/11/22/nyregion/jack-brown-core-services-homeless-nyc.html#:~:text=N.Y.C.,Severs%20Ties%20With%20Housing%20Boss%20Who%20Earned%20%241%20Million%20a,and%20services%20to%20the%20homeless;Newman%20A%20New%20York%20Times,23/11/2021>. She Ran a Bronx Shelter: Here's What She Spent Millions On, available at: <https://www.nytimes.com/2021/11/23/nyregion/ethel-denise-perry-millennium-care-fraud.html>.
- ²⁴⁹ Under s.82 of the *Housing Act 1983*, approval of the Housing Registrar is required for a registered agency to be a subsidiary of a body that is not a registered agency, or to act as a trustee for any person other than a registered housing agency.
- ²⁵⁰ National Housing Finance and Investment Corporation. 2021 *Delivering More Affordable Housing: A Sustainable Solution*, Australian Government
- ²⁵¹ Section 46 of the *Corporations Act 2001* (Cth) defines a subsidiary for the purposes of that Act as being where another body controls the composition of its board, is able to cast more than 50% of the votes at a general meeting or holds more than half of its share capital; or where the entity is a subsidiary of a subsidiary of another body.
- ²⁵² The Hon Chief Justice Marilyn Warren AC. 2016 *Corporate Structures, the Veil and the Role of the Courts*, *Melbourne University Law Review* 40:657-687
- ²⁵³ Proposals for legislation reform in England include broadening the regulator's power to obtain information, including the ability to follow funds and assets once they have left the sector, and strengthening the regulator's power to set standards

on the provision of information to tenants and the regulator (Department for Levelling Up, Housing and Communities. 2022. *Social housing regulation draft clauses: explanatory notes*, available at: <https://www.gov.uk/government/publications/social-housing-regulation-draft-clauses/social-housing-regulation-draft-clauses-explanatory-notes>).

²⁵⁴ Ministry of Housing, Communities and Local Government. 2020. *The charter for social housing residents: social housing white paper*, available at: <https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>

²⁵⁵ Department for Levelling Up Housing and Communities. 2022. *Social housing regulation: draft clauses: explanatory notes*, available at: <https://www.gov.uk/government/publications/social-housing-regulation-draft-clauses/social-housing-regulation-draft-clauses-explanatory-notes>

²⁵⁶ *Housing and Regeneration Act 2008* (UK), ss.69–70.

²⁵⁷ Homes and Communities Agency. 2015. *Private Registered Provider Social Housing Stock in England, Statistical data return 2014–15*, p.7, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/464349/SDR_2014-15_full.pdf.

²⁵⁸ Data obtained from Regulator of Social Housing, *List of registered providers of providers of social housing — updated monthly*, available at: <https://www.gov.uk/government/publications/registered-providers-of-social-housing>, accessed 4 May 2020.

²⁵⁹ Regulator of Social Housing. 2015. *Governance and Financial Viability Standard Code of Practice*, Homes & Communities Agency, UK. p.10.

²⁶⁰ The key definition of affordable housing in Victoria is under the *Planning and Environment Act 1987*, which defines affordable housing as housing appropriate for the needs of very low, low or moderate income households (including social housing). A Ministerial notice gives some guidance on the factors to be considered for the purposes of determining what housing is suitable for these income groups (Wynne, R. 2018, Specified Matters Under Section 3AA(2)). In Victoria, the term ‘affordable housing’ is generally used to refer to rental housing, but it can also encompass home ownership or shared ownership schemes under which financial assistance is made available to enable eligible people to purchase a home in return for a stake or proportionate interest in the property. For example, the state government has a shared ownership scheme aimed at people on modest incomes - the Victorian Homebuyer Fund - and the Women’s Property Initiatives (a Community Housing Organisation) has also developed shared equity housing projects aimed at single women over 55 who are at risk of homelessness.

²⁶¹ The Affordable Housing Industry Advisory Group (submission 14, p. 4) provided some examples of the types of affordable housing.

²⁶² As at June 2021. (Australian Government, Department of Social Services. 2021. *National Rental Affordability Scheme Quarterly Performance Report, as at 30 September 2021*, Department of Social Services). Note that the definition of affordable housing under the NRAS is different to that used in the *Planning and Environment Act 1987* (Vic).

²⁶³ For example, Geelong Housing Action Group (submission 38, p. 6).

²⁶⁴ For example, Moreland City Council has secured a section 173 agreement with the owners of 215-219 Albion Street, Brunswick (amendment C164) to deliver 20 per cent affordable housing in any development as a condition for rezoning the land. The Council has also put in place a section 173 agreements with the owner of 10 Dawson Street Brunswick to deliver 20 per cent affordable housing. This housing will be delivered by the Barnett Foundation, which provides discounted build-to-sell apartments to current social housing tenants through the use of interest free loans (Planning Panels Victoria. 2020. *Priority Projects Standing Advisory Committee Report, Moreland Planning Scheme, Referral No. 5, 10 Dawson Street, Brunswick*, State Government of Victoria).

²⁶⁵ Australian Housing and Urban Research Institute (submission 18, p. 5) cited some local councils such as Port Phillip and Moreland as being active in the affordable housing area but noted that affordable housing is rare in Victoria.

²⁶⁶ Premier of Victoria. 2022. *Statement on Planning Reform Package*, available at: <https://www.premier.vic.gov.au/statement-planning-reform-package>

²⁶⁷ Premier of Victoria. 2022. *Affordable Housing Scheme To Ease Rental Crunch*, available at: <https://www.premier.vic.gov.au/affordable-housing-scheme-ease-rental-crunch>.

²⁶⁸ For example, the City of Melbourne, under its affordable housing strategy, has placed a focus on a key worker strategy to secure affordable rental housing for key workers (City of Melbourne. 2020. *Affordable Housing Strategy 2020-2030*, p. 61, City of Melbourne).

²⁶⁹ Homes Victoria. 2022. *Affordable Housing Rental Scheme*, available at: <https://www.vic.gov.au/affordable-housing-rental-scheme>, accessed 4 May 2022.

²⁷⁰ The maximum incomes specified align with the maximum of the moderate-income range specified under the *Planning and Environment Act 1987* Order in Council s.3AB Specification of Income Ranges, dated 22 June 2021, available at: https://www.planning.vic.gov.au/__data/assets/pdf_file/0021/532029/Gazette-version-GiC-Order-29Jun21.pdf, accessed 4 May 2022.

²⁷¹ For example, Victorian Public Tenants Association (submission 60, p. 57); Mallee Family Care (submission 42, p. 5); and Housing for the Aged Action Group (submission 66, p. 4) supported affordable housing delivered by registered providers being delivered under the same regulatory system. One exception was Tenants Victoria (submission 29, p. 30), that raised concerns that having affordable housing under the same framework could reduce the focus on renter outcomes.

²⁷² For example, City of Port Phillip (submission 64, p. 5). Other local councils also raised similar concerns during consultation.

²⁷³ The *Affordable Housing Agreements Toolkit* developed jointly by the Community Housing Industry Association Victoria and the Municipal Association of Victoria to assist councils in negotiating s.173 agreements, encourages councils to consider ensuring that affordable housing properties are owned or managed by registered community housing organisations (Community Housing Industry Association Victoria and Municipal Association of Victoria. 2020. *Affordable Housing Agreements Toolkit, Advice for local government and community housing organisations*, p.12, Community Housing Industry Association Victoria and Municipal Association of Victoria).

²⁷⁴ For example, see Housing All Australians. 2020, *Submission to the Federal Government Inquiry into Homelessness in Australia*, available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/HomelessnessinAustralia/Submissions, accessed 4 May 2022. Questus Capital Group is one of the largest managers of affordable housing in Victoria through the NRAS.

²⁷⁵ The English planning scheme includes provision to claw back the value of affordable housing delivered within build to rent developments if the properties are sold off or converted to another tenure type (Department for Levelling up, Housing and Communities and Ministry of Housing, Communities & Local Government. 2018. *Guidance on build to rent*, available at: <https://www.gov.uk/guidance/build-to-rent> , accessed 4 May 2022).

²⁷⁶ See for example, Housing All Australians. 2020. *Submission to the Federal Government Inquiry into Homelessness in Australia*, available at:

https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/HomelessnessinAustralia/Submissions, accessed 4 May 2022, called for a register of affordable housing obligations.

²⁷⁷ Housing All Australians. 2020. *The Permanent Rental Affordability Development Solution (PRADS)*, p.3, Available at: <https://housingallaustralians.org.au/wp-content/uploads/2020/04/20200411-PRADS-MODEL.pdf>

²⁷⁸ Community Housing Industry Association Victoria (Interim Report submission 24, p.13).

²⁷⁹ Scottish Housing Regulator. 2022. *Landlord performance: Reports, data and analysis about social landlords in Scotland*, available at: <https://www.housingregulator.gov.scot/landlord-performance>, accessed 4 May 2022.

²⁸⁰ Department of Families, Fairness and Housing. 2021. *Annual Report: Housing Assistance Additional Service Delivery Data 2020–21*, p. 18, available at: <https://www.dffh.vic.gov.au/publications/annual-reports-department-families-fairness-housing>.

²⁸¹ Tenants Victoria (submission 28, p. 38).

²⁸² Productivity Commission. 2017. *Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services*, Inquiry Report No. 85, p. 166.

²⁸³ Department of Families, Fairness and Housing. 2021. *Social housing allocations. A report on social housing allocations for the 2019/2020 period*, available at: <https://www.vic.gov.au/social-housing-allocation>, accessed 6 May 2022.

²⁸⁴ Housing Registrar. 2022. *Registered housing agency performance*, available at: <https://www.vic.gov.au/registered-housing-agency-performance>, accessed 6 May 2022.

²⁸⁵ Mallee Family Care (submission 44, p. 7).

²⁸⁶ Tenants Victoria (submission 28, p. 38).

²⁸⁷ Pawson, H., Milligan, V., Phibbs, P. and Rowley, S. 2014. *Assessing management costs and tenant outcomes in social housing: developing a framework*, AHURI Positioning Paper No. 160, p. 13, Australian Housing and Urban Research Institute Limited, Melbourne.

²⁸⁸ Community Housing Industry Association Victoria (submission 4, p. 3).

²⁸⁹ Tenants Victoria (submission 28, p. 6).

6. Regulation that supports sustainability and growth

Key issues

- The social and affordable housing sector must continue to grow beyond the Big Housing Build to address the shortage of affordable housing and meet continued high demand.
- Appropriate investment coupled with good regulation can generate sustainable growth. Regulation alone cannot stimulate growth.
- Effective regulation can have positive effects on growth by contributing to a healthy, well governed sector that is attractive to funders and investors while minimising unnecessary regulatory burden on regulated organisations.
- Good regulation is outcomes-based, proportionate, targeted to risk, and enables flexibility and efficient performance of regulatory obligations. There is a balance to be struck between ensuring the regulator has sufficient powers and tools for effective tenant-focused consumer and economic regulation and minimising regulatory burden.
- Some aspects of the current regulatory framework are unnecessarily onerous, limit registered agencies' agility and deter other providers from becoming registered.
- There is duplication of performance reporting requirements and reporting for funding contracts. Some entities must provide similar information to multiple agencies.
- The regulator could play a more active role in supporting and facilitating growth of social housing.
- The lack of a truly national regulatory system for community housing has been cited as an impediment to investment and growth.
- Victorians would benefit from joining an effective national scheme that is tenant-centred and promotes growth in social and affordable housing. However, the National Regulatory System for Community Housing requires changes to make it fit-for-purpose.

6.1. What is the problem?

6.1.1 Growth in social and affordable housing stock is needed

There is an urgent need for growth in social housing stock. The 2021 review of the *National Housing Finance and Investment Act 2018* estimated that, Australia-wide, an investment of around \$290 billion will be required over the next two decades to meet the shortfall in social and affordable housing dwellings.²⁹⁰

At June 2020, Victoria had 3.2 social housing dwellings for every 100 households, compared with the national average of 4.4.²⁹¹ Growth in public housing has been declining in recent decades, and community housing has been identified as the main growth vehicle in the Big Housing Build.

When the regulatory system for community housing was created in 2004, the government's aspiration was to stimulate growth in social housing through the community housing sector.²⁹² Although Victoria's community housing sector has matured over the past two decades, growth in social housing stock has not occurred at the rate that was apparently envisaged at that time.

The establishment of the National Housing Finance and Investment Corporation (NHFIC) in 2018 was intended to strengthen efforts to increase the supply of social and affordable housing, encourage investment in the social and affordable housing sector, and contribute to the development of scale, efficiency and effectiveness of the community housing sector.

The recent review of the National Housing Finance and Investment Act found that, while the NHFIC has operated successfully within its mandate, and improved access to longer term finance and the facilitation of greater private investment in the sector, the growth of the community housing sector remains constrained.²⁹³ It also concluded that meeting the projected national shortfall in social and affordable housing dwellings would require active participation by the private sector and high levels of collaboration across all levels of government.²⁹⁴

6.1.2 There are constraints to growth in Victoria's social housing system

Various reviews have pointed out the most fundamental constraint on growth is that rents generated by social and affordable housing are insufficient to fund the costs of provision. For social and affordable housing provision to be an economic proposition, that funding gap needs to be filled by government subsidies.²⁹⁵ The biggest funding gap is for social housing which, in 2018, the Australian Housing and Urban Research Institute estimated at around \$13,000 per annum for an average social housing dwelling over a 20-year timeframe.²⁹⁶

Another constraint is difficulty accessing finance from the private sector:

“Bank loan offerings have historically been unsuitable for CHPs; loans are typically provided at relatively high interest rates and with relatively short 3-to 5-year terms, which does not match the asset life of social housing dwellings (typically beyond 35 years). Banks and other financiers are generally reluctant to take exposures in social and affordable housing. This reluctance reflects the low rental yields available, unfamiliarity with the sector and few established policies to assess lending options, small pools of equity among providers, the relatively small scale of developments, policy instability and administrative complexity.”²⁹⁷

In a roundtable meeting held by the Panel on regulation and sector growth, a number of participants commented that government investment in social housing has been sporadic and ad hoc. They stated that government needed to provide a predictable, ongoing pipeline of investment to entice non-government entities to invest, and to attract and retain skilled staff beyond the life of individual projects. This is necessary to build their capability to scale up.²⁹⁸ Investors need to be offered a suitably attractive financial proposition if they are to choose social and affordable housing over other investments.

6.1.3 Certain regulatory settings represent obstacles to registration

Good regulation is outcomes-based, proportionate, targeted to risk, and enables operational flexibility and efficient performance of regulatory obligations by those who are regulated. It does not impose unnecessary regulatory burden, or barriers to growth and innovation.

However, aspects of the current regulatory framework impose unnecessary costs on providers. This chapter identifies where there is scope to reduce the regulatory burden on registered agencies and increase their capacity to innovate, while ensuring the regulator has the necessary powers and tools to perform its functions effectively.

There is scope to alter features of the regulatory scheme that deter registration from Aboriginal Community Controlled Organisations (ACCOs) and some specialist providers of services to identified communities (such as organisations that have a mission focus on a single ethnic community). These organisations have land and community resources that could be unlocked for social housing, if they registered and obtained funding.

Growth in social housing is essential to address the acute need faced by Aboriginal Victorians; and consistent with Aboriginal self-determination, ACCOs are the ideal vehicles to drive this growth. From the information generated through this Review's consultations with Aboriginal stakeholders, and feedback on its Interim Report from the Victorian Aboriginal Housing and Homelessness Forum (VAHFF), recommendations are made to assist ACCOs to register.

6.1.4 Regulation could play a more active role in encouraging and shaping growth

Many Review participants emphasised that, without appropriate government investment, better regulation cannot be expected to stimulate growth in social housing stock. At any level of investment, however, regulatory settings can influence growth positively or negatively, depending on how they are designed and implemented. In particular, regulation can influence whether dwellings and services meet appropriate standards for current and future tenants, within a financially viable and sustainable sector.

Effective regulation provides an accountability function to ensure providers do not take excessive risks, divert public funds for private benefit, neglect maintenance obligations, or reduce the utility and value of social housing assets over time. There is scope for the regulator to play a more proactive role in facilitating and supporting growth of this type within the sector.

6.1.5 Victoria is not part of the National Regulatory System for Community Housing

Victoria is one of two states (along with Western Australia) that have not joined the National Regulatory System for Community Housing (NRSCH).²⁹⁹ Victoria decided not to participate when the scheme was established in 2013, because of a lack of adequate protection for Victoria's investment in the community housing sector, and because it was considered that many of the benefits could be captured by aligning performance assessment and reporting requirements.³⁰⁰

At the time it was introduced, Victoria already had an established regulatory scheme, and it focused instead on aligning aspects of this with the NRSCH, and building co-operative

arrangements between the Victorian Housing Registrar and the NRSCH regulators. Table 6.1 outlines the key differences between the Victorian Regulatory System and the NRSCH.

Table 6.1: Key differences between the National Regulatory System for Community Housing and the Victorian Regulatory System

Victorian Regulatory System	NRSCH
<ul style="list-style-type: none"> • Only not-for-profit organisations can register 	<ul style="list-style-type: none"> • For-profit providers can register
<ul style="list-style-type: none"> • The Victorian Housing Registrar’s intervention powers include the ability to enter premises, search and seize documents where non-compliance is suspected, appoint members to a board, appoint administrators, or wind up the agency. 	<ul style="list-style-type: none"> • NRSCH registrars do not have the same inspection powers, such as the ability to search and seize documents,
<ul style="list-style-type: none"> • The Victorian Housing Registrar is independent of the Department of Families, Fairness and Housing (and Homes Victoria) and is located within the Department of Treasury and Finance. 	<ul style="list-style-type: none"> • NRSCH registrars generally sit within the department responsible for housing policy.
<ul style="list-style-type: none"> • All housing assets held by a registered agency are in regulatory scope. 	<ul style="list-style-type: none"> • Only community housing assets are in scope (which may exclude, for example, the affordable housing assets).
<ul style="list-style-type: none"> • Wind-up provisions allow the Victorian Housing Registrar to allocate assets to another registered agency. 	<ul style="list-style-type: none"> • Assets can be transferred to the relevant government body as well as another registered organisation.
<ul style="list-style-type: none"> • Housing agencies are classed under two categories and the Victorian Housing Registrar assesses all agencies annually. 	<ul style="list-style-type: none"> • Housing agencies are classed under three tiers of registration. Tiers one and two are assessed every 12 to 18 months, and tier three agencies are assessed every second year.
<ul style="list-style-type: none"> • Registered agencies are assessed under continuous improvement criteria and have regulatory action plans with a compliance and continuous improvement focus. 	<ul style="list-style-type: none"> • Registered agencies are not assessed for continuous improvement.
<ul style="list-style-type: none"> • The Victorian Housing Registrar has begun publishing performance information on each registered agency. 	<ul style="list-style-type: none"> • NRSCH registrars do not publish performance information on each registered agency.
<ul style="list-style-type: none"> • Registered agencies operating in Victoria must be registered by the Victorian Housing Registrar. 	<ul style="list-style-type: none"> • Registered agencies operating in multiple jurisdictions are regulated by a nominated ‘primary regulator’ in one jurisdiction.

Other reviews and participants to this Review have identified an effective national regulatory scheme for social and affordable housing as being important for investment and to facilitate growth. The review of the operation of the National Housing Finance and Investment Act commented that the lack of robust national community housing performance data erodes visibility for investors, hampers assessment of creditworthiness and feasibility of potential projects, and contributes to a low appetite for social and affordable housing investment.³⁰¹

Providers of community housing that operate across both Victoria and the NRSCH jurisdictions must comply with two different regulatory schemes and set up a subsidiary entity for their Victorian operations. In its submission to the NRSCH Review, YWCA Australia noted that:

“The current system is particularly cumbersome to agencies that operate within various jurisdictions. YWCA Housing and YWCA National Housing have been established at great cost to ensure that YWCA can operate within the community housing sector. This process is highly administrative with double reporting and has had a huge impact on organisational legal and governance structures.”³⁰²

Several participants and reviews have suggested that the presence of three different regulatory regimes in Australia reduces investor confidence and certainty, which limits growth. Strong governance and prudential supervision are seen as vital to provide certainty and confidence to investors.³⁰³ The National Housing Finance and Investment Act Review noted that:

“...a uniform national regulatory system is widely considered by stakeholders to be necessary for attracting private investors at scale to the sector, and thus growing the social and affordable housing market in Australia.”³⁰⁴

In a submission to this Review, the national Community Housing Industry Association noted:

“The costs associated with having three systems, include the opportunity cost (which for community housing organisations wanting to operate in Victoria includes them setting up a separate subsidiary), less investment in the system as a whole, and an absence of comprehensive consistent information about the sector. For investors such as the NHFIC, and the superannuation industry, one single registration scheme will simplify administration and any future Commonwealth funding would be more straightforward if a consistent regulatory regime was in place.”³⁰⁵

The costs associated with Victoria not being involved in the NRSCH are largely anecdotal, and there is no clear evidence that Victoria has missed out on substantial investment due to not joining the NRSCH.³⁰⁶ Nonetheless, as the imperative for sector growth, and the scale of providers needed to facilitate that growth, increases, it is likely there would be benefits in an effective national approach to regulation.

6.2. What is recommended and why

6.2.1 Remove disincentives to registration and promote innovation

Continued growth in social housing stock is imperative. It is important that regulation does not deter organisations with land and resources from becoming registered or inhibit registered agencies’ capacity for agility and innovation.

The *Housing Act 1983* confers powers on the Housing Registrar that enable intervention in the case of significant failures by a registered entity. These include power to direct the appointment of an administrator to control and direct the entity, and the capacity to direct the winding up and distribution of its assets to another registered entity.³⁰⁷

As noted in this Review’s Interim Report, some not-for-profit organisations that serve particular communities raised concerns about the wind-up provisions of the Housing Act, because these could see assets acquired for the benefit of their communities transferred to other registered housing agencies that do not share their mission. The wind-up provisions have also been raised as a concern for church-based organisations and ACCOs.³⁰⁸

Several church-based registered agencies have indicated that these laws constrain their ability to access church-owned land that could be developed for social housing. The VAHMF has emphasised that self-determination requires that housing assets remain in Aboriginal hands if a registered Aboriginal housing organisation is ever wound up.

Recommendation 6.1: Amend the wind-up provisions to ensure the assets of a specialist housing agency are transferred to another registered agency that shares its mission, and that Aboriginal housing remains in Aboriginal hands

Amend the wind-up provisions to ensure, as far as possible, that assets are transferred to another registered housing agency with the same mission as the agency being wound up, with the assets of an Aboriginal housing agency to be required to remain with an Aboriginal provider.

6.2.2 Facilitate registration of Aboriginal Community Controlled Organisations

There is scope for the regulatory system to better cater to the needs of ACCOs and small specialist providers to encourage them to become registered.

The VAHMF's submission expressed strong support for registration of ACCOs because:

- they are the preferred housing providers for Aboriginal renters
- it provides more choice for Aboriginal renters
- they are best placed to provide culturally safe housing and support for Aboriginal renters.³⁰⁹

The VAHMF observed that ACCOs are the ideal vehicles to drive growth in Aboriginal housing, consistent with Aboriginal self-determination. The Housing Registrar is currently giving priority to supporting ACCOs to become registered, and this should continue to be a high priority for a new single regulator of social and affordable housing.

The Review's Interim Report proposed establishing and maintaining a culturally safe pre-registration team within the regulator, comprising Aboriginal staff who would undertake active outreach with ACCOs and Aboriginal communities. It also proposed requiring the regulator to develop model policies and templates to facilitate successful registration, including information packs to help ACCO boards consider the pros and cons of registration for their communities, and action plans that map out the first year of registration with the actions needed to meet the first compliance review.

While supportive of these proposals, the VAHMF suggested that the Panel consider whether model policies and templates are more appropriately developed by Aboriginal Housing Victoria (AHV), and that AHV could also develop an Aboriginal Housing Interpreters Guide to assist ACCOs, working with the regulator's pre-registration team. While it is the regulator's role to develop model registration policies and templates, it is important they are co-designed or developed with engagement from AHV and other Aboriginal community stakeholders.

The VAHMF emphasised that supported assessment of registration readiness is an important first step, before ACCOs go down the path of registration. ACCOs must be provided with adequate support to help them register, including capacity building during the registration process and intensive support in the first year after registering. Funding will be

required to assist ACCOs prepare for registration, including work on policies, procedures, processes and systems, to demonstrate compliance with performance standards and preparation of a registration application.

The Panel considers that government should provide funding needed to support ACCOs to prepare for registration and meet regulatory requirements in their first year after registering. The Aboriginal Housing team in Homes Victoria or the Department of Treasury and Finance could manage this program.

Box 6.1: The Aboriginal Community Housing Sector

The Aboriginal community housing sector in Victoria comprises Aboriginal Housing Victoria (AHV) and several other Aboriginal Community Controlled Organisations (ACCOs).

Apart from AHV, housing is not the core business of all other ACCOs with housing portfolios. ACCOs within Victoria come in different sizes and deliver a range of services. They provide holistic, wrap around services for Aboriginal people, often in a one-stop-shop.

Each ACCO is unique, as is the Aboriginal community they serve, their housing portfolio, and the mix of funded and unfunded services.³¹⁰

The VAHMF has advised that a culturally safe and flexible regulatory system is also needed to ensure successful maintenance of registration and strong performance by registered Aboriginal housing agencies in meeting regulatory standards. In particular, the regulator's approach needs to be adaptable and accommodate the diversity of ACCOs. It also needs to ensure a high standard of housing services to Aboriginal tenants, and effective organisational governance that recognises the particular strengths ACCOs bring to housing provision, as a result of their deep knowledge of Aboriginal family and community circumstances.

The VAHMF noted that there needs to be flexibility when carrying out assessments of performance against standards. As with all other registered housing agencies, the expected level of sophistication in meeting performance standards — particularly tenancy, property and asset management standards — should reflect the housing portfolio size and scale. This is consistent with this report's recommendation that the regulator should tailor its approach to the risk profile of the individual provider (Chapter 7).

The Panel considers that for regulation of ACCOs, an appropriate degree of flexibility should be adopted, commensurate with the treatment of non-Aboriginal housing organisations of a similar size and complexity of operations.

This Review's Interim Report also noted there may be value in the regulator and the VAHMF working together to develop tailored Indigenous Governance Principles, which value, respect and inform how ACCOs can meet housing regulatory governance standards.³¹¹ These principles could be integrated into the performance framework to enable a strengths-based and culturally appropriate approach to the governance of Aboriginal housing agencies.

The Housing Registrar has made considerable efforts over the past year to strengthen its capacity to proactively assist Aboriginal organisations to become registered. It will be essential to build on this momentum in the process of transitioning to a single regulator.

The Panel also recognises that efforts to work closely with prospective registrants is likely to require extra resourcing and notes the need for this work will not be limited to ACCOs. The

Housing for the Aged Action Group noted that specialist providers of services to diverse communities such as older people, LGBTIQ and culturally diverse communities, are important to provide safe and appropriate housing and services and that many of these are small agencies that may struggle to meet the burden of regulation.³¹²

There is a limit to the work the regulator can reasonably take on, however, and the Panel considers there may be a role for the Department of Families, Fairness and Housing to provide funding and support to specialist community agencies wishing to become registered housing agencies.

Recommendation 6.2: Facilitate the registration of Aboriginal Community Controlled Organisations

Undertake a program of initiatives to facilitate the registration of Aboriginal Community Controlled Organisations (ACCOs), that includes but is not limited to:

- prioritising assisting ACCOs to become registered
- establishment of a culturally safe pre-registration team within the regulator led by an Aboriginal senior officer and comprising Aboriginal staff to undertake outreach with ACCOs and Aboriginal communities
- working with the Aboriginal community and Aboriginal Housing Victoria (AHV) to develop model policies and templates to facilitate successful registration of ACCOs including board information packs and action plans, which map out the first year of registration and the actions needed to meet the first compliance review
- identifying practical ways of recognising the multiple accreditation and regulatory requirements that ACCOs already meet and working with AHV, ACCOs and other regulators to investigate scope for mutual recognition to minimise duplication of the compliance and reporting obligations that ACCOs face
- ensuring regulatory performance standards are sufficiently flexible to recognise the strengths of ACCOs and their delivery of housing, knowledge of family and community circumstances, and approaches to managing arrears and evictions
- ensuring the regulatory framework incorporates Aboriginal housing perspectives into operational processes and service delivery, and that regulation is proportionate and suited to the scale of the organisation being regulated
- developing and implementing, in collaboration with Victorian Aboriginal Housing and Homelessness Forum, Indigenous Governance Principles that value, respect and inform how ACCOs can meet housing regulatory governance standards.

Extra funding will be required to support ACCOs to prepare for registration and to meet regulatory requirements in their first year after registering.

In addition to the suite of regulatory initiatives, the Aboriginal community and ACCOs should be provided with information on:

- the broader social housing system and social housing regulation
- landlord responsibilities and the *Residential Tenancies Act 1997*.

6.2.3 Reduce regulatory burden on registered agencies by avoiding duplication

There is tension between minimising administrative burden on providers and encouraging those outside the system to register, while also enabling effective regulatory oversight. Social housing dwellings are valuable, publicly subsidised, long-term assets requiring life-cycle asset management in the interests of current and prospective tenants. Raising finance for social housing development and growth can entail significant financial risk. These factors require sound risk-based prudential supervision of registered agencies.

Many organisations delivering government-funded services must navigate a complex environment of overlapping regulatory frameworks and multiple regulators. The complexity and regulatory burden this generates could, however, be reduced by explicitly authorising information sharing between regulators to reduce duplication.

Both the English and Scottish social housing regulators have legislative requirements to perform their functions in a way that is proportionate and targeted only to where action is needed.³¹³ The Scottish regulator is designated as the principal regulator of Scottish social housing agencies, most of which are charities. Legislation enables registered agencies to report their financial and governance information to the social housing regulator and for this information to be 'passported' to the Scottish charities' regulator, reducing the need for dual reporting. The Scottish system also allows the charities regulator to delegate certain regulatory functions to the social housing regulator.

There is scope for this approach to be adopted where overlaps in regulatory schemes create dual reporting. However, the scope for reducing regulatory burden is more limited, where the focus and remit of regulatory schemes differs significantly.

There is also scope to incorporate provisions into Victorian legislation to help manage overlaps between the social housing regulatory framework and other regulatory schemes. It would allow the social and affordable housing regulator to share relevant information with other regulators (including in other jurisdictions), and act on intelligence received from these regulators. Financial reporting could be streamlined by increasing regulator cooperation, such as between the Australian Charities and Not-for-Profits Commission and the Australian Securities and Investments Commission.

Interface with social services regulation

Reducing duplication at the state level will require attention to the interface between the recently announced Social Services Regulator and the social and affordable housing regulator. Social housing will not be captured in the social services regulatory framework. The Panel considers this to be appropriate for the reasons outlined in Chapter 7, although homelessness services are to be in scope of social services regulation,³¹⁴ and this could create a dual registration requirement for providers of both services.

The two regulatory schemes have different purposes:

- The social services regime is needed to safeguard vulnerable clients from abuse and neglect.
- The social housing regulatory regime covers consumer protection in relation to tenancy management and dwelling standards, asset management and the financial performance and viability.

The challenge is to reduce regulatory reporting requirements for dual housing and homelessness providers that fall under both schemes, without compromising the regulatory coverage each provides.

One option is to give the social and affordable housing regulator responsibility for overseeing the governance and financial viability of registered agencies. A legislative mechanism could be used to apply the relevant social services regulation provisions to the dual providers, and require oversight in relation to those provisions (that is, the client safeguarding provisions) by that regulator.

This way dual providers could be deemed to be registered under the *Social Services Regulation Act 2021* and regulated appropriately without having to register with, and report to, two different regulators. Should there be persistent and serious breaches of safeguarding requirements, deemed registration for homelessness services could be removed by the Social Services Regulator.

There are already provisions in the Social Services Regulation Act which allow the Social Services Regulator to minimise regulatory burden by recognising compliance with other regulatory schemes and sharing information for intelligence.³¹⁵ Complementary provisions will enable the social and affordable housing regulator to share information and act on intelligence provided by the Social Services Regulator. This will allow the two regulators to work together to manage the interface between the regulatory schemes in a practical way.

It will be important for the two regulators to create a memorandum of understanding about how they will work together. This could include how they will refer matters to each other, share regulatory intelligence, and create a seamless regulatory experience for providers of all relevant services.

Recommendation 6.3: Reduce duplication where registered community housing agencies report to multiple regulators

Require formal information-sharing arrangements between the social and affordable housing regulator and the Social Services Regulator (and other relevant regulators) and enable relevant intelligence to be acted on.

Create a mechanism to enable dual housing and homelessness providers to register with, and report to, a single regulator. For example, relevant social services client safeguarding provisions (those relating to client safety and incident reporting) could be applied to homelessness services that are also registered agencies under the *Housing Act 1983*, and be overseen by the Social Services Regulator.

The regulator should have explicit duties to perform its functions in a way that is proportionate and targeted to where action is needed, and to work with other regulators to minimise duplication and administrative burden for registered agencies, wherever possible.

Reduce duplication of regulation and contract

The Panel has consistently heard from providers of community housing that the biggest regulatory burden they face is duplication of regulatory requirements with Homes Victoria's funding contracts. There is no good reason for contracts to duplicate requirements for performance reporting or to demonstrate compliance with standards if these are already monitored by the regulator. Contracts should focus on matters not already covered by the

regulatory regime, and any quasi-regulatory functions that Homes Victoria has in relation to community housing should be removed.

One way to address this problem would be to amend legislation to prevent funding contracts duplicating regulatory requirements and allow cross reporting of data required for compliance and monitoring purposes to the funder and the regulator. The funder and regulator would be able to exchange information and evidence about the performance of a registered agency.

There are precedents for legislation that imposes limits on powers to duplicate existing laws. For example, the *Food Act 1984* limits the power of local councils to make laws that that are, or could be, the subject of regulations made under the Food Act or the national Food Standards Code.³¹⁶ It also invalidates any local laws that contravene this provision.

The Director of Housing's statutory powers could be limited to prevent it entering into contracts that duplicate regulatory requirements (including the timing and frequency of data reporting).

Another option is for the responsible Minister to issue a direction to Homes Victoria aimed at avoiding duplication of regulatory requirements in funding contracts. The advantage of amending legislation over administrative arrangements is that the requirement will endure for as long as the legislation is in force and is not susceptible to being altered when there is a change of Minister.

To bring about a similar outcome in the immediate term, formal arrangements should be put in place, such as through a memorandum of understanding between the regulator and Homes Victoria, which has the reduction of duplication in regulation and contract as its objective. The memorandum would allow for cross reporting of data and require information sharing.

Recommendation 6.4: Reduce duplication and confusion in regulatory and contract reporting

Put in place a memorandum of understanding or similar formal arrangements between the regulator and Homes Victoria whose objective is to reduce duplication in regulatory and contract reporting.

The arrangements should explicitly allow for cross reporting of data required for regulatory monitoring purposes to the funder and regulator, and for sharing of information between the regulator and funder about the performance of a registered provider.

Mutual consultation on new contracts or regulations should be included.

6.2.4 Transition to a portfolio management approach

The Housing Act includes measures to protect against loss or change of use of social housing assets acquired with the assistance of Victorian Government funds. Under the Housing Act, the Director of Housing has an interest in all such land acquired with the assistance of government funds, and a registered agency cannot deal with the land without prior approval of Homes Victoria.³¹⁷

In meetings with the Panel, the community housing sector commented that, while approval is usually granted, it often takes a long time and can inhibit the agency's ability to manage

their portfolio and respond to asset opportunities. Processes could be improved to expedite the response, but the system could also be improved to allow the sector greater flexibility, while protecting government investments. By enabling them to manage their assets on a portfolio or entity-wide basis in accordance with their mission and strategic plans, registered agencies could redevelop and replace or upgrade housing stock to optimise their performance, reduce maintenance costs and grow stock.

The Housing Act does not include any criteria that Homes Victoria must consider when deciding to grant or refuse approval for land transactions, and no administrative criteria have been published. The requirement for approval allows Homes Victoria to enforce contracts with registered agencies, alert potential investors and lenders to Homes Victoria's interest, and ensures funds provided for social housing continue to be used for that purpose. Homes Victoria has likened its interest to that of a lender who can take steps to recoup funds owing in the event of default, and has argued it reduces the risk of fraud, because there is security in the underlying asset.

Aside from the timing concerns, the requirement for case-by-case approval of land transactions is a constraint on registered agencies that ideally would not exist, as there are less restrictive ways of managing the risks. The requirement gives Homes Victoria scope for significant control over registered housing agencies, which are also independently regulated. It would be desirable to separate out any quasi-regulatory functions Homes Victoria has, in relation to community housing, to reduce potential conflicts of interest.

To address the immediate concern about approval delays:

- a statutory timeframe should be specified, within which approval must be granted or refused
- statutory criteria for decision-making should be provided
- a requirement that approval must not be unreasonably refused should be specified

Steps should also be taken to strengthen oversight of asset management by registered agencies and pave the way for a less restrictive approach over time. All registered agencies should be required to develop and maintain an up-to-date asset and liabilities register, which records details of ownership, associated debt, property status as social or affordable (or market), obligations related to use, building condition, maintenance plans and tenancy obligations. This is good practice in asset management and would enable the regulator to oversee asset management and disposals.³¹⁸

If some controls and oversight from Homes Victoria are still required, a hybrid system should be considered in the interim. For example, in Scotland the social housing regulator approves the disposal of housing land or assets and may give general consents for disposals (such as to specified providers, for particular land or particular classes of disposals), and may attach conditions to consent. Certain types of asset disposals do not require consent and the registered agency must simply notify the regulator.³¹⁹ There is also an obligation on the provider to consult with their tenants about proposed property disposals. The English social housing regulatory scheme also requires the regulator to be notified of asset disposals and empowers the regulator to intervene in certain circumstances.³²⁰ These laws provide a useful model for Victoria.

In all cases, registered agencies should work closely with affected tenants throughout any development or renewal process, to ensure the plans consider tenants' individual needs and views, and they are not forcibly displaced from their homes, support networks and communities. If implemented effectively, this report's recommendations for a tenant-centred

system should address the risk of poor outcomes for tenants from housing upgrades and renewal projects.

Recommendation 6.5: Expedite land transaction approvals as a step towards enabling a portfolio management approach

Amend legislation to:

- require Homes Victoria to grant or refuse approval for land transactions within 30 days of receiving a written request from a registered agency
- introduce statutory criteria for decision making
- provide that approval cannot be unreasonably refused.

Consider replacing the requirement for Homes Victoria approval with a more flexible system overseen by the regulator, modelled on the Scottish regulatory approach.

Recommendation 6.6: Registered agencies to develop and maintain an up-to-date assets and liabilities register

Require registered agencies to develop and maintain an up-to-date assets and liabilities register that contains details of property ownership, associated debt, status as social or affordable or a mix, obligations related to use, building condition, maintenance plans and tenancy obligations.

6.2.5 Clarify and strengthen the role of regulation in supporting growth

When the current regulatory system for community housing was created, the government's aspiration was to stimulate growth in social housing through the community housing sector, by providing assurances to investors of the capacity and capability of the sector to provide housing, via its oversight of governance and financial viability.³²¹

The role the regulator and regulation play in supporting or promoting growth of a sector should be specified by government, because the regulator needs clear policy settings to guide its actions. The objective of the regulatory scheme under the Housing Act is to encourage the development of registered agencies to deliver secure and affordable housing solutions that serve the housing needs of low-income tenants by providing for registration of rental housing agencies and the regulation and monitoring of those agencies.³²²

As noted earlier, this objective describes the function of regulation but does not explicitly guide the regulator. It is recommended that the objective of the regulatory scheme be to promote and safeguard the interests of current and prospective tenants (Chapter 1). In doing this, the regulator would have clear regard to the future supply of social and affordable housing.

Supporting documentation could also include principles to guide the regulator's strategy and functions, which could include encouraging appropriate growth in social and affordable housing stock, while considering the long-term financial health and viability of registered agencies.

At a minimum, it is reasonable to expect that publicly funded entities appropriately preserve the value of their stock and use surpluses to reinvest in more social housing. This is consistent with recommendation 6.6 for registered entities to maintain an assets and liabilities register.

Registered agencies should also be required to articulate their intentions in relation to growth of housing stock, and report on progress, to ensure that exploring opportunities to increase social housing stock remains a priority of their boards. This might encourage some smaller registered agencies to seek to join forces with another agency that shares their mission and values, to build their capacity for growth over time.

Removing the Housing Act's distinction between registered housing associations and registered housing providers would dispel the impression that smaller organisations should not consider growing their stock to meet community need (Recommendation 7.3). Instead, the regulator should continue to develop a tailored approach to risk assessment focused on the registered agency's individual risk profile.³²³

The regulator should conduct research and communicate with stakeholders, including investors, to build their knowledge and understanding of the sector in Victoria.

Policy and planning must factor in a longer time horizon. Housing providers (and investors) require certainty in relation to funding and clear guidance based on data, which identifies where social and affordable housing will be required and for whom.

The Victorian Government must also consider the ways in which Victoria's social and affordable housing sector will need to develop to deliver on these future needs. Today's policy and funding decisions will influence the number and size of providers, the degree of provider specialisation, and their incentives to manage costs and pursue efficiency and growth. The Panel is aware that contracts have 20-to-30-year commitments (or longer), but it is unclear whether consideration has been given to these matters.

Recommendation 6.7: Strengthen the regulator's role in supporting growth

- Include principles in the regulatory framework to guide the regulator's strategy and functions, to encourage appropriate growth in social and affordable housing stock, while ensuring the long-term financial health of registered providers.
- Ensure the regulator develops a tailored approach to risk management, based on the individual risk profile of registered agencies.
- Require registered agencies to articulate strategies in relation to growth of stock and report on progress.
- Include a statutory function for the regulator to conduct research and inquiries to promote continuous improvement in regulatory practice; and engagement with tenants, providers and other stakeholders, including investors.

6.2.6 Changes to the NRSCH are needed

The Terms of Reference for this Review require consideration of whether Victoria should join the NRSCH. In this chapter the NRSCH is considered in the context of whether joining would support and facilitate growth in social and affordable housing in Victoria.

A fit-for-purpose national system could facilitate growth in social and affordable housing stock, both in Victoria and nationwide. Such a system has the potential to encourage investment and the development of more providers capable of operating at scale across multiple jurisdictions. However, there were several reasons why Victoria decided not to participate when the scheme was established in 2013, including that it was not seen to adequately protect Victoria's investment in the community housing sector. This remains an issue, along with differences in relation to regulatory scope, the regulator's powers and the lack of an effective governance structure in the NRSCH.

The reforms recommended by this Review for Victoria are also relevant to consideration of the NRSCH, in particular, the need for a greater focus on system users (tenants), and improved service delivery and dwelling standards. Participants to the recent review of the NRSCH flagged many of the same issues, including issues with communication, duplication, tenant empowerment and dispute resolution.³²⁴ Groups representing tenants and people experiencing homelessness were generally opposed to joining the NRSCH, citing a lack of tenant focus and outcomes.³²⁵

Detailed analysis of the current differences between the Victorian regulatory framework and the NRSCH would be required, particularly around the different scopes of the regimes and the intervention powers of the regulator. There is also a need to thoroughly examine the concerns raised in previous reviews about the overall governance and effectiveness of the national system with a view to finding practical solutions. A 2017 assessment by Australian Housing and Urban Research Institute noted that:

“National regulation has so far failed to achieve Australia-wide coverage, lost all momentum, and become isolated from policy developments. A thorough review of the system is therefore timely. This should encompass the system's governance arrangements and its proper remit, as well as performance standards, compliance guidance, and ‘tiers’ framework. Also relevant is the growing administrative burden experienced by some providers due to contractual requirements being overlaid on formal regulation. Perceived organisational capacity limitations within housing registrar offices need to be addressed.”³²⁶

Similar concerns have been raised by the Affordable Housing Working Group in the context of maximising the effectiveness of the bond aggregator, and the National Housing Finance and Investment Act Review. The Affordable Housing Working Group highlighted the need for greater oversight of the governance and financial activities of community housing agencies, as well as a more consistent application of the system across NRSCH jurisdictions. They expressed a preference for a single national regulator.

A review of the NRSCH commenced in 2018 and culminated in an options paper released in June 2020. That review presented an opportunity to address some of the concerns raised about the NRSCH. However, as yet, no changes have been made as a result of the review, and the above issues remain.

Given the acute need to increase social and affordable housing stock and the growth of more complex financing models promoted by NHFIC, there may be support from other jurisdictions for a fresh effort to review the NRSCH to examine the best model for an effective tenant-focused co-operative national regulatory scheme which can adapt to the changing financing environment. This cannot be achieved by the regulators alone, as it requires dedicated national regulatory and policy work with active engagement from senior officials and stakeholders in all jurisdictions.

A strong in-principle commitment by governments to a genuine national regulatory system would be required for progress to occur, and all jurisdictions would need to commit resources to the process.

Recommendation 6.8: Create a pathway for Victoria to join the National Regulatory System for Community Housing

Commence discussions with the National Regulatory System for Community Housing (NRSCH) jurisdictions to identify opportunities for closer alignment of provisions, streamlining of registration requirements and greater consistency in data and performance reporting.

Recommend to NRSCH jurisdictions and the Commonwealth Government that a fresh policy review, aimed at creating an effective and tenant focused national regulatory system be conducted in consultation with key stakeholders in the system.

Key features that Victoria would be seeking in the first instance include:

- an agreed set of contemporary national standards that are tenant centred, and give prominence to tenant voice
- standards for the safety of properties (especially fire safety) and Aboriginal cultural safety
- an effective governance framework that ensures consistency is achieved and maintained over time, and any changes can be progressed and endorsed by participating governments in a timely way
- agreement on the scope to retain some jurisdictional differences (for example, if jurisdictions choose to regulate public housing, it would be outside the NRSCH).

Key technical and policy issues to be considered by any new national review include:

- adequacy of the primary regulator model for effective regulation of providers operating at scale across multiple jurisdictions, and issues regarding line of sight for local regulators of providers operating in their jurisdiction
- retaining investments of state/territory governments for the benefit of the residents of that state/territory
- adequate regulation of complex multiparty special purpose vehicles and for-profit providers
- registration of for-profit providers of social housing.



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- ²⁹⁰ Australian Government, The Treasury. 2021. *Statutory Review: Operation of the National Housing Finance and Investment Corporation, Final Report*, p. 30, The Treasury.
- ²⁹¹ Infrastructure Victoria. 2021. *Victoria's infrastructure strategy 2021-2051, Volume 1*, p.190, Infrastructure Victoria, Melbourne.
- ²⁹² Housing (Housing Agencies) Bill 2004, *Second Reading Speech*, The Hon Bronwyn Pike, MP, Minister for Health, Victorian Hansard, Legislative Assembly, 18 November 2004, p.1732.
- ²⁹³ Australian Government, The Treasury. 2021. *Statutory Review: Operation of the National Housing Finance and Investment Corporation, Final Report*, pp. 18 and 34, The Treasury.
- ²⁹⁴ Australian Government, The Treasury. 2021. *Statutory Review: Operation of the National Housing Finance and Investment Corporation, Final Report*, p. 15, The Treasury.
- ²⁹⁵ Australian Government, The Treasury. 2021. *Statutory Review: Operation of the National Housing Finance and Investment Corporation, Final Report*, p. 23, The Treasury.
- ²⁹⁶ Lawson, J., Pawson, H., Troy, L., van den Nouwelant, R. and Hamilton, C. 2018. *Social housing as infrastructure: an investment pathway*, AHURI Final Report 306, p.82, Australian Housing and Urban Research Institute Limited, Melbourne, available at: <http://www.ahuri.edu.au/research/final-reports/306>, doi:10.18408/ahuri-5314301.
- ²⁹⁷ Australian Government, The Treasury. 2021. *Statutory Review: Operation of the National Housing Finance and Investment Corporation, Final Report*, p. 24, The Treasury.
- ²⁹⁸ Social Housing Regulation Review, roundtable meeting: 'The role of regulation in sector growth', held on 25 March 2022.
- ²⁹⁹ The Box on page 17 of the Review's Consultation Paper 3 (Social Housing Regulation Review. 2021. *Social Housing in Victoria, Consultation Paper 3: The role of regulation in sector accountability, viability and growth*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>), provides an overview of the NRSCH, and some of the key differences between the NRSCH and Victoria's regulatory regime.
- ³⁰⁰ These reasons were noted by the Government in a letter to the community housing sector. See, Community Housing Industry Association Victoria. 2019. *Review of the National Regulatory System for Community Housing, The Community Housing Industry Association (CHIA) Submission on the Discussion Paper*, available at: <https://www.facs.nsw.gov.au/about/reforms/NRSCH/review-of-the-national-regulatory-system-for-community-housing>.
- ³⁰¹ Australian Government, The Treasury. 2021. *Statutory Review: Operation of the National Housing Finance and Investment Corporation, Final Report*, p. 26, The Treasury
- ³⁰² YWCA Australia. n.d. *YWCA response: Review of the National Regulatory System for Community Housing*, p.4, available at: https://www.facs.nsw.gov.au/_data/assets/pdf_file/0006/672918/YWCA.PDF
- ³⁰³ Council on Federal Financial Relations, Affordable Housing Working Group. 2016. *Innovative Financing Models to Improve the Supply of Affordable Housing*, available at: https://treasury.gov.au/sites/default/files/2019-03/C2016-050_Final_report.pdf.
- ³⁰⁴ Australian Government, The Treasury. 2021. *Statutory Review: Operation of the National Housing Finance and Investment Corporation, Final Report*, p. 26, The Treasury.
- ³⁰⁵ Community Housing Industry Association (Interim Report submission 4, p. 3).
- ³⁰⁶ There are about 20 providers within the NRSCH that operate across jurisdictions. While several of these operate only across the NSW and ACT border, many (such as Community Housing Limited, Uniting and Mission Australia) already operate subsidiaries within Victoria, which suggests it is not an insurmountable barrier.
- ³⁰⁷ *Housing Act 1983* s.132
- ³⁰⁸ Social Housing Regulation Review. 2021. *Review of Social Housing Regulation: Aboriginal Victorians and Social Housing Regulation: Findings and Options*, pp. 9–16, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.
- ³⁰⁹ Aboriginal Housing and Homelessness Forum (Interim Report submission 26).
- ³¹⁰ Aboriginal Housing and Homelessness Forum (Interim Report submission 26).
- ³¹¹ The Indigenous Governance Toolkit is an on-line resource to assist Aboriginal organisations and communities develop effective fit for purpose governance and is available at: <https://toolkit.aigi.com.au/>.
- ³¹² Housing for the Aged Action Group (Interim Report submission 14).
- ³¹³ *Housing (Scotland) Act 2010*, s.3(2); *Housing and Regeneration Act 2008 (UK)*, s.92K(5). The English legislation is expressed differently but has a similar intent. It requires the regulator to exercise its functions in a way that (a) minimises interference and (b) so far as is possible is proportionate, transparent, consistent and accountable.
- ³¹⁴ The definition of a service user in s.3 of the *Social Services Regulation Act 2021* includes a person experiencing or at risk of homelessness.
- ³¹⁵ *Social Services Regulation Act 2021*, ss.8 and 13.
- ³¹⁶ *Food Act 1984*, s.63B.
- ³¹⁷ *Housing Act 1983* ss. 107–111.
- ³¹⁸ Lawson, J., Milligan, V. and Davies, L. 2022. *Options for regulating the good growth of Victoria's social and affordable housing*, (unpublished paper).
- ³¹⁹ *Housing (Scotland) Act 2010*, Part 9.
- ³²⁰ *Housing and Regeneration Act 2008 (UK)*, s.176.

³²¹ Housing (Housing Agencies) Bill 2004, *Second Reading Speech*, The Hon Bronwyn Pike, MP, Minister for Health, Victorian Hansard, Legislative Assembly, 18 November 2004, p.1732.

³²² *Housing Act 1983*, s.73.

³²³ Housing for the Aged Action Group (Interim Report submission 14).

³²⁴ NRSCH Review Working Group. 2019. *Discussion Paper. Consultation Summary Report: The Review of the National Regulatory System for Community Housing (NRSCH)*, pp. 3-5, NSW Government Department of Communities & Justice.

³²⁵ For example, Victorian Council of Social Service (submission 39, p. 24); Tenants Victoria (submission 29, pp. 30-31); Victorian Public Tenants Association (submission 60, pp. 35-36); Council to Homeless Persons (submission 36, p. 9).

³²⁶ Milligan V., Pawson, H., Phillips, R. and Martin, C. with Elton Consulting. 2017. *Developing the scale and capacity of Australia's affordable housing industry*. AHURI Final Report No. 278, Executive Summary, p.6, Australian Housing and Urban Research Institute Limited, Melbourne, available at: <http://www.ahuri.edu.au/research/final-reports/278>, doi:10.18408/ahuri-7108402.

7. An independent regulator for the social and affordable housing sector

Key issues

- Driven by the landmark Big Housing Build, Victoria's social housing sector is changing rapidly, but the current regulatory system was designed in and for a different era.
- The Victorian Housing Registrar is a small regulator with a legal form and structure designed to regulate a nascent community housing sector. The Registrar's structure and governance arrangements do not equip it to perform the new regulatory roles and responsibilities recommended in this report, or to meet changing expectations.
- At present, both the regulatory system and the regulator are provider focused, rather than tenant focused.
- The financial models for social housing, and providers' legal entity structures are growing in complexity, creating significant challenges for the regulatory system.
- Although Homes Victoria is the state's largest social housing landlord, it is not subject to regulation, and comparisons of the performance of social housing providers across the system are not possible.
- Reforms should:
 - establish a strong, independent and sophisticated regulator that can deliver the ambitious reform agenda outlined in this report and play a leadership role to drive continuous improvement across the sector
 - embed a dedicated function for Aboriginal housing providers in the regulator, performed by Aboriginal staff members
 - create mechanisms for greater transparency and stronger accountability across the social housing system (Chapter 5)
 - bring public housing provision into the scope of regulation (Chapter 2)
 - ensure the regulator and social housing providers build effective structures and processes, to obtain ongoing feedback and input from current and prospective tenants to inform service delivery, asset management, monitoring, policy and planning (Chapter 1)
 - give the regulator enhanced powers, including power needed to effectively regulate multiparty special purpose vehicles with complex legal entity structures (Chapter 5).
- The *Housing Act 1983* gives Homes Victoria regulatory powers over registered housing agencies. Ideally regulation would be the sole domain of a social and affordable housing regulator.
- The Housing Act is outdated and does not reflect the focus on growing social and affordable housing through the community housing sector. There is a case for a wider review of the Act to complement the regulatory reforms recommended in this report.

7.1. What is the problem?

The recommended changes to the social and affordable housing regulatory framework and the regulator are required to respond to a changing environment, to perform an expanded set of functions, and make the culture shift to a client-centred system.

The Panel has heard that the Housing Registrar has competently regulated the community housing sector under the existing regulatory framework, and has striven to improve its approach to regulation over time, within the constraints of its functions, size and resources.³²⁷ Community housing organisations have described the Registrar and staff as approachable and responsive, although some Aboriginal organisations indicated that the Registrar has had a low profile among Aboriginal Community Controlled Organisations, and they would prefer direct outreach.³²⁸

The Registrar has also been required to manage a complaints function with a specific jurisdiction, causing confusion and frustration for complainants and tenant advocates, but nonetheless generating a significant workload for staff of the Registrar's office and diverting it from its primary activities.

While the original reasons cited for establishing the regulatory framework for community housing included a desire to promote growth and diversity in social housing,³²⁹ the legislation does not give the regulator any explicit objectives or functions with respect to promoting social housing growth. Distinguishing between housing associations and housing providers,³³⁰ it gives the impression that only housing associations should focus on growth in social housing stock. Consequently, it is not possible to make judgements about whether a different regulatory approach might have resulted in more growth than has been the case, prior to the Big Housing Build.

Over the past year, the Housing Registrar has been required to respond to emerging models for social and affordable housing finance, which have progressed ahead of changes to the regulatory regime, and it appears to have had little capacity to influence these developments.

With additional resources, the Registrar could take on some of the functions recommended by the Panel, such as the implementation of new social housing dwelling standards and Aboriginal cultural safety standards (Chapter 3). However, there is a compelling case for change in its form and location for several reasons, including that:

- the community housing sector is set to change significantly, as will the economic regulation task. Procurement and provision of social housing is increasing in complexity with diverse entity types seeking registration. The need to ensure value for money from public investments, not least the \$5.3 billion being invested in the Big Housing Build, is critical
- it is recommended the regulator would take on the task of overseeing public housing provision (service delivery and asset management)
- a shift to tenant-centred regulation is being recommended, which would entail a significant cultural shift, and the development and implementation of tenant consultation infrastructure in various forms.

This means effective regulation of social housing will need:

- a high degree of structural and operational independence to enable the regulator to be, and be perceived as, an impartial regulator of both Homes Victoria public housing activities and non-government organisations

- the strength and authority to regulate more complex provider (and financing) arrangements, involving more powerful stakeholders
- stronger capability in both consumer and economic regulation
- to enable effective engagement with tenants across the state
- to enable the regulator to undertake a program of property inspections to supplement data monitoring and reviews, and to commission forensic financial and performance audits where required
- the capacity to play a leadership role in driving Aboriginal cultural safety across the sector.

For regulatory reform to be effective and deliver ongoing public benefits, it is essential that the regulator is structured, governed and adequately resourced to perform the expanded functions and activities efficiently, and to drive necessary cultural change (Appendix E).

The expansion of the regulator's scope to include public and affordable housing, as appropriate to each, will coincide with a major cultural shift from a system focused on providers, to one that is centred on, and informed by, tenants.

To achieve this shift, the regulator will be required to establish and maintain robust processes to obtain structured ongoing input from diverse groups of tenants and their representatives, which will provide the intelligence to enable continuous improvement in social housing services, asset management, monitoring, policy and planning.

Ongoing financial viability of the sector is essential to ensure housing security and quality services for tenants, and protect investments of taxpayer funds in social housing. Victoria's providers of public and community housing currently manage social housing assets worth around \$35 billion, with the Big Housing Build to deliver significant further growth over the next two years. The Big Housing Build has driven the rapid development of complex financing and delivery models, involving multiparty special purpose vehicles and partnerships between registered community housing organisations and the private sector, increasing financial risk and regulatory complexity.

The proposed reform package would include enhanced powers for the regulator to enable monitoring and management of new types of risk presented by this more-complex legal and financial landscape. Financial failure of an entity would have significant impacts on tenants, sector reputation and government, which would be left to pick up the bill.

The Panel previously considered there to be four viable options for the location and governance of an augmented independent sector-wide social housing regulator, which were outlined in its Interim Report, being:

- *status quo – retaining the Housing Registrar, but strengthening its statutory independence by removing the broad power of Ministerial direction and control*
- *transferring social housing regulation to the newly created Social Services Regulator*
- *creating a structurally independent stand-alone statutory authority within the Treasury portfolio governed by an expertise-based board*
- *aligning social housing regulation with the Essential Services Commission (ESC) – an independent multi-sector regulator within the Treasury portfolio, whose objective is to protect the long-term interest of Victorian consumers, with respect to the price, quality and reliability of various essential services, such as energy, water and transport.*³³¹

The fundamental purposes of social housing regulation should remain to drive accountability for use of funds for social housing from the perspectives of system users and the taxpayer; and to build the confidence of investors to invest in the social housing sector. However, changes are recommended to the functions and approach of a sector regulator. An assessment of the current arrangements against relevant best-practice principles for regulatory governance indicates where reform is needed (Table 7.1).

The *Housing Act 1983* does not provide sufficient powers to the regulator to undertake inspections of properties or to commission forensic audits. An effective social and affordable housing regulator will need sufficient resources to enable a risk-based program of proactive and reactive property inspections, as well as enhanced inspection and audit powers and some additional regulatory tools that allow for a more graduated approach to enforcement that can be applied to both government and non-government social housing providers.

The Housing Act confers regulatory powers on Homes Victoria, giving it scope to exercise influence over the performance and viability of registered housing agencies. There is a case for review now that social housing is increasingly being delivered and operated by independent not-for-profit organisations, and where investment is being sought from both not-for-profit and for-profit sector partners. Unlike contemporary legislation creating statutory bodies, the Housing Act does not clearly articulate Homes Victoria’s functions. The Act is outdated and, despite major changes in the housing ecosystem over the past four decades, has had little substantive change since it was enacted in 1983.

Table 7.1: Assessment of options for regulator governance and location against best-practice principles for regulation

Relevant governance principles for regulators	Housing Registrar (status quo)	Essential Services Commission	Independent statutory authority	Social Services Regulator
1. Suitable legal form for a regulator that can affect the financial viability and reputation of regulated social housing providers	✓	✓✓	✓✓	?
2. Structural and operational independence to impartially regulate both government and non-government organisations	X	✓✓	✓✓	?
3. Access to resources, skills and expertise as an economic and consumer regulator and a good fit with any other regulatory functions	✓	✓✓	✓	X
4. Fit for purpose governance for complex decision making (i.e. a multi-member decision maker)	X	✓✓	✓✓	X
5. Strength and authority to regulate powerful stakeholders with significant influence and resources	X	✓✓	?	?
6. Sophisticated understanding of vulnerable consumers	?	✓✓	✓✓	✓
7. Drives public accountability for regulatory approach, decisions and use of public funds	✓	✓✓	✓✓	X

7.2. What is recommended and why

A number of inquiries over the past decade³³² have highlighted various examples of regulator failure due to multiple causes, including confused objectives, poor governance and culture, and a lack of willingness or capability to exercise regulatory powers when needed. Poorly conceived structural and governance arrangements can be costly to the community, by undermining the effectiveness and reputation of regulators and the achievement of the objectives of regulation.

Conversely, good governance provides the foundation for high performance. It strengthens community confidence in regulators, enabling them to perform efficiently and effectively, and to respond strategically to challenging demands.³³³

In weighing up the various options, the Panel has taken into account well-established principles for best-practice structure and governance of regulators, including role clarity, independence, accountability for performance of regulatory functions and use of public funds, and fit-for-purpose enabling legislation.³³⁴ Important factors to be considered are the degree of independence required to fulfil the particular regulator's functions, and whether the regulator's structure should provide for individual or collective decision-making.

Recommendation 7.1: Establish an independent social and affordable housing regulator

Establish an independent social and affordable housing regulator with the following capabilities and governance features:

- Capabilities include:
 - the independence, authority and leadership capability to effectively regulate a complex provider environment, encompassing public and community housing, and other forms of government-subsidised rental housing
 - strong capability to implement client-centred regulation, including for the development and implementation of system-user consultation structures that inform regulator priorities and system-design decisions
 - access to skilled staff and expertise to enable it to perform all aspects of its role effectively. The specialist skills to regulate complex entities and investment models are essential
 - a dedicated function for Aboriginal housing staffed by Aboriginal people.
- Governance features include that the regulator:
 - is (or forms part of) a statutory body with functions and powers specified in legislation
 - has structural independence, in that it is not subject to broad powers of Departmental or Ministerial direction and control
 - is adequately resourced to perform functions efficiently and is not dependent on a host department for core services such as legal advice and communications
 - has a multi-member decision-making structure, including an expertise-based board
 - has a clear published approach to regulation, including how and when powers will be exercised
 - is subject to administrative and judicial review of significant regulatory decisions and public accountability via reporting
 - has clear objectives and sufficient powers to perform its regulatory functions effectively.

After further consultation with stakeholders and assessment of the options against the best practice features in Table 7.1, it appears that formation of a statutory authority or the integration of a dedicated social housing function in the ESC could fulfil the needs of the social and affordable housing regulator. In either case, it is envisaged that existing Housing Registrar staff and operations would be retained to form the core of the new regulator.

7.2.1 Option 1: An independent statutory authority within the Treasury portfolio

An independent statutory authority within the Treasury portfolio would give the regulator greater structural independence than the Housing Registrar currently has as a team embedded in the Department of Treasury and Finance (DTF). For efficiency the regulator would need to rely on shared corporate services and facilities which could continue to be supplied by DTF. The

regulator would remain a small entity under this option (even after factoring in the added resources required to perform its expanded functions).

As the Panel noted in its Interim Report,³³⁵ the benefit of a stand-alone regulator is deep specialist sector knowledge and expertise. The potential downsides are a risk of insularity, and that the regulator could become too close to the sector. Small regulators face challenges, particularly in regulating large or influential entities, and this is especially the case where regulations are outcomes based, require judgement in their interpretation, and where regulatory decisions may be challenged.³³⁶ Measures would need to be put in place to safeguard against this.

The Panel recommends a multi-member, expertise-based board to enable the regulator to benefit from multiple perspectives and expertise, with the capacity to delegate regulatory decision-making to staff of the authority. This is the model that applies to social housing regulators in England and Scotland, and the Panel considers it should be adopted, if the government decides to create a stand-alone regulator. The board should constitute individuals with expertise relevant to the regulator's functions, including lived experience, Aboriginal housing, social and affordable housing, finance, law, regulation, and community engagement.

7.2.2 Option 2: Integration in the Essential Services Commission

The Panel considers that integration into the ESC would also give the social and affordable housing regulator structural independence, as well as the scale, and authority of an established multi-sector economic regulator.

The ESC has proven experience and capability in regulating government and former government bodies, as well as private sector providers of essential services. Regulation of both Homes Victoria (public housing provision) and non-government providers of social housing requires considerable skills of the kind used by the ESC in its dealings with large infrastructure providers.

The ESC is an established economic and consumer protection regulator with strong core skills in economic and financial analysis, which will be important to assess providers' financial risk in an environment of rapid growth, and increasingly complex financial and legal arrangements for social housing delivery.

It has developed a sophisticated understanding of consumer vulnerability and an ongoing commitment to achieving outcomes for the community, informed by an engagement strategy with a specific focus on vulnerable consumers.³³⁷ Given the overlap in the cohort of consumers experiencing vulnerability across both housing and utilities, the ESC offers an understanding of the issues facing these consumers, and there is considerable scope for synergies in adding social housing regulation to its remit.

The ESC is well regarded by consumer research and advocacy organisations. The Consumer Policy Research Centre³³⁸ noted that the ESC is a strong regulator that is well placed to consider the cross-sectoral impacts of social housing policies and commented that the ESC is doing significant work examining consumer vulnerability through its *Getting to Fair* strategy.

Safe and Equal, a peak body representing family violence victim survivors in Victoria, positively described its experience of working with the ESC, and how the ESC has played a leading role in supporting water and electricity businesses to respond to customers experiencing family violence and hardship in general. Safe and Equal commented that there is scope to learn from the ESC's experience to inform social housing regulation.³³⁹

From a practical perspective, a dedicated commissioner for social and affordable housing could be introduced to the ESC (a position equivalent to the existing Housing Registrar), and a social

and affordable housing division created (drawing on the existing office of the Housing Registrar in DTF). In addition to the commissioners as the regulatory decision-makers, a principal advisory committee could be put in place to inform strategy and assist the dedicated commissioner to build structures for engagement with social housing tenants and providers.

The Panel is aware that the ESC already has regulatory functions conferred on it under various statutes and regulations and adapts its regulatory approach as required for diverse industry sectors. It does not envisage that any material changes to the *Essential Services Commission Act 2001* would be needed.

7.2.3 Why retaining the Housing Registrar in its current form and location is not recommended

A regulator of both government and non-government organisations requires a high degree of structural and operational independence as well as strength, expertise and accountability. To ensure public credibility and confidence in the regulatory system, the Panel recommends that the regulator should not be located within a state government department and agrees with the views of the Victorian State Service Authority that:

“Because of the direct, hierarchical nature of ministerial control over departments, regulators established as units within departments are inherently ‘closer’ to ministers. More independent regulators can be created through the creation of separate statutory bodies with distinct, establishing legislation governing the regulator’s objectives, powers and functions and limiting the extent of ministerial control over decision-making.”³⁴⁰

Simply expanding the Housing Registrar’s scope, powers and resourcing, and strengthening its independence by removing the power of Ministerial direction and control would not deliver the step change that the proposed reform agenda is designed to achieve. Homes Victoria is by far the state’s largest social housing provider and the largest single housing provider, with a public housing portfolio valued at \$31 billion, housing almost 120,000 people.³⁴¹ As such, it will be perceived to have considerable influence within government, and there would be significantly greater potential for real or perceived conflicts to arise between the interests of the regulator and those of DTF or its Secretary.

7.2.4 Why the Social Services Regulator is not recommended for oversight of social and affordable housing

For the reasons outlined in the Review’s Interim Report,³⁴² the Panel does not recommend merging the social housing and social services regulators. The Social Services Regulator’s functions, once established, will centre on protecting vulnerable clients of community services from abuse and neglect. It is not an economic regulator and would not attract the staff with the deep skills and expertise in financial analysis and understanding of social housing finance required to perform the financial monitoring functions. There is a risk that economic regulation would be deprioritised in this environment.

At a time when Homes Victoria is involved in a long-overdue range of innovative, but complex programs, designed to rapidly grow the stock of social and affordable housing, it is imperative that the new regulator possesses strong economic and financial expertise.

Legislation establishing the Social Services Regulator was passed in August 2021, and it is expected to commence operation in 2023. Its scope is already broad, encompassing various diverse social services, including child protection and private-sector-supported residential

services. An appointment to the statutory role of Regulator is not expected until mid-2022 and new social services standards are currently under development.

The Social Services Regulator will take some time to establish itself and build the systems to meet its obligations under the new legislation. In this environment, the addition of social and affordable housing regulation would place substantial pressure on the new regulator and detract from the effectiveness of both social and affordable housing, and social services regulation. However, there is scope for information sharing between the regulators to reduce duplication (Chapter 6).

It is also essential that the social and affordable housing regulator remains separate from the Department of Families, Fairness and Housing to avoid any perception that it or Homes Victoria have the capacity to influence its decisions.

7.2.5 Costs and transition considerations

Regardless of which option is chosen, extra resources will be required to equip the regulator to perform its expanded and ongoing regulatory functions effectively and efficiently. The increased resources reflect the scale and nature of growth in social and affordable housing.

Under the recommended model the regulator would no longer be responsible for dealing with complaints (Chapter 4), which would free up resources. However, both of the options outlined above would require additional staffing for the expanded regulatory functions and the structures for tenant engagement. The regulator will also need financial capacity to procure expert audit, financial and legal analysis when needed, and to establish and maintain a program of property inspections, to supplement data monitoring and other forms of regulatory intelligence gathering.

Governance costs for the ESC would include a principal advisory committee with remunerated members, but these costs would be low, as the existing position of Housing Registrar would transform into the additional ESC commissioner. In the case of a stand-alone regulator, governance costs would include the appointment and remuneration of a board, a chief executive officer and a board secretary or corporate counsel, as well as its own legal and communications staff.

Any change to organisational arrangements will involve transaction costs, disruption and uncertainty for those affected, but the Panel considers that the long-term benefits of the proposed change will outweigh the short-term costs. It will be important to maintain the effective operation of existing regulatory functions, while taking the necessary steps towards a smooth transition to the new regulatory environment, and to ensure that the valuable skills and sector knowledge possessed by the Housing Registrar and the staff of the Registrar's office are retained. More dedicated change management resources would likely be needed to support the transition process.

Finally, given that social housing is not a viable commercial product without subsidy, a user-pays model to fund the regulator is not recommended at present. This arrangement could be reviewed over time as the sector transforms, to determine whether it may be appropriate to introduce some level of cost recovery from regulated entities.

7.2.6 Enhanced regulatory approach and regulatory tools

An effective social and affordable housing regulator will need sufficient resources to undertake a program of property inspections, as well as some additional regulatory tools to allow for a more graduated approach to enforcement.

In reforming Victoria's regulatory system, there is an opportunity to learn from the English experience. Following the Grenfell tower tragedy in London, the government's Social Housing

White Paper³⁴³ acknowledged that the current regime of consumer regulation is not sufficiently strong³⁴⁴ and outlined reform proposals to establish a new, proactive consumer-focused regulatory function while maintaining an overall approach to regulation that is risk-based and co-regulatory.³⁴⁵ The English Government announced a Bill to implement the White Paper's recommendations.³⁴⁶

The White Paper emphasises the need for the social housing regulator to undertake routine inspections to obtain assurance that landlords are complying with the enhanced consumer standards, as well as specific reactive inspections and investigations where appropriate (for example, where serious potential compliance breaches have been brought to the regulator's attention by tenants or the English Housing Ombudsman).³⁴⁷

While implementing an inspection program would require additional resourcing, it would give the regulator a rich source of intelligence to adequately monitor performance and manage risks as the sector grows. Although there are currently some powers in the Housing Act that enable the Housing Registrar to carry out inspections, including power to enter premises and seize and copy documents and question those involved in the activities of housing agencies,³⁴⁸ these are geared towards enabling the Registrar to access providers' records and information rather than to enable inspections of the standard of tenants' homes.³⁴⁹ There is a need to review these provisions and to make changes to clearly authorise the regulator to conduct routine inspections of tenants' homes with tenants' consent, as well as reactive inspections where the regulator has a reasonable belief there may be non-compliance with standards. As noted in Chapter 5, the regulator will also need enhanced powers to conduct or commission forensic audits and examine the flow of money between related entities in complex, multi-party arrangements where required.

Recommendation 7.2: Resource a program of inspections and enhance the regulator's inspection and audit powers

Resource and implement a program of proactive routine property inspections as well as reactive inspections and investigations.

The regulator's current monitoring and enforcement powers should be amended to ensure that they are fit-for-purpose to enable it to conduct routine and ad hoc inspections of rented properties and conduct or commission forensic audits where required (Recommendation 5.1)

The English Social Housing White Paper proposed that the inspection regime be based on risk-profiling, to ensure that those landlords at greatest risk of failing, or where failure might have the greatest impact on tenants, are subject to greater oversight.³⁵⁰ A risk-profiling approach is appropriate as it allows for efficient regulation and acknowledges that risk is not solely a consequence of the size and scale of a housing provider's activities. Therefore, this report recommends removing the current statutory distinction between housing associations and housing providers to enable a more nuanced approach to regulation based on provider risk profiling.

Recommendation 7.3: Remove the statutory distinction between housing association and housing provider

Remove the statutory distinction between housing association and housing provider under section 85 of the *Housing Act 1983*, to facilitate an approach to regulation and inspections based on provider risk-profiling.

The White Paper also proposed that, where a clear case of non-compliance is detected, the regulator will publish the outcome of its inspection and take appropriate enforcement action. For non-government providers, the White Paper proposed that the regulator may go further and seek assurance about the adequacy of the provider's governance arrangements.³⁵¹

Publication of regulatory actions is important for transparency and to enable a history of providers' performance to be visible over time. Victoria also needs a more graduated set of regulatory tools to allow for the imposition of appropriate and proportionate sanctions for breach of standards or the legislation, with sanctions that can be imposed on both public and non-government providers, if required. At present, the Housing Registrar only has powers to intervene in the agency's governance or to deregister an agency,³⁵² and lacks intermediate regulatory tools such the power to impose fines or improvement notices.

In England, there are proposals to amend legislation to increase the level of fines that may apply to providers and require them to implement performance improvement plans. The capacity to issue performance improvement notices and requirements for performance improvement plans would be valuable additions to the Victorian regulator's toolkit and consideration could also be given to introducing a power to levy fines. The Panel envisages that the regulator would continue to adopt a graduated and proportionate approach to regulation and would only impose these measures where necessary, in accordance with its published regulatory strategy. The English government also indicated that it plans to give the English social housing regulator an additional power to arrange emergency repairs to properties where a survey uncovers evidence of systemic landlord failures.³⁵³ However, specific consultation would be required to ascertain whether such a power should be introduced in Victoria, so it is not recommended at this time.

Recommendation 7.4: Enhance the tools available to the regulator to allow for a more graduated approach to enforcement

Give the regulator the power to issue improvement notices when there have been breaches of regulatory standards and consider introducing a power to levy fines.

7.2.7 Homes Victoria's regulatory functions

This chapter focuses on the structure, governance and powers of a new social and affordable housing regulator, but it is also necessary to consider how the current statutory roles of Homes Victoria (the Director of Housing) under the Housing Act intersect with the regulatory system and influence the performance of community housing agencies.

As well as having power to approve community housing agencies' land transactions (Chapter 6), the Director of Housing has power to make statutory instruments which determine eligibility criteria for social housing, priority categories of applicants and how properties are to be allocated.³⁵⁴ These provisions, together with its contracting powers, give the Director of Housing scope to exercise substantial influence over the performance and viability of registered social housing providers. Under the Housing Act, the Director of Housing is subject to the direction and control of the responsible Minister in performing its functions and exercising its powers.³⁵⁵

The legislative settings that enable these outcomes are less suitable now as social housing is increasingly being delivered and operated by independent, not-for-profit organisations, and investment in social and affordable housing is increasingly being sought from not-for-profit and for-profit sector partners. The Housing Act does not reflect contemporary thinking about best practice governance and regulation, which emphasises clarity of the roles and responsibilities of responsible authorities, public transparency and accountability, separation of regulatory from

policy functions where feasible, and ensuring that legislation and regulations are reviewed periodically so that they are up-to-date.³⁵⁶ Ideally regulation would be the sole domain of the social and affordable housing regulator, and the Director of Housing would not have regulatory or quasi-regulatory powers over registered housing agencies.

It is no longer appropriate for the Director of Housing to have power to make legislative instruments setting the rules for eligibility and allocation of social housing. This is a significant policy function which shapes the social housing landscape and involves making trade-offs between different interests. This function should be vested solely in the responsible Minister. Although the process functions involved in developing proposals for change (including public consultation and cost/benefit analysis of various options) would be performed by a department on the Minister's behalf, decisions would be made by the Minister after considering all the feedback received. The power to develop performance standards would continue to be vested in the responsible Minister.³⁵⁷

Recommendation 7.5: Transfer eligibility and allocations powers to the Minister

Transfer the Director of Housing's power to make legislative instruments determining the rules for eligibility for, and allocation of, social housing to the responsible Minister.

7.2.8 The Housing Act needs modernisation to complement the recommended regulatory reforms

The Housing Act is now substantially outdated as it was written at a time when the state was the monopoly provider of social housing. Despite major changes in the housing eco-system over the past four decades,³⁵⁸ the Act has only been substantially amended twice: to create the regulatory system for community housing in 2004, and to provide for the Victorian Housing Register in 2016.³⁵⁹ Both sets of amendments were built onto the existing legislative framework, and there has been no comprehensive public review of the Housing Act, as a whole, since its inception.

Unlike contemporary legislation creating statutory bodies, the Act does not contain a clear statement of Homes Victoria's functions. Instead, these functions must be inferred from the Act's stated objects in section 6 and the various powers the Act confers on the Director of Housing. However, the Act enables Homes Victoria to perform multiple roles (including public housing landlord, policy setting for both public and community housing, and social housing investor) creating significant scope for conflicts of interest, especially now that growth is being driven through the non-government sector.

Reflecting its early 1980s origins, the Act's objects focus on public housing³⁶⁰ and refer to the then government's aspiration to expand the role of the public sector in the provision of housing.³⁶¹ Although the government's current focus is on achieving growth of social and affordable housing through the community housing sector, including through public, not-for-profit and other private-sector partnerships, this is not visible in the Housing Act.

To complement the regulatory reforms recommended in this report, the Housing Act also needs to be modernized to ensure that the powers, functions and duties of all the institutions in the system are clear and designed to dovetail, rather than duplicate or overlap. It is particularly important that legislation creates a high degree of coherence and complementarity of functions between the social and affordable housing regulator and Homes Victoria. A modernised Housing Act that provides a contemporary legislative framework for social housing would also provide

greater certainty and clarity to the sector about government’s roles, responsibilities and functions going forward.

Finding 7.1: The Housing Act 1983 needs modernisation to complement the recommended regulatory reforms and reflect other changes in the sector

The Housing Act is substantially outdated and focuses primarily on public housing. It does not reflect the current focus on growing social and affordable housing through the community housing sector including through public, not-for-profit and other private-sector partnerships.

There is a case for a review of the Housing Act to complement the reforms to the regulatory system recommended in this report, and ensure clarity, coherence and complementarity of the respective roles and responsibilities of the social and affordable housing regulator and Homes Victoria.



³²⁷ The *Housing Act 1983* currently creates the Housing Registrar as a body corporate with an individual office holder who is appointed by the Governor in Council for a term of up to seven years and is the regulatory decision maker. The Registrar’s office currently has 14 Full Time Equivalent staff located in the Department of Treasury and Finance (DTF) who are DTF employees and ultimately report to the DTF Secretary. Under the Housing Act, the Registrar is subject to the direction and control of the Minister for Housing. It was initially situated within the Department of Human Services which then had responsibility for social housing but was transferred to DTF following an Auditor-General’s recommendation to revise the governance structure to strengthen the Registrar’s autonomy

³²⁸ Community Housing Industry Association Victoria (submission 68, p.5); *Social Housing Regulation Review. 2021. Review of Social Housing Regulation: Aboriginal Victorians and Social Housing Regulation: Findings and Options*, pp. 9–16.

³²⁹ *Housing (Housing Agencies) Bill 2004, Second Reading Speech*, The Hon Bronwyn Pike, MP, Minister for Health, Victorian Hansard, Legislative Assembly, 18 November 2004, p.1732.

³³⁰ *Housing Act 1983*, s.85 and Schedule 7.

³³¹ *Social Housing Regulation Review. 2021. Social Housing Regulation Review Interim Report*, p.66, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

³³² For example, the Banking and Financial Services Royal Commission highlighted deficiencies in the Australian Securities & Investment Commission’s enforcement culture and the Aged Care Royal Commission criticised the Aged Care Quality and Safety Commission’s light touch approach to its regulatory responsibilities. These inquiries have increased the focus on regulator performance and governance. See for example, Noone, C. 2019. Royal commission has changed the landscape for regulators – not just in banking, *The Mandarin*, available at: <https://www.themandarin.com.au/109976-royal-commission-has-changed-the-landscape-for-regulators-not-just-in-banking/>, accessed 3 May 2022.

³³³ Victorian Public Sector Commission. 2013. *Legal Form and Governance Arrangements for Public Entities*, p.5, available at: <https://vpssc.vic.gov.au/resources/legal-form-and-governance-arrangements-for-public-entities-guidelines-revised-may-2013/>, accessed, 3 May 2002.

³³⁴ OECD. 2014. *The Governance of Regulators, Best Practice Principles for Regulatory Policy*, p. 18, OECD Publications, available at: https://read.oecd-ilibrary.org/governance/the-governance-of-regulators_9789264209015-en#page1; New Zealand Productivity Commission. 2014. *Regulatory Institutions and Practices. Summary version*, p.10, available at: <https://www.productivity.govt.nz/assets/Documents/6c8805d9a5/Summary.pdf>

³³⁵ Social Housing Regulation Review. 2021. *Social housing in Victoria, Interim Report*, p. 67, available at: <https://engage.vic.gov.au/social-housing-regulation-review>

³³⁶ For example, a review by Pegasus Economics of the Victorian Game Management Authority's compliance and enforcement function in 2017 noted that the Authority (which was responsible for regulating game hunting) lacked scale and critical mass and, as such was vulnerable to capture by the interests it was seeking to regulate. Pegasus Economics. 2017. *Assessment of the Game Management Authority's compliance and enforcement function*, p.6. available at: https://www.gma.vic.gov.au/__data/assets/pdf_file/0011/481682/Assessment-of-the-GMAs-compliance-and.pdf, accessed 3 May 2022.

³³⁷ The ESC has a strong focus on consumers experiencing vulnerability (whether temporary, long-term or permanent) expressed in its published strategy *Getting to Fair*. This strategy seeks to break down the barriers that consumers experience which prevent them accessing essential services. It highlights the ESC's plan to capture diverse consumer needs both through direct consumer engagement as well as relationship building with consumer and community groups. It articulates the need for regulators to play a greater role in empowering consumers. Consumer vulnerability is stated to be an enduring priority in compliance and enforcement work. (Essential Services Commission.

³³⁸ Consumer Policy Research Centre (Interim Report submission 9, p.6).

³³⁹ Safe and Equal February (Interim Report submission 19, p.11).

³⁴⁰ Victorian State Services Authority. 2009. *Review of the Rationalisation and Governance of Regulators. Final Report*, p. 46, available at: https://www.vgls.vic.gov.au/client/en_AU/search/asset/1267619/0.

³⁴¹ Department of Families, Fairness and Housing. 2022. *DFFH Annual Report 2020-21*, p.9, available at: <https://www.dffh.vic.gov.au/publications/annual-reports-department-families-fairness-housing>.

³⁴² Social Housing Regulation Review. 2021. *Social Housing Regulation Review Interim Report*, pp.66–67, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

³⁴³ Ministry of Housing, Communities and Local Government. 2020. *The Charter for Social Housing Residents Social Housing White Paper*, available at: <https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>

³⁴⁴ Ministry of Housing, Communities and Local Government. 2020. *The Charter for Social Housing Residents Social Housing White Paper*, p. 35, available at: <https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>.

³⁴⁵ Ministry of Housing, Communities and Local Government. 2020. *The Charter for Social Housing Residents Social Housing White Paper*, pp.35–36, available at: <https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper> *The Charter for Social Housing Residents Social Housing White Paper November 2020*.

³⁴⁶ Department for Levelling Up, Housing and Communities. 11 May 2022, *Media release, Government to deliver new deal for renters*, available at: <https://www.gov.uk/government/news/government-to-deliver-new-deal-for-renters>; Department for Levelling Up, Housing and Communities, 2022. *Policy paper: Social housing regulation: draft clauses*, available at: <https://www.gov.uk/government/publications/social-housing-regulation-draft-clauses>.

³⁴⁷ Ministry of Housing, Communities and Local Government. 2020. *The Charter for Social Housing Residents Social Housing White Paper*, p. 37 and p. 74, available at: <https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>. The White Paper proposed routine inspections for the largest landlords with over 1,000 homes with the aim of inspecting these providers every four years to obtain assurance that landlords are complying with the consumer standards.

³⁴⁸ *Housing Act 1983*, ss.112–128.

³⁴⁹ For example, s.117 of the *Housing Act 1983* provides that an inspector may enter any place (other than a residence) and may search for and seize relevant documents or anything the inspector reasonable grounds to be connected with a failure to comply with the regulatory regime.

³⁵⁰ Ministry of Housing, Communities and Local Government. 2020. *The Charter for Social Housing Residents Social Housing White Paper*, p. 37, available at: <https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>.

³⁵¹ Ministry of Housing, Communities and Local Government. 2020. *The Charter for Social Housing Residents Social Housing White Paper*, p. 37, available at: <https://www.gov.uk/government/publications/the-charter-for-social-housing-residents-social-housing-white-paper>.

³⁵² Section 131 of the *Housing Act 1983* gives the Registrar various powers to respond to breaches of the Act, registration criteria or performance standards. These include to give instructions about appointments to the agency's governing body, arrangements the agency should enter into with other registered agencies, the appointment of an administrator, and the winding up and distribution of the agency's assets to another registered agency. Section 141 gives the Registrar the power to revoke the registration of an agency that is non-compliant or insolvent.

³⁵³ Department for Levelling Up, Housing and Communities, 2022. *Policy paper: Social housing regulation: draft clauses —explanatory notes*, available at: <https://www.gov.uk/government/publications/social-housing-regulation-draft-clauses-explanatory-notes>.

³⁵⁴ *Housing Act 1983*, s.142E. The Director of Housing is also responsible for establishing and administering the Victorian Housing Register which is the centralised social housing waiting list under s.142A of the Act.

³⁵⁵ *Housing Act 1983*, ss.10(1),13,19 and 32.

³⁵⁶ See for example, OECD. 2005. *Guiding Principles for Regulatory Quality and Performance*, OECD Publications, available at <https://www.oecd.org/fr/reformereg/34976533.pdf>; OECD 2014. *The Governance of Regulators, Best Practice Principles for Regulatory Policy*, OECD Publications, available at: https://read.oecd-ilibrary.org/governance/the-governance-of-regulators_9789264209015-en#page1; New Zealand Productivity Commission. 2014. *Regulatory Institutions and Practices*, available at: <https://www.productivity.govt.nz/assets/Documents/d1d7d3ce31/Final-report-Regulatory-institutions-and-practices.pdf>

³⁵⁷ *Housing Act 1983*, s.93 empowers the Minister to determine the performance standards and to determine different performance standards for different categories of registered agencies.

³⁵⁸ Major changes to the social housing ecosystem over the past four decades include strong population growth, changes in the housing market and in the profile of social housing tenants, complete overhauls of Victoria's planning system and residential tenancies laws, changes to Commonwealth income support and various Commonwealth-State housing and homelessness agreements.

³⁵⁹ There have also been a handful of other minor 'housekeeping' amendments, the most significant of which was some changes made in 1996 to transfer the Director of Housing's powers regarding the standards of habitation of houses (including power to direct owners to repair or demolish houses unfit for habitation) to local councils.

³⁶⁰ Public Housing is defined as non-profit housing in the public sector *Housing Act 1983*, s.4.

³⁶¹ This included a desire to expand the role of local government in providing housing: "...municipal councils and regional housing councils will be able to be appointed agents of the Ministry in the provision of housing", Housing Bill 1983 *Second Reading Speech*, The Hon Ian Cathie, MP, Minister for Housing, Victorian Hansard, Legislative Assembly Vol 371 August-October 1983, p.651

8. A system that supports those eligible but unable to obtain social housing

Key issues

- Through the *Housing Act 1983*, Victoria's system provides for a layer of consumer protection over and above that provided by the *Residential Tenancies Act 1997* for people who are in social housing.
- Many people in the private market who are eligible for social housing are not covered by the extra consumer protections provided by the Housing Act, because of the hyper shortage of social housing properties in Victoria. The length of the waiting list for social housing, at around 55,000 households, is an indication of this but not a true reflection.
- Despite the fact that housing is essential, the private rental sector does not work well for everyone in the community. Rental housing is mostly provided by small scale investors, who hold properties for investment. Landlords' incentives and expertise do not always align with considerations of tenant wellbeing, particularly for those with additional and complex needs.
- Commonwealth Rent Assistance indirectly supports private rental providers through payments to tenants in Victoria of around \$1 billion per year, although nothing is asked of them in exchange for this support.³⁶²
- There are barriers to vulnerable and disadvantaged tenants in accessing the full range of consumer protections and rights under the Residential Tenancies Act.
- Making assistance available to people on the Victorian Housing Register to obtain appropriate accommodation and supports, and maintain their existing tenancies, could reduce the harm and trauma some applicants experience while waiting for housing.
- A culture shift among private rental providers would help the sector to better cater to people who are vulnerable and disadvantaged. Education and guidance would contribute to this.
- Information on properties and tenancies would facilitate compliance with, and enforcement of, the Residential Tenancies Act by rental providers. This is appropriate for providers of an essential service.

8.1. What is the problem?

Some stakeholders asked why the Panel considered regulatory arrangements that apply to the private rental market. It is because many people who are eligible for social housing are unable to access it due to a shortage of social housing properties. Hence, they are unable to benefit from the extra consumer protections offered by the *Housing Act 1983*. This raises the question of whether this cohort is adequately protected by private rental sector regulations.

The *Residential Tenancies Act 1997* applies a minimum level of regulation to long-term rental housing agreements (with some exceptions). These protections are critical in addressing power imbalances between tenant and landlord (referred to as renters and rental providers under that Act), for reducing transaction costs, and for providing certainty to tenants and landlords.

The Panel commends the recent reforms made to the Residential Tenancies Act. However, there are limitations to the protections that legislation can provide for vulnerable and disadvantaged tenants, because:

- it sets out minimum requirements for rental housing and must be appropriate and proportionate for the over 600,000 households that rent in Victoria
- many vulnerable and disadvantaged tenants struggle to adequately exercise their rights under the Residential Tenancies Act (Chapter 4), and often have limited housing options
- there are few mechanisms in place for monitoring compliance with the Residential Tenancies Act.

Landlords covered by the Housing Act are required, aside from their obligations to provide affordable rent, to have consideration for tenants' wellbeing, including the sustainment of tenancies. This includes providing stable, secure accommodation, working with tenants who are having difficulty paying rent and linking tenants with support where available.

Social housing eligibility criteria define who should have access to these stronger standards. Due to the shortage of social housing, however, only a small percentage of this cohort can benefit from them. In December 2021, there were 54,587 applicant households on the Victorian Housing Register (not including transfer applicants).³⁶³ These numbers provide an indication of housing stress, but not the full extent.

Commonwealth Rental Assistance (CRA) is intended to address this lack of supply by providing income support to people in receipt of other benefits (and therefore on low incomes). An adequate level of CRA would go some way to addressing affordability issues and providing tenants with more options. The discussion below considers aspects of tenancy management rather than rental affordability.

The Consumer Policy Research Centre's Renter's Journey report highlights the issues faced by vulnerable and disadvantaged renters in the private market, including a lack of stability, lack of redress where there are tenancy issues, difficulty accessing housing and limited support services.³⁶⁴

The Victorian Council of Social Service stated in its submission to this Review, that vulnerable tenants:

“...may experience the worst that the private market can serve up in terms of housing that is in poor condition, expensive to maintain, and bad for their health and wellbeing, and who may not be aware of or engaged with community-based supports.”³⁶⁵

The private rental market is supported by CRA payments to eligible tenants. However, there are no accountability mechanisms in place for private landlords who receive these through rent. Due to the design of the scheme, it is difficult to incorporate accountability mechanisms without risking discrimination to recipients.

Rooming houses and caravan parks are last resort accommodation for many people in housing need, and who are unable to access the private rental market. While many are operated professionally and can offer a reasonable standard of accommodation, several individuals and

service providers have highlighted safety and security concerns, particularly in rooming houses, with some individuals preferring to sleep rough than stay in a rooming house.³⁶⁶

Rooming houses are subject to the Residential Tenancies Act and the *Public Health and Wellbeing Act 2008*. They must be licenced, and operators must meet a fit-and-proper-person test. A greater focus on compliance activities for rental provision to vulnerable tenants seems warranted. This is occurring to some extent in the rooming house sector, but there is scope for more investment to help residents access their housing rights.

8.2. What is recommended and why

8.2.1 Support to applicants on the Victorian Housing Register

Review participants indicated that they received minimal contact or support after applying for social housing and can be waiting for housing for extended periods.³⁶⁷ The extra time spent in inappropriate accommodation can exacerbate existing health issues. Practical support could be given to applicants on the waiting list to help them improve their housing situation and options.

Assistance to secure appropriate interim accommodation, access to programs like Tenancy Plus to assist applicants in their current tenancies³⁶⁸ and personalised advice on support services would help to reduce harm to individuals and eventual costs to the system. This approach could also induce others eligible for social housing to apply, creating a centralised support gateway for housing assistance. The necessary information on tenant support needs is already available, since applicants submit considerable information on their support requirements when registering. The Panel acknowledges this is largely a funding and resourcing solution.

Recommendation 8.1: Offer support to applicants on the Victorian Housing Register

Link Victorian Housing Register applicants to services and accommodation-related assistance.

This should include equivalent supports for tenants who are eligible for social and affordable housing, and programs such as Tenancy Plus to help them access appropriate interim accommodation.

This would require adequate funding and resourcing.

It could also include personalised advice on support services (based on the information applicants provide about their support requirements when registering) and other accommodation-related supports.

8.2.2 Landlord education and a Code of Practice

There is scope to improve the culture of rental housing provision in Victoria by raising awareness among landlords, property managers and investors of their critical role in the provision of an essential service. This could be achieved without the need to place mandatory or onerous requirements on landlords.

Many people become landlords as a result of a decision to invest in property, or otherwise incidentally, if they acquire property or change the use of property they already own. They may not recognise this as a decision to become an essential service provider for low-income or

vulnerable households. This is not an insignificant probability, given around 50 per cent of rental households in Victoria are considered lower income.³⁶⁹

These households often have limited options and landlords' decisions can have significant impacts on tenants' life outcomes. Although many real estate property managers operate professionally, they act on the instructions of property owners, and knowledge of the Residential Tenancies Act can sometimes be patchy.

Government could seek to improve the culture of rental housing provision by introducing a Code of Practice. It would provide a best-practice and ethical decision-making framework for landlords and agents, and practical guidance consistent with the Residential Tenancies Act. The Code could be co-designed with stakeholders (including tenants), and promoted as a support to landlords and agents for adhering to the legislative requirements.

To complement the Code, there could be dedicated education and guidance for landlords and prospective landlords to emphasise the importance of their responsibilities. It could set out best-practice principles, offer practical steps on how to be an ethical landlord, and highlight the potential advantages to all parties.

Such a Code and associated guidance would be a positive statement of ethical conduct in the leasing of residential property beyond the technical legal requirements. It could point out the benefits for landlords and agents, including the ability for a tenant focus to improve the longevity of tenancies and help to ensure properties are better kept.

To provide a pathway for implementation and to test the Code's effectiveness with target cohorts of landlords and tenants, government could conduct and evaluate a trial. The trial would allow landlords to opt-in to the Code and comply with other measures aimed at tenancy sustainment.

These measures could include, for example, an undertaking to provide information about financial counselling services to the tenant, and to engage in a supported process in the event of a dispute, including in relation to rent arrears. They could also include an undertaking not to issue a notice to vacate where termination of the tenancy is sought, but to apply to the Victorian Civil and Administrative Tribunal for a termination order. This was temporarily in place in Victoria under the COVID-19 emergency measures, which applied to all agreements under the Residential Tenancies Act. It would provide an assurance that due process occurs prior to any eviction.

Participating landlords (and tenants) could be incentivised appropriately and have access to support services. The trial would target tenancies with features likely to make them vulnerable or precarious, including where properties are at the low-cost end of the market with self-managing landlords, and where tenants are on low incomes. Rooming house and caravan operators could be invited to participate. In addition to assessing the Code itself, a trial could:

- gather intelligence on pain points for landlords and tenants in vulnerable or precarious tenancies
- explore how support services and other mechanisms can be used most effectively to sustain tenancies
- explore how future requirements could be designed in a way that supports landlords and tenants.

8.2.3 Formal registration of rental providers and properties

There is currently no requirement for property owners to formally register themselves as rental providers or their properties as long term rental housing. The Panel considers housing to be a human right and an essential service. It is not common for providers of essential services in our system to have no obligation to be registered or to demonstrate the suitability of their offering.

Nonetheless, the existence and provisions of the Residential Tenancies Act are an acknowledgement that legislative protections are required for those renting and those providing long-term accommodation (landlords). However, there are limited mechanisms for monitoring compliance with the Residential Tenancies Act. The onus for enforcement is predominantly on the parties themselves. Tenants' ability to exercise their rights is often constrained by practical circumstances, including their awareness of how to do this. Power imbalances also constrain tenants' scope to exercise their rights.

Many international jurisdictions use landlord registration and licencing schemes to support the regulation of residential tenancies. In the United Kingdom, for example, registration or licensing is mandatory in all jurisdictions, except England, which has locally based registers and is considering a national scheme. The compliance requirements and intervention powers of registering authorities vary.

The Victorian Government could introduce a requirement for rental providers to register and attest that they comply with the Residential Tenancies Act. The purpose of the register would be to:

- improve the standard of rental properties and property management by increasing avenues for landlord accountability
- monitor compliance with the Residential Tenancies Act and assist in more active enforcement
- provide complete information on the rental stock and other market conditions.

The register could be funded through the Victorian Property Fund and phased in over time. It could provide, for example, the following information:

- an accountability mechanism for rental providers to promote good practice, with the potential for more active enforcement activities under the Residential Tenancies Act
- a mechanism for recording compliance against Residential Tenancies Act requirements in relation to property conditions such as minimum standards, the various appliance standards and safety testing
- maintenance and other property records, which would assist with dispute resolution and enforcement of other requirements under the Residential Tenancies Act to disclose certain information about properties, including those added under the recent reforms³⁷⁰
- complete information of the rental stock, number of rental providers and other market information that is lacking.

Certain limited aspects of the register could be searchable by the public, such as property address and registration status, but aspects made public would not disclose names of renters, rental providers, rent paid or any other sensitive information.

The Panel acknowledges that the residential tenancies bonds register administered by the Residential Tenancies Bond Authority contains details of rented properties where bonds have

been lodged. In its current form, the bonds register does not perform this the function described here, but it could be adapted to do so.

The new registration requirement would be a reasonable, proportionate, and non-onerous measure for landlords (or their agents). It would strengthen the intended outcomes of the recent Residential Tenancies Act reforms, particularly for the cohort of tenants who are less empowered to play a role in their enforcement.



³⁶² Commonwealth Government real expenditure on Commonwealth Rent Assistance in 2019–20 was \$4,688b Australia-wide and \$1,022b for Victoria. See, Australian Government, Productivity Commission. 2021. *Report on Government Services 2021*, available at <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/housing-and-homelessness#downloads>.

³⁶³ Department of Families, Fairness and Housing. 2021. *Victorian Housing Register*, available at: <https://www.housing.vic.gov.au/victorian-housing-register>, accessed 8 May 2022.

³⁶⁴ Curry, S. 2019. *The Renter's Journey. A consumer-centred approach to understanding the dynamics of Australia's private rental market*, Consumer Policy Research Centre.

³⁶⁵ Victorian Council of Social Service (submission 13).

³⁶⁶ One submitter reported, it is "...extremely unsafe and typically of a very poor standard" (Northern and Western Homelessness Networks, submission 69) and similar concerns were echoed by other submitters (for example, Council to Homeless Persons, submission 35). Users of such emergency accommodation have reported: "...feeling unsafe, demoralised by the squalor they witnessed, with a growing sense of worthlessness and disconnection from their community. Many reported feeling that the quality of the accommodation was a reflection of the way that their community viewed them (Northern and Western Homelessness Networks, submission 69).

³⁶⁷ In 2019–20, the average waiting time for public rental housing for those clients who have received priority access housing allocation was 12.0 months (Department of Health and Human Services. 2020. *Annual report 2019–20*, p. 52, Victorian Government).

³⁶⁸ Social Housing Regulation Review. 2021. *Social Housing in Victoria, Consultation Paper 2: Service delivery and the tenant experience*, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

³⁶⁹ During the 2017–18 financial year 46.6 per cent of rental households in Victoria were considered lower income. (Commissioner for Residential Tenancies. 2020. *Renting in Victoria: Snapshot 2020*, p. 10, Commissioner for Residential Tenancies, Melbourne).

³⁷⁰ Requirements to disclose if foreclosure is possible during tenancy, other intended uses during tenancy (like sale), previous use of property in drug manufacture, or if a homicide was committed on the property.

Appendices

Appendix A: Review of Social Housing Regulation Terms of Reference

Purpose

The Review of Social Housing Regulation aims to identify future regulatory arrangements to provide strong resident protection, better information to Victorians and position social housing for growth and transformation over the next decades.

It will assess the settings for regulation that best support the long-term interests of social housing residents and their communities. It will also assess settings required for significant growth in social and affordable housing as well as an independent regulatory system that provides adequate prudential and operational oversight, resident protections and reduced red tape.

The Review terms of reference include:

- a focus on resident voice, resident and community outcomes and transparent reporting of sector performance (Terms 1 to 3 below)
- advice on how the regulatory system can best support the long-term interests of social housing residents and communities, how it can enable significant growth with adequate prudential and operational oversight but without unnecessary regulation and reporting, and regulatory scope across community, public and affordable housing (Terms 4 to 8 below)
- the case for moving towards national regulation (Term 9 below).

The Review will commence in December 2020, develop an interim report for consultation by November 2021 and deliver a final report to the Assistant Treasurer and the Minister for Housing by March 2022.

In preparing the interim and final reports, the Review Panel will consider the following:

Resident voice and outcomes

1. Assess how regulation can include a stronger focus on resident voice and resident and community outcomes and develop options to provide residents with a stronger voice in the management and operation of social housing providers.
2. Provide advice on the degree to which residents' rights should be harmonised under public and community housing models and options to ensure an effective and coherent complaints management and redress system across the social housing system.
3. Assess options for best practice frameworks that provide Victorians with easily understood and comparable information to assess the performance of social housing providers that support consumer choice.

Reform to the Victorian Regulatory System

4. Assess the Victorian Regulatory System for Community Housing to support the long-term interests of Victorians, including settings for the *Housing Act 1983* (Vic), performance standards, intervention powers and registration requirements, and consider appropriate amendments to support growth in social housing. Consider appropriate amendments to the Victorian Regulatory System to support the \$5 billion housing stimulus package and anticipated growth in the community housing sector.
5. Assess whether:

- public housing activities should be covered in common regulatory arrangements with the community housing sector, including asset, financial, performance, resident and housing services and reporting
 - affordable housing (particularly affordable housing receiving public subsidy or assistance) should be included in the regulatory system and what amendments may be required to incorporate them
 - emerging entities and funding vehicles within the social housing sector are appropriately regulated and consider any gaps in regulation, and whether Special Purposes Vehicles and other housing bodies outside of the current regulatory system should be brought within the system.
6. Provide advice on options to reduce regulatory and administrative burden and/or duplicative reporting across the social housing system, while ensuring an appropriate level of regulation to manage the identified risks and interests of consumers.
 7. Provide advice on enhancements to performance frameworks, and their enabling processes and systems, across the social housing system including options to improve data management, reporting and information sharing opportunities and protocols across government.
 8. Assess options to measure the performance of public housing and community housing agencies and promote competitive neutrality to enable all sectors to have an equal opportunity to attract growth and funding and to position community housing and public housing on an equal footing into the future. The Review should consider barriers, financial or otherwise, to this objective, as well as prior work on this issue, including by the Productivity Commission and the Victorian Auditor General.

The case for national regulation

9. Develop recommendations for future regulation of the sector, particularly whether Victoria should:
 - a. retain the Victorian Regulatory System;
 - b. revise the Victorian Regulatory System; or
 - c. join a national regulatory system through a revised National Regulatory System for Community Housing Providers (NRSCH).

Consultation approach

10. Consult with a range of stakeholders including housing agencies, peak associations, the private sector, financial institutions, consumer groups, and unions on any of these matters, taking into account previous consultation at state and national level.
11. Explicitly take into account the views of Aboriginal Victorians to ensure Victoria's housing system reflects culturally safe best practices and acknowledges Closing the Gap targets on securing affordable and appropriate housing for Aboriginal Victorians.

Membership of the Review Panel

The Review Panel will be chaired by Professor David Hayward, with support from Dr David Cousins AM and Dr Heather Holst. The Panel will provide oversight for delivery of the Terms of Reference, including drafting of reports and papers, and final reports to the Assistant Treasurer and Minister for Housing.

Primary Role

The Review Panel members will:

- agree a workplan to deliver the Terms of Reference;
- provide strategic advice regarding project scope, timing, deliverables, within agreed resources;
- agree on appropriate stakeholder engagement and communication;
- provide advice on review considerations and matters from time to time of other agencies of government;
- develop draft interim and final reports for consultation with the Departments of Health and Human Services and Treasury and Finance; and
- provide regular updates, reports and formal advice to the Minister of Housing and Assistant Treasurer as requested.

Term of the Review Panel

These Terms of Reference are effective from the commencement of the Review until 31 March 2022 unless extended or terminated earlier by the Assistant Treasurer and Minister for Housing.

Meetings

The Review Panel should meet at least monthly, or more regularly at the direction of the Chair.

Working groups

The Review Panel may establish other time limited ad hoc working groups as needed, with terms to be agreed by the Panel.

Conflicts of interest

Members of the Review Panel must:

- a. complete and sign a Declaration of Conflicts of Interest;
- b. verbally declare any potential conflicts of interest at the commencement of each meeting on matters pertaining to the prepared Agenda; and
- c. alert the Chair of any other potential conflicts of interest that may arise during the course of a meeting.

Where a perceived, potential or actual conflict of interest has been declared, the Chairperson shall determine how to proceed and advise the meeting accordingly.

The nature of the conflict and action by the Chair shall be recorded in the minutes.

Secretariat

The Review Panel will establish a secretariat which will report to the Review Panel for day-to-day operational matters on the Review.

Amendment, modification or variation

The Review Panel's Terms of Reference may be amended with the agreement of the Assistant Treasurer and Minister for Housing.

The timing and sequencing of work and deliverables, and the term of the Review Panel may be affected by the COVID-19 event. The Terms of Reference can be amended by the Assistant Treasurer and Minister for Housing should this be required.

Context for the Review

Government and the community housing sector in Victoria have a long and proud history of working in partnership to deliver more social housing and better outcomes for Victorians in need. More than a decade and a half of Victorian community housing regulation has contributed to a resilient, strong and diverse sector. Victoria's registered housing sector is well governed and comprises agencies of various sizes and appetites for growth and specialties.

Regulation has achieved what it set out to do when it was established in 2005. A stable and robust regulatory framework has been a key contributor in enabling the development of a viable Victorian social and affordable housing market. Good regulation has played a role to ensure that government had confidence in large scale investment and emerging transfers, and financiers and partnering organisations had the confidence to invest. Regulation has also been essential in ensuring quality service delivery to tenants.

Nevertheless, in an environment of emerging investment and growth through Homes for Victorians and emerging strategies to grow social and affordable housing and provide better services for tenants, rethinking regulation going forward to support the next phases of investment is needed. Recent years have seen:

- limited policy settings for affordable housing, especially at the national level
- growing but inadequate funding to support steady growth of social and affordable housing
- limited government leadership on housing matters at the national level
- capacity shortcomings in supporting institutions within national and state/territory bureaucracies, especially policymaking, data monitoring and regulatory capabilities.

There is a strong case for reviewing elements of regulation as part of new opportunities and challenges in the housing market, to further progress continuous improvement, and respond to changing contexts at State and Commonwealth level. Given the Government's recent significant investment in social and community housing, it is critical that this review occurs now to ensure that current regulatory arrangements (particularly system-level risk management settings) maximise the benefits of this investment for Victorians. Good regulatory policy ensures that the social housing sector is as efficient, flexible and responsive as possible to new investment opportunities, changing housing markets and better tenant outcomes. Reviewing regulation can ensure that government, the social housing sector and investors work together effectively with minimal red tape.

The community housing and public housing systems are subject to differing regulatory and reporting requirements. The community housing sector is currently highly regulated under the Victorian Regulatory System (VRS). This requires a level of transparency from providers on their performance and operational policies. Public housing is subject to parliamentary oversight and scrutiny by bodies such as the Public Accounts and Estimates Committee and the Victorian Auditor General's Office. It is not currently regulated under the VRS and does not routinely release financial and performance data. There is an opportunity to consider whether public housing should be regulated (and by whom) and what other measures can be taken to improve its service delivery and transparency.

Renewed regulation can support an integrated social and affordable housing system that:

- supplies social and affordable dwellings commensurate with the level of government, private and philanthropic investment;
- provides best value for money;
- houses people meeting housing need criteria (the defined cohort);
- provides a supply of dwellings with rents that are affordable to the defined cohort according to acceptable asset and service standards; and
- has a focus on resident outcomes.

A parallel issue is that Victoria (and Western Australia) have not joined the National Regulatory System for Community Housing that was established in 2014. Increasingly there is a view that community housing providers in Victoria and across Australia would benefit from standardised regulation in order to attract institutional investment and build more homes. The lack of uniform community housing regulatory arrangements may be impeding expansion of the community housing sector and the creation of a truly national market, with consequent larger providers that can operate across borders and build more and better housing in this State.

The Review should be cognisant of previous work undertaken by the Department of Treasury and Finance and consultation with the sector on differences between the VRS and the NRSCH in 2017; and the now completed review of the NRSCH led by NSW.

Appendix B: Consultation

Contributors

Written submissions in response to Consultation Papers 1, 2 and 3, the Aboriginal Housing Findings and Options Paper and/or Interim Report were received from:

Aboriginal Housing and Homelessness Forum	Confidential submission, 22 September 2021
Aboriginal Housing Victoria	Confidential submission, 12 November 2021
Action for More Independence & Dignity in Accommodation	Confidential submission A, received 15 November 2021
Affordable Housing Industry Advisory Group	Confidential submission B, received 15 November 2021
Anonymous Tenant, 17 August 2021	Consumer Policy Research Centre
Anonymous Tenant, 7 October 2021	Council of Single Mothers and their Children Incorporated
Anonymous Tenant, 29 October 2021	Council to Homeless Persons
Anonymous Tenant, 10 January 2022	Defend and Extend Public Housing Australia
Australian Association of Social Workers	Domestic Violence Victoria & Domestic Violence Resource Centre Victoria
Australian Charities and Not-For-Profits Commission	Eastern Homelessness Service System Alliance
Australian Housing and Urban Research Institute	Fire Rescue Victoria and the Country Fire Authority
Australian Institute of Health & Welfare	Fitzroy Legal Service
Australian Manufacturing Workers' Union, 3PE Build, Health and Community Services Union	Friends of Public Housing Victoria
Australian Services Union	Geelong Housing Action Group
Banyule Community Health	Home Fire Sprinkler Coalition Australia
City of Port Phillip	Housing for the Aged Action Group Incorporated
Community Housing Industry Association	Housing Quality Network (HQN) Consultancy, United Kingdom
Community Housing Industry Association Victoria	Hume Riverina Community Legal Service
Community Information and Support Victoria	Inner Melbourne Community Legal
Community Legal Centres – Joint Response	Jesuit Social Services

Joint Legal Assistance Sector
 Justice Connect
 Kids Under Cover
 Launch Housing
 Mallee Family Care
 Mental Health Legal Centre Incorporated
 Mornington Peninsula Shire
 National Disability Services
 Northern and Western Homelessness Networks
 Peninsula Community Legal Centre
 Peninsula Parks and Villages Group
 Quantum Support Services
 Quit Victoria
 Quit Victoria and Vic Health
 Residents of Retirement Villages Victoria
 Safe and Equal
 Victorian Health Promotion Foundation
 Victorian Public Tenants' Association
 Victorian Trades Hall Council
 West Heidelberg Community Legal
 Western Homelessness Network
 Western Settlement Outcomes Network
 Wombat Housing Support Services
 Women's Housing Alliance
 Young People's Legal Rights Centre (Youthlaw)
 Youth Affairs Council Victoria

Salvation Army Tenancy Plus Program
 Save Public Housing Collective
 South-East Monash Legal Service
 Southern Homelessness Services Network
 South Port Community Housing Group
 Suicide Prevention Australia
 Tenants Victoria
 The Renters' (Acting) Committee
 Uniting Vic Tas
 Victoria Legal Aid
 Victorian Alcohol and Drug Association
 Victorian Association for the Care and Resettlement of Offenders (VACRO)
 Victorian Council of Social Service
 Victorian Healthcare Association

A total of 82 contributions were received in response to the following four questions posed on the Engage Victoria website at: <<https://engage.vic.gov.au/social-housing-regulation-review>>.

1. Are there any areas that the Review Panel have not covered in their discussion paper that you would like to see addressed?
2. What are the key problems with service delivery by housing providers and how do these impact tenant experiences?
3. How could housing providers be encouraged to give greater attention to their tenants' preferences and experience of social housing?
4. What role can regulation play in supporting investment and growth in the social housing sector?

An additional 17 emails from public and community housing tenants were received by the Panel following the release of the Interim Report.

Meetings

Meetings were held with the following:

Research and consultancy groups, academics and other individuals

Affordable Development Outcomes

Associate Professor Julie Lawson, Centre for Urban Research, RMIT University

Centre for Innovative Justice, RMIT University

Consumer Policy Research Centre

Dr Michael Fotheringham, Australian Housing and Urban Research Institute

Dr Sarah Taylor, Unison Housing Research Lab, RMIT University

Dr Tom Alves, Australian Housing and Urban Research Institute

Emeritus Professor Michael Berry, Centre for Urban Research, RMIT University

HQN Consultancy, United Kingdom

Mr Stephen Nash

Professor Bill Randolph, City Futures Research Centre, University of New South Wales

Professor Graeme Hodge, Law Resources, Monash University

Professor Guy Johnson, Unison Housing Research Lab, RMIT University

Professor Hal Pawson, City Futures Research Centre, University of New South Wales

Professor Kath Hulse, Centre for Urban Transitions, Swinburne University of Technology

Professor Terry Burke, Centre for Urban Transitions, Swinburne University of Technology

Professor Vivienne Milligan, City Futures Research Centre, University of New South Wales

Professor Wendy Stone, Centre for Urban Transitions, Swinburne University of Technology

Financial, investment and development groups

Australia and New Zealand Banking Group Limited

Inspire Impact

Liveable Australia

Macquarie Group

Smart Green Group

Social Ventures Australia

Government departments, statutory authorities and other bodies

Aboriginal Housing and Homelessness Forum

Australian Charities and Not-For-Profit Commission

Australian Institute of Health and Welfare

Better Regulation Victoria

Development Victoria – Social Housing

Essential Services Commission

Commissioner for Better Regulation, Red Tape Commissioner

Community Housing Registrar, Western Australia

Infrastructure Victoria

Melbourne City Council

Moreland City Council

Municipal Association of Victoria

National Housing Finance Investment Corporation

National Regulatory System for Community Housing Registrars and Policy Representatives Forum

New South Wales Government Department of Family and Community Services:

- Housing Strategy
- New South Wales Housing Registrar

Queensland Government Department of Communities, Housing and Digital Economy:

- Housing Investment Growth Initiative

Regulator of Social Housing, United Kingdom

Royal Commission into Victoria's Mental Health System

Scottish Housing Regulator, Scotland

Victorian Auditor General's Office

Victorian Civil and Administrative Tribunal

Victorian Government Department of Environment, Water, Land and Planning:

- Energy Efficiency; Planning, Performance & Insights
- Policy and Performance

Victorian Government Department of Education and Training:

- Higher Education and Skills
- Quality Assessment and Regulation

Victorian Government Department of Families, Fairness and Housing:

- Homes Victoria (including the Aboriginal Outcomes Branch)
- Regulatory Policy and Relationships
- Social Services Regulator
- Operational Divisions:
 - Ballarat
 - Bendigo
 - Geelong
 - Morwell
 - Preston
 - Seymour
 - Shepparton
 - Sale
 - Traralgon
 - Wodonga

Victorian Government Department of Health and Human Services:

- Regulation, Public Health and Emergency Management

Victorian Government Department of Justice and Community Safety:

- Consumer Affairs, Liquor, Gaming and Dispute Services
- Regulatory Assurance and Policy

Victorian Government Department of Premier and Cabinet:

- Social Policy and Intergovernmental Relation
- First Peoples – State Relations
- Legal, Legislation and Governance

Victorian Government Department of Treasury and Finance:

- Service Delivery and Reform
- Land and Shareholder Advice
- Victorian Housing Registrar
- Office of the Housing Registrar

Victorian Building Authority

Victorian Multicultural Commission

Victorian Ombudsman

Community housing organisations

Aboriginal Housing Victoria

Baptcare

Beyond Housing

Centacare, Ballarat

Common Equity Housing Limited

Community Housing (Vic) Limited

East Coast Housing

EACH Housing

Froniditha Care

Haven; Home Safe

Housing Choices Australia

Housing First

Jewish Care

Launch Housing

Paradigm Housing, United Kingdom

Rumbulara Aboriginal Co-operative Limited

Uniting Vic.Tas

Vasey RSL

Wathaurong Aboriginal Housing

Wintringham

Women's Housing Limited

Women's Property Initiative

Industry peak bodies, associations and service providers

Affordable Housing Industry Advisory Group

Australian Vietnamese Women's Association

Community Housing Industry Association

Community Housing Industry Association Victoria

Council on the Ageing Victoria

Council to Homeless Persons

Domestic Violence Victoria & Domestic Violence Resource Centre

East African Women's Foundation

Eastern Homelessness Service System

Ethnic Communities' Council of Victoria

Gippsland Homelessness Network

Homelessness Services Network Coordinators

Housing All Australians

Housing for the Aged Action Group

IndianCare

Inner Melbourne Community Legal

Junction Support Services
Justice Connect
Loddon Campaspe Multicultural Services
Mallee Family Care
Mind Australia
Pacific Women's Indigenous Network
PowerHousing Australia
Pronia
Settlement Services International
Somali Community Incorporated
Somali Women Development Association Incorporated
Southern Homelessness Network
Sunraysia Mallee Ethnic Communities' Council
Tenants Victoria
The Bridge Youth Service
Victoria Legal Aid
Victorian Aboriginal Legal Service
Victorian Alcohol and Drug Association
Victorian Council of Social Service
Victorian Healthcare Association and the High-Risk Accommodation Response Community of Practice
Victorian Immigrant and Refugee Women's Coalition
Victorian Public Tenants' Association
Western Homelessness Network
West Heidelberg Community Legal Service
Wyndham Community and Education Centre

Presentations

Presentations were made to:

Aboriginal Housing and Homelessness Forum
Community Housing Industry Association Victoria, members' meeting
Community Housing Industry Association Victoria, second sector consultation
Homes Victoria Community Housing Forum

Inter Council Affordable Housing Forum

National Regulatory System for Community Housing (NRSCH) Registrars and Policy Representatives forum

Victorian Council of Social Service – Social Housing Regulatory Reform Forum

Victorian Housing Registrar Forum

Consultation projects

Four dedicated consultation projects were commissioned by the Panel:

Aboriginal Housing Consultation Project

An Aboriginal consultant was engaged to conduct stakeholder consultation with Aboriginal Community Controlled Organisations (ACCOs), including Aboriginal Housing Victoria, community and public housing organisations, Aboriginal tenants and people seeking housing, and third party representative bodies. An Aboriginal Project Reference Group was established with whom findings and options were discussed to:

- ensure that the components of work were undertaken in the context of contemporary policy; cognisant of community issues and needs including local needs; and were integrated, and accurately reflected findings
- provide a reference point back to the Aboriginal community governance structures
- ensure that all work was culturally respectful, appropriate, and culturally safe.

As part of the consultation, interviews with Aboriginal tenants and those seeking housing and ACCOs were guided by two sets of questions – one for ACCOs and one for tenants and those seeking housing:

Guiding interview questions for Aboriginal community and public housing tenants and prospective tenants

Details and background:

- Are you a tenant in social housing or are you seeking social housing?
- If you are a tenant are you living in:
 - public housing
 - mainstream community housing
- If you are on the waiting list?
 - roughly how long have you been on the waiting list?
 - do you receive any information, updates or support?

Tenant-landlord relationship

- What are the key things that you expect from your landlord?
- Do you know what your obligations as a tenant are?
- Would it help you to know what standards your housing provider is expected to meet? (e.g., tenant and housing services; maintenance of houses; understanding of your community needs; how your housing provider is governed; management and financial viability of the provider).

Complaints:

- How are/should complaints be handled? Where is the complaints focal point for Aboriginal tenants and seekers of social housing? How does it best work? How can Aboriginal tenants be empowered?

Cultural safety:

- If you live in social housing: Do you feel that your housing provider offers culturally safe services/housing? If yes, give examples. If no, explain why not.
- What would you like to see as an Aboriginal person living in or seeking social housing?
- If you are not in social housing, do you feel culturally safe when you try to access social housing through mainstream and/or Aboriginal housing providers? Why or why not?

Guiding interview questions for Aboriginal housing providers

Details of the ACCO:

- The ACCO's characteristics – number of houses and number of tenancies; characteristics of tenants.
- Current ways the ACCO is exercising landlord responsibilities.(e.g., direct management through a housing officer, outsourced rent collection or entire function to a real estate agency or other housing agency).

Understanding of and attitudes to community housing registration:

- What is the value of registering as a housing provider?
- How do you perceive the process? Is it onerous, too many barriers, adding to regulatory burden, accessible and doable? Real and perceived barriers should be discussed.
- What would need to change to encourage you into the system?
- How would registration as a community housing provider assist your role as a landlord?
- How would it assist your tenants?
- Would registration assist you to expand your property portfolio?
- What accountability do you have or should you have to the Aboriginal community/your immediate community (e.g., data provision, use of assets)?

Managing multiple accreditation pathways:

- What impact does accreditation and regulation have on your organisation?
- How could compliance be streamlined and costs managed?

Strengths-based regulation:

- How should the strengths of Aboriginal community housing providers be reflected in housing regulations (e.g., cultural strengths, cultural safety, landlord practices)?
- How should the regulatory system ensure and support provider viability (e.g., annual financial monitoring; monitoring of risk)?
- What does financial viability look like (e.g., capacity and resource tools)?

Protecting Aboriginal tenants:

- In regard to Aboriginal people seeking or living in social housing, what should the registration system expect of:
 - mainstream community and public housing providers? How should cultural safety be ensured?
 - Aboriginal housing providers?

Complaints:

- How are/should complaints be handled?
- Where is the complaints focal point for Aboriginal tenants and seekers of social housing?
- How does it best work?
- How can Aboriginal tenants be empowered?

Performance outcomes and accountability:

- Do you have a view on key performance outcomes for Aboriginal and non- Aboriginal registered housing agencies?
- What accountability can a regulatory system provide back to community?
- Might include data sharing and data sovereignty issues

Self determination:

- Are there ways that community housing regulation:
 - can enable self-determination?
 - create barriers to self-determination?
 - provide a longer-term pathway to a self-determining regulatory?

Community housing tenants

A consultation project was conducted to include the voices and views of prospective, current and former community housing tenants in the Review. This occurred through an online survey, focus groups, individual interviews and interviews with representative organisations. Feedback was provided by more than 470 people.

The online survey, which was also used to gather feedback from prospective, current and former public housing tenants, comprised 29 questions.

In the individual interviews and focus groups, participants were asked about their experience in five key areas:

1. Finding information about, and applying for, community housing.
2. The property allocation process, including your satisfaction with the outcome.
3. How the tenancy was managed, including property maintenance, raising and resolving issues with your provider/landlord, and involvement in any external dispute resolution processes.
4. What opportunities have you had to input to decisions about your tenancy or other tenant engagement activities?
5. What have been the greatest benefits and challenges around your community housing experience?

Public housing tenants

The consultation project to gather insights from past, current and prospective housing tenants drew on 310 survey responses and 64 focus group participants, and email and telephone communications. The online survey questionnaire was the same used for prospective, current and former community housing tenants.

Communications strategy

The fourth project commissioned by the Panel was part of a communications strategy designed to increase awareness and participation. The key groups that this project aimed to reach were:

- public and community housing tenants
- those eligible for social housing but not in the social housing system
- service providers, peak bodies and other interested organisations
- people working with tenants and eligible non-tenants.

To raise awareness of the Review and encourage participation, a simplified fact sheet was developed and adapted as needed for different groups, and translated into 15 community

languages. Over 200 community services, housing providers, sector peak bodies and other groups were contacted via email and/or telephone to inform them of the Review and to encourage their participation and the participation of their clients and/or tenants.

Materials were developed for distribution to community housing providers by the Victorian Housing Registrar, with a request that the material be shared with tenants. Similar materials were developed for Homes Victoria to distribute to public tenants, via hard copy mail. Social media posts and graphics were developed and disseminated to groups to share via social channels, newsletter/article content was developed and adapted for dissemination to groups to share via other communications channels, content was developed for the Multilingual News Service and shared via their service in a number of community languages and a media release was produced and distributed statewide to media outlets.

Feedback was sought through an online questionnaire which was translated in 14 community languages, and a hardcopy version of the questionnaire was distributed to relevant services and groups. Almost 1,300 responses were received online, or in hard copy or email format to the questions:

1. What kind of housing do you live in? (or have lived in before):
 - Public housing
 - Community housing
 - Private rooming house or caravan park
 - I am homeless and/or on the waiting list
 - Other (tell us below)
2. What would you change or fix about public or community housing in Victoria?
3. What would you change about applying and waiting for a property?
4. What would you change to make it easier to be a tenant?
5. What support and information do tenants need to feel at home?
6. What is the best thing about social housing in Victoria?
7. Is there anything else you want to say?

The following online questions, to gather feedback from those working with tenants and eligible non-tenants, generated over 80 responses:

- 1: Do you work with social housing tenants or people who are eligible for housing? (select all that apply):
 - Yes, I work (or have worked) for a not-for-profit homelessness service
 - Yes, I work (or have worked) for a not-for-profit housing provider
 - Yes, I work (or have worked) for another kind of not-for-profit health or community service
 - Yes, I work (or have worked) for the Victorian Government
 - None of the above
 - No, I don't work with social housing tenants or people eligible for housing
- 2: Is it easy for people to understand eligibility and apply for social housing? What could be improved?
- 3: Is the current system for prioritising and selecting people for public and community housing appropriate? What could be improved?
- 4: Are public and community housing tenants adequately supported to maintain their tenancies? What support services should be provided?

5: Do public and community housing tenants have a meaningful say in issues about their housing situation?

6: Do current dispute resolution procedures work well for tenants? How could they be improved?

7: Are there any changes you would like to see introduced to help workers better support tenants and others eligible for social housing?

8: What are the biggest workforce issues that impact on successful housing outcomes?

9: What is the most challenging part of your work within the social housing system?

10: What is the most rewarding part of your work within the social housing system?

11: Is there anything else you would like to say?

Webinar

Following the release of the Interim Report, the Panel held a webinar to explore the Interim Report's proposals for changes to the regulatory landscape, including explicitly making the tenant the centre of the system, bringing public and community housing under the umbrella of a single social housing regulator, facilitating the good growth of social housing stock, and building stronger accountability and transparency as the system grows.

The webinar was open to all 1,490 subscribers to the Social Housing Regulation Review and, of this group, 790 attended.

The webinar program began with a summary of the key Interim Report proposals. This was followed by a short presentation by Mr Michael Cameron, Chief Executive, Scottish Housing Regulator, who explained how and why tenants are at the heart of the Scottish housing system. After the presentation there was a question-and-answer session with the Panel.

Roundtables

To further inform and refine its thinking, in early 2022 the Panel held two roundtables. The topic for the first roundtable was 'Tenancy sustainment', and brought together participants from academia, government, peak bodies from the housing, health and social and support services sectors, legal assistance services and housing agencies.

The second roundtable explored 'The role of regulation in social housing sector growth', and involved participants from academia, government (including the Commonwealth and local government), peak bodies and industry groups, housing agencies, financial and investment bodies, and developers.

Appendix C: A chronology of social housing in Victoria

While not intended to be a comprehensive historical account, the following annotated timeline sets out a series of key events that have shaped social housing policy, law and provision in Victoria since the 1920s. The purpose of the timeline is to illustrate governments' policy responses to changes in social circumstances that impacted housing availability and provision, and the laws introduced to support those responses.

Some aspects of significance include:

- the concern for the lack of availability of affordable housing for those on low incomes was raised in the 1930s. Concerns that remain 90 years later
- opportunities for tenant participation in decision-making about their housing in the mid-late 1970s, with the emergence of co-operative housing
- tenant advocacy, through organised volunteer public housing which emerged in the 1980s to give tenants a voice³⁷¹
- a gradual shift in the demographic profile of tenants, from predominantly middle-to-low-income families to lower-income demographic, who often had complex support needs
- recognition of the growing contribution of non-government providers in the delivery of housing services, through amendments to the *Housing Act 1983* to provide for the registration of housing agencies
- a series of Commonwealth/State Housing Agreements facilitated Commonwealth Government policy shaping the delivery of housing through funding levers.

Social reform pressures, slum reclamation and the rise of public housing

- **1920s to early 1930s:** Reclamation of inner-city slums. Concerns were expressed in Victoria about the lack of affordable housing for people on low incomes, and pressure was applied by social reformers to address the conditions of families living in inner city 'slums'.
- **1935:** Construction of 44 brick public rental houses in Williamstown Road, Port Melbourne – described by the then Premier Albert Dunstan, as an experiment.
- **1937:** *Housing Act 1937* – the passage of this Housing Act established the Housing Commission and charged the Commission with focusing on improving housing conditions and providing adequate housing for people of limited means. Succumbing to public pressure, the Premier established the Housing Investigation and Slum Abolition Board. The Board exposed the poor housing conditions of Melbourne's inner suburbs and advocated the spending of public money on low-cost rental accommodation.³⁷²
- **1938:** Introduction of the *Slum Reclamation and Housing Act 1938* and *Slum Reclamation and Housing (Financial) Act 1938*, the introduction of these Acts gave the Housing Commission wide powers. These included the power to buy, develop and compulsorily acquire land, construct and improve housing, make regulations about housing standards, rent homes to people on low incomes and raise finance by borrowing and issuing debentures. In allocating housing, the Commission was required to "give preference to persons of good character who are displaced through slum reclamation or living in unsanitary or over-crowded housing or under unsatisfactory housing conditions". In a further response to housing shortage for those on low to middle incomes, the Victorian Government offered cheap home loans to low-income families.³⁷³ Re-accommodating

those who were displaced during the slums reclamation process was marred by the reluctance of many tenants' to move. Rents were more expensive in the new housing developments built by the Commission in areas such as Fisherman's Bend and Pigdon Street, Carlton, and increased distances to workplaces saw increased transportation costs for workers.³⁷⁴

Post-war stimulus, housing demand and Commonwealth Government funding for rental housing development

1940s

- **1941:** With the onset of the Second World War, the work of the Housing Commission effectively ceased, as did the housing construction industry.³⁷⁵
- **1943:** *Housing Act 1943* – this Act further expanded the Commission's powers. The Commonwealth Housing Commission was established help alleviate the growing problem of housing and homelessness. It assessed the nation's housing stock and reported a shortage of 300,000 dwelling. It advised the Commonwealth Government to take an active role in housing to address the problem. The Victorian Government expanded the powers of the Housing Commission through the introduction of the *Housing Act 1943* so that it could build houses for sale to eligible people, sell houses, subdivide land and increase the maximum amount the Commission was permitted to borrow. Eligibility criteria for housing were expanded to require the Commission to consider the number of children within the family and whether the applicant had served in the armed forces or auxiliary services.
- **1944:** *Co-operative Housing Societies Act 1944* (Vic) – in Victoria, there was an estimated shortage of about 60,000 houses. A number of Victorian politicians called for the government to involve itself in housing finance for middle and lower-income earners, by encouraging the establishment of cooperative housing societies. These societies had formed during the 1930s, in response to the reluctance of major banks to provide housing finance to middle and lower-income earners, and a tendency for permanent building societies to cater mainly for investors in rental housing. These co-operative housing societies purchased land, subdivided it and allocated blocks to society members to build homes themselves. The *Co-operative Housing Societies Act 1944*, introduced by the Victorian Government, provided for the registration, incorporation and management of the societies, and enabled Government guarantees and indemnities for the societies.
- **1945:** The first Commonwealth/State Housing Agreement was created, whereby the Commonwealth Government extended loans to states to build publicly owned homes. Under the Agreement 50 per cent of the Commonwealth's funding to the states was to be allocated to ex-armed services personnel and their families. Post-war reconstruction and economic stimulus was an explicit objective. Much of the housing constructed through the first Agreement were large estates on the outskirts of major cities.³⁷⁶ Public housing stock increased nationally "... from virtually nothing to 100,000 dwellings".³⁷⁷
- **1946 – 1960:** The post-war period saw high annual population growth nationally with migration being an important contributor with overseas migration adding 1.2 million people to the population, many of them Europeans displaced by the Second World War.³⁷⁸ A 'marriage boom', whereby a greater proportion of the population married and

had children, and women were starting and completing their childbearing earlier, was a significant contributor to the population's increase.³⁷⁹

The 'baby boom' that ensued compounded an existing housing shortage, a situation exacerbated by the Commonwealth Government's regulation of housing rents, which effectively prevented landlords from raising rents or from evicting tenants and greatly discouraged further investment in rental accommodation.³⁸⁰

Community groups demanded government action to address housing need. According to Naismith, the housing shortage resulted in "people...sleeping in covered verandas and balconies as well as in small sleep outs". This shortage caused 'rent rackets', long queues, a shortage of building materials and 'black marketers' selling existing houses at extortionate prices".³⁸¹ In addition, many working-class families still lived in temporarily converted army camps (Nissan Huts), tents, caravans and with extended family.³⁸²

Differences in jurisdictions' policy and funding approaches to housing, and the rise of tenant involvement in housing management decisions

1950s –1960s

- **1956:** The Second Commonwealth/State Housing Agreement saw an emphasis on encouraging home ownership with low-interest loans to home builders and the sale of houses on concessional terms. In Victoria, public housing was significantly expanded, particularly in regional and outer suburban areas where low-income families were located close to expanding industries.³⁸³ The Commonwealth/State Housing Agreement gave the states considerable power to regulate the level of rents, type of rebates, eligibility criteria and the level of funding. This resulted in substantial policy and funding differences between the various jurisdictions.³⁸⁴

Housing Commission Victoria constructed the Olympic Village for Olympic Game's athletes, which was later used for public housing.³⁸⁵

- **1958:** Commonwealth supplementary assistance was introduced to aid single pensioners and widows paying rent. Aided by Commonwealth funding assistance, construction of public housing continued in inner-Melbourne and on broad acreage estates in outer suburban Melbourne and regional areas.
- **Early 1960s:** Construction of public housing slowed as government sought to clear slums in the inner Melbourne suburbs, which were considered breeding grounds for crime.

The 1960s saw the construction by Housing Commission Victoria of prefabricated concrete high-rise towers situated on whole blocks, where individual houses were located and demolished.³⁸⁶ These towers would eventually ring inner-city Melbourne.

By the 1970s, opposition from inner-city councils, migrant groups (many migrants had renovated houses that were subsequently demolished), 'new gentrifiers' (young middle-class families moving into the inner city and restoring terrace houses), residents' associations and trade unions, resulted in the cessation of further high-rise tower construction.

- **Late 1960s:** Funding for public housing began to decrease. To compensate, the Housing Commission created a scheme that sold public housing dwellings to the families who were renting them. Loans were issued at 4.5 per cent interest and required a five per cent

deposit. By the end of this scheme, 49,635 homes had been sold to tenants. Although this was successful in redistributing housing to create generational wealth for families, it also saw public housing stock more than halve in numbers across Victoria.³⁸⁷

An alternative to public housing

1970s

- **1970:** A Commonwealth supplementary allowance was introduced for people on long term sickness benefits.
- **1973:** The Third Commonwealth/State Housing Agreement focused on targeting housing assistance to low-income earners, and new eligibility requirements were introduced for both rental and home ownership. It specified that only 30 per cent of new Commonwealth/State Housing Agreement-funded housing could be sold to home purchasers.³⁸⁸

Housing Commission Victoria became part of a new Ministry of Housing.

- **1974:** The delivery of housing was being influenced by developments overseas. In an endeavour to develop a significant alternative to public housing, the then Director of the Brotherhood of St Laurence published two pamphlets: *Housing Associations in the UK: Why they are Needed and How they could Function in Australia* and *Cost of Rental Housing Associations: A New Initiative to meet Housing Need*. The pamphlets were designed to stimulate a re-thinking of housing policy particularly in terms of combining citizen participation in management and meeting housing.
- **1977:** The Fitzroy Collingwood Rental Housing Association was established under the *Companies Act 1961*. The structure of the association followed that used by housing associations in the United Kingdom, and provided a formal, long-lasting entity that allowed positions to be held for particular people. The association was governed by a board that included representatives from local government, housing professionals, tenants and a Ministry of Housing representative, and managed 26 properties.
- **1978:** The Fourth Commonwealth/State Housing Agreement further targeted housing assistance to those in most need (such as pensioners) and there was an expansion in the types of housing provided. This included leasing dwellings, joint ventures, community housing and interest subsidies for home buyers. The Agreement continued to target housing assistance to those in most in need.³⁸⁹

Tenant empowerment, diversity in housing to respond to local needs, the impact of deinstitutionalisation and scandal

1980s

Further pressure on housing during the 1970s and 1980 arose from deinstitutionalisation of mental health and disability services delivered through government-operated institutions. The process of deinstitutionalisation grew in momentum until its completion in 2000. The shift of the accommodation and care of people with mental illness and disabilities from these old 'asylums' into community settings was driven by a policy of mainstreaming.

The consequence for many of these people was that they were 'decanted' into boarding houses and, for those with mental illness, their clinical management was transferred to public hospitals and community mental health services. Mainstreaming mental health and disability services within the general health sector aimed to improve consumer access to a quality, comprehensive healthcare service and to prevent people being discriminated against or stigmatised.³⁹⁰

- **1980:** A three-year evaluation of the Fitzroy Collingwood Rental Housing Association conducted by the Melbourne University Town Planning Unit. The evaluation found that tenant management brought satisfaction and efficient and enthusiastic management. It also found that its cost efficiency equalled that of conventional Ministry medium-density estates in the same areas. This finding led the Minister of Housing to establish a Rental Housing Co-operative Program, replacing full management control over public housing to tenant occupiers with the homes leased by co-operatives.

A Green Paper on the future of housing provision was released. One of the major changes mooted was to scale down broad-acre development and to emphasise smaller scale developments. This suited the purposes of the cooperative movement, which wanted its members to have ordinary houses in ordinary streets.³⁹¹

- **1981:** The Fifth Commonwealth/Stated Housing Agreement included formal State matching requirements for funding and an increasing proportion of Commonwealth funding was earmarked for specific groups. For untied funds, the states were free to allocate money to rental or home purchase assistance.³⁹²
- **1982:** The Ministry of Housing called for submissions from groups working to establish rental housing co-operatives, and chose two out of the five detailed proposals received. Rental Housing Cooperatives provided an alternative housing solution for low-income families. Public housing tenants became ineligible for the supplementary (rental) allowance.
- **1983:** The *Housing Act 1983* is enacted. It abolishes the Housing Commission and the Housing Finance Corporation, and transfers their functions to the Department of Housing (successor body), which is under the control of the Minister. The main objective of the Act (section 6(1)(a) is "to ensure that every person in Victoria has adequate and appropriate housing at a price within his or her means by encouraging... the provision of well maintained public housing of suitable quality and location...".
- **1984:** The Sixth Commonwealth/State Housing Agreement aimed to increase the level of public rental housing. Various grants were replaced with specific programs aimed at particular groups and market segments: rental housing for Indigenous Australians and pensioners, crisis accommodation, local government and community housing and mortgage and rent assistance. Home loan repayments were to be set at market levels and rent levels for public housing were to be based on a formula.³⁹³

The Housing Commission Victoria structure was abolished in favour of an Office of Housing within the Ministry of Housing. This followed criticism that Commission was bureaucratic and undemocratic, and because of scandals over corruption in relation to housing developments in Melbourne's fringe areas.³⁹⁴

- **1985:** Commonwealth supplementary assistance and supplementary allowance were combined into one payment, which was renamed Commonwealth Rent Assistance (CRA).

The first common equity housing co-operatives were established in Broadmeadows, Geelong West, Keilor and Werribee. The Common Equity Housing Finance Ltd was also formed. The first Common Equity Rental Cooperative (CERC) properties were purchased in 1986. The earlier Rental Housing Cooperatives program was just being established when the Government initiated a different rental housing co-operative program, CERCs, regarded by housing groups and their proponents in the government as a superior model. CERC members were to be housed in properties leased from Common Equity Finance Ltd (CEFL), which was a company with a majority of 'independent' directors. Contractual arrangements existed between CEFL and each co-operative in the form of a head lease on the properties owned by CEFL. Each co-operative then leased the properties to individual CERC members.

- **1986:** the Ministry of Housing set out the aims of the Rental Housing Program, which were to:
 - devolve management control over public housing to the tenant occupiers
 - provide greater housing choice and more secure housing to those on low incomes who cannot afford access to ownership
 - develop an alternative form of public housing which is diverse and responsive to local needs.
- **1986–1987:** CRA was expanded to cover a broader range of people receiving social security benefits, family allowance recipients became eligible for CRA, and the amount payable was standardised across all benefits.
- **1987:** The Final Report of the Ministerial Review of Special Accommodation Houses was released. The Special Accommodation Houses sector grew from boarding houses, which took in many ex-institutional residents with complex care needs. The review found that the special accommodation houses sector was, in the main, unable to accommodate those needs, and recommended a new regulatory framework. A consequence of the review was the closure of several houses, which added to the number of homeless.³⁹⁵
- **1989:** The Seventh Commonwealth/State Housing Agreement pointed to the need for an increase in public housing stock, or at least to halt the decline in the level of stock available. Commonwealth assistance was to be made in the form of grants, not loans as in the past. The states were required to match at least half of the Commonwealth's untied grants with funding of their own. Joint Commonwealth-State assistance plans were introduced, and an increasing emphasis was placed on user rights for those in rental housing.³⁹⁶

Regulation of Community Housing providers, and the announcement of Victoria's Big Housing Build

1990s — 2000s

- **1996:** The Eighth Commonwealth/State Housing Agreement emphasised housing outcomes for individuals as opposed to building up the stock of public housing. It also prioritised accountability for the housing assistance provided, including the setting of targets and measurement of outcomes.³⁹⁷

Section 6 of the *Housing Act 1983* was amended to provide for the participation of tenants and other community groups in the management of public housing, and non-distributing co-operatives engaged in the provision of rental housing to their members.

- **1999:** The Ninth Commonwealth/State Housing Agreement – the focus of this Agreement was on helping families and individuals who cannot be adequately housed in the private market. It also strengthened accountability and reporting mechanisms and improved how outcomes were measured. A key tenet of the Agreement was that housing assistance should be based on need as opposed to the earlier notion of security of tenure.³⁹⁸
- **2004:** Section 6 of the *Housing Act 1983* was amended to provide for the “...participation of not-for-profit bodies in the provision of well maintained, affordable rental housing of suitable quality and location” and “to provide a regulatory framework to encourage the development of rental housing agencies serving the housing needs of low-income tenants by providing for the registration of those rental housing agencies and the regulation and monitoring of registered agencies”. Among the amendments was the appointment of a Registrar of Housing Agencies, provisions governing the registration of rental housing agencies, a register of housing agencies and the duties and functions of registered agencies. The regulatory framework provides for prudential oversight and for monitory compliance of registered agencies against the gazetted Performance Standards.

The amendments sought to grow the community housing sector to allow for diversity and choice for those on low incomes.

- **2008:** The National Rental Affordability Scheme commenced. It was designed to increase the supply of new and affordable rental dwellings by providing an annual financial incentive for up to ten years. This incentive is issued to housing providers (‘approved participants’) to provide affordable rental dwellings, at least 20 per cent below market rates.
- **2009:** The National Affordable Housing Agreement replaced the Commonwealth/State Housing Agreement. The new agreement, introduced as part of the ‘nation building’ initiatives in response to the Global Financial Crisis, was supported by the National Affordable Housing Specific Purpose Payment. A number of National Partnership payments were made to the states and territories to support affordable housing services in particular areas. The national partnership payments were not tied to specific programs but were outcomes-based.
- **2014:** The National Regulatory System for Community Housing was established, and in the year prior to its establishment Victoria chose not to participate.
- **2017:** The National Affordable Housing Agreement was replaced with the National Housing and Homelessness Agreement. Funding to state and territory governments was linked to specified outcomes in priority areas, including targets for social and affordable housing, residential land planning and zoning reforms, inclusionary zoning arrangements, renewal of public housing stock and transfer of public housing to community housing providers, and homelessness services. Performance against these outcomes is to be monitored through schedules with clear targets, to be negotiated with the states.
- *Homes for Victorians* was released, which provided a \$2.6 billion funding plan that detailed the future of housing and homelessness services. Included in the plan was the \$1 billion Social Housing Growth Fund, allocated to promote the community housing industry. A further \$185 million was allocated to the Public Housing Renewal Plan, an

initiative to renew over 2,500 public housing dwellings across the state. A large number of these properties were then managed by community housing providers.

- **2018:** The National Housing Finance and Investment Corporation was established.
- **2020:** The Victorian Government announced the Big Housing Build.

³⁷¹ Victorian Public Tenants Association. 2018. Our history. Available at: <https://vpta.org.au/who-we-are>

³⁷² Follington, K. 2021. The Towers of Melbourne. Public Record Office Victoria, available at:

<https://prov.vic.gov.au/about-us/our-blog/public-housing-records-prov>.

³⁷³ Naismith, M. 2018. Public Housing then and now, May 28, The Socialist, available at: <https://thesocialist.org.au>

³⁷⁴ Naismith, M. 2018. Public Housing then and now, May 28, The Socialist, available at: <https://thesocialist.org.au>

³⁷⁵ Naismith, M. 2018. Public Housing then and now, May 28, The Socialist, available at: <https://thesocialist.org.au>

³⁷⁶ McIntosh, G and Phillips, J. 2001. The Commonwealth-State Housing Agreement. Parliament of Australia, available at:

https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/publications_archive/archive/statehouseagree#:~:text=The%20Commission%20was%20appointed%20in,housing%20to%20overcome%20of%20his%20shortage

³⁷⁷ Hayward, D. 1996. The Reluctant Landlords? A History of Public Housing in Australia, *Urban Policy and Research* 14(1): 5-35.

³⁷⁸ Australian Bureau of Statistics 1996. - Australian Social Trends - 4102.0, Population Growth: Australia's population growth.

³⁷⁹ Australian Bureau of Statistics 1996. - Australian Social Trends - 4102.0, Population Growth: Australia's population growth.

³⁸⁰ Abbott, M.J. and Thompson, D. 1997. A History of the Co-Operative Housing Societies in Victoria, 1944 – 1996, *Urban Policy and Research*, 15 (1): 19-30.

³⁸¹ Naismith, M. 2018. Public Housing then and now, May 28, paragraphs 9 -10, The Socialist, available at: <https://thesocialist.org.au>

³⁸² Naismith, M. 2018. Public Housing then and now, May 28, paragraphs 9 -10, The Socialist, available at: <https://thesocialist.org.au>

³⁸³ For instance, public housing was built on broad acre subdivisions in Broadmeadows in proximity to the Ford car plant and other factories. Public housing in Doveton was in proximity to the GMH factory. Generally, these estates comprised homes that were constructed of pre-cast concrete panels which facilitated efficient, mass production. These housing estates were generally well planned in terms of layout, open space and the provision for retail facilities. In inner Melbourne, one and two storey flats were built to ensure the economic use of land whose value was higher than outer suburban areas.

³⁸⁴ McIntosh G and Phillips J. 2001. Social Policy Group, Commonwealth Parliamentary Library E-Brief, The Commonwealth-State Housing Agreement, available at: https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/publications_archive/archive/statehouseagree

³⁸⁵ Victorian Public Tenants Association. n.d. Timeline of Victoria's Public Housing - 1850's to 2020's, Available at: vpta.org.au/wp-content/uploads/2021/10/Public-Housing-Timeline.pdf

³⁸⁶ Forty high rise towers were situated on 21 sites housing, on average, 1, 000 people in each block.

³⁸⁷ Victorian Public Tenants Association. n.d. Timeline of Victoria's Public Housing - 1850's to 2020's, Available at: vpta.org.au/wp-content/uploads/2021/10/Public-Housing-Timeline.pdf

³⁸⁸ McIntosh G and Phillips J. 2001. Social Policy Group, Commonwealth Parliamentary Library E-Brief, The Commonwealth-State Housing Agreement, available at: https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/publications_archive/archive/statehouseagree

³⁸⁹ McIntosh G and Phillips J. 2001. Social Policy Group, Commonwealth Parliamentary Library E-Brief, The Commonwealth-State Housing Agreement, available at: https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/publications_archive/archive/statehouseagree

³⁹⁰ Department of Health and Human Services. 2016. *Mainstreaming of mental health services*, available at: <https://www.findingrecords.dhhs.vic.gov.au/faqs/mainstreaming>, accessed 3 May 2022.

³⁹¹ McIntosh G and Phillips J. 2001. Social Policy Group, Commonwealth Parliamentary Library E-Brief, The Commonwealth-State Housing Agreement, available at: https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/publications_archive/archive/statehouseagree

³⁹² McIntosh G and Phillips J. 2001. Social Policy Group, Commonwealth Parliamentary Library E-Brief, The Commonwealth-State Housing Agreement, available at:
https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/publications_archive/archive/statehouseagree

³⁹³ McIntosh G and Phillips J. 2001. Social Policy Group, Commonwealth Parliamentary Library E-Brief, The Commonwealth-State Housing Agreement, available at:
https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/publications_archive/archive/statehouseagree

³⁹⁴ Howe, R. (ed). 1988. *New houses for old: Fifty years of public housing in Victoria, 1938–1988*, Ministry of Housing and Construction, Melbourne.

³⁹⁵ Victoria. Ministerial Review of Special Accommodation Houses (1987). Final Report. Victorian Government, Melbourne.

³⁹⁶ McIntosh G and Phillips J. 2001. Social Policy Group, Commonwealth Parliamentary Library E-Brief, The Commonwealth-State Housing Agreement, available at:
https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/publications_archive/archive/statehouseagree

³⁹⁷ McIntosh G and Phillips J. 2001. Social Policy Group, Commonwealth Parliamentary Library E-Brief, The Commonwealth-State Housing Agreement, available at:
https://www.aph.gov.au/about_parliament/parliamentary_departments/parliamentary_library/publications_archive/archive/statehouseagree

³⁹⁸ The current Commonwealth-State Housing Agreement is due to expire in mid-2003 and already there are moves underway to begin negotiations for a new 2003 Agreement. The 1999 Agreement focuses on helping families and individuals who cannot be adequately housed in the private market. It builds on the 1996 Agreement in terms of strengthening accountability and reporting mechanisms and also how outcomes are measured. A key feature of this Agreement is that housing assistance should be based on need as opposed to the earlier notion of security of tenure. As well, bi-lateral agreements between each jurisdiction and the Commonwealth have become the norm.

Appendix D: Data gaps

There are key data gaps in both public housing and community housing. Review participants argued for additional publicly available data to be provided as part of the annual performance reporting process. The Review has already included specific proposals for data comparability, the presentation of data, and the review of performance reporting frameworks (Chapter 5).

This appendix details data gaps that were commonly highlighted, as well as the key rationale for their collection. They are included to inform the process for review of the performance reporting framework recommended in the report (Chapter 5).

Tenant demographics

Review participants at times remarked on the lack of information on the profile of tenants. Some community housing providers in particular noted that due to the specialisation of services provided, organisations often housed different shares of certain tenant cohorts. For example, some had a greater share of young and single tenants, while others had a greater share of older tenants. Sometimes this was related to the type of stock the provider managed, and at other times it was a matter of the organisation's mission (for example, to provide support to domestic violence victims). To contextualise performance information, many participants supported greater public information on the following metrics of:

- age
- gender
- income
- Indigenous status
- culturally diverse information (for example, language, country of origin)
- rental rebate status
- tenure length
- arising issues
- referrals to support.

Allocations from the Victorian Housing Register

Review participants stated a desire for public information on the central wait list and allocations to dwellings. The information desired included:

- age
- gender
- income
- indigenous status
- culturally and diverse information (for example, language, country of origin)
- applicant needs
- Victorian Housing Register category (register of interest/priority access), including subcategories of priority access
- duration of time on wait list
- provider type (when allocation eventually occurred).

Some information was recently released publicly for the first time. This includes metrics on total allocations, the relative shares of applicants allocated public and community housing aggregates, and household makeup and needs (as defined by priority access subcategory). The rationale for making this information public was to ensure that the allocation process was operating fairly for both public and community housing tenants, and to gather information on how long different applicants spend on the Register before being allocated a property.

Exits

Information on social housing exits was of particular importance to Review participants. While eviction rates are made public for community housing organisations, evictions represent only one type of exit. Participants were interested in the reasons for tenant exit, and in particular the process leading up to and including an eviction. These concerns came from a desire to ensure that social housing providers used evictions only as a last resort, as is required by performance standards.

From a slightly different perspective, exits to other forms of housing, including private accommodation or affordable housing, represent a situation where social housing has worked to improve the tenant's circumstances, so they are able to move out of social housing altogether. Such 'pull' exits represent a success in the system.

The data of interest to participants included:

- push exits:
 - unsuitable housing
 - eviction reasons (for example, rent arrears/other)
 - eviction process information
 - notices to vacate
 - reasons for notices to vacate
 - applications for possession orders at the Victorian Civil and Administrative Tribunal (VCAT)
 - warrants purchased for eviction
 - warrants executed
- pull exits:
 - exits to private rental
 - exits to private home ownership
 - exits to other subsidised housing (affordable housing or other social housing).

Asset management and maintenance

Some participants highlighted the need for more information on social housing assets. There is already considerable information available on dwelling categories for the public housing stock. These are published annually as Additional Service Delivery Data.³⁹⁹ The Registrar has also begun publishing information on community housing organisations' stock composition in individual performance reports. However, there are still considerable information gaps which go to the condition of the building, and the responsiveness of the landlord to maintenance and repair requests.

Some important information on the quality of dwellings would be useful, including:

- dwelling type
- number of bedrooms
- age of property
- accessibility for people with disability
- dwelling energy rating
- building condition (for example, number of key appliances not in working order).

Participants were interested in ensuring that properties allocated to tenants were of adequate standard for the tenant to live in, and that information was available to both the tenants and to the landlord on the maintenance requirements of the dwelling. Tenants who have waited considerable time on the waiting list should be able to assess the condition of the building,

along with other location and amenity aspects, before accepting the house. This would also reduce the need for a subsequent housing transfer.

The data available at this time is lacking in the ways noted by participants, including:

- data that describe the housing
- data that describe the condition of the housing
- dwelling vacancies
- communal space
- property condition data:
 - log of repairs conducted
 - log of repairs needed
- time taken to conduct urgent and non-urgent repairs
- disability-related housing modification requests made (including the number of successful applications, the average spend and median spend)
- maintenance applications made to VCAT.

Dispute resolution

As part of the desire to see that social housing providers were responsive to tenants' needs, several participants outlined data needs relating to the dispute resolution process. These are also an important public accountability mechanism for tenants wanting to compare the performance of their provider with other providers. They include:

- response time for complaints
- satisfaction with outcome of complaints
- time to resolution of complaints
- number of breach of duty notices issued to tenants
- number of applications for a compliance or compensation Order made to VCAT
- number of temporary absences granted
- tenancies at risk of failure (statistics broken down by provider)
 - support service referrals made
 - type of service referred to
 - the stage at which the referral happened
 - whether the services were accessed by the tenant
 - proportion of cases of anti-social behaviour resolved.

Outcomes

Some participants remarked at the lack of outcomes-based data currently made available in housing data sets. Some participants remarked that the focus of current performance reporting was geared towards sustainability of stock, rather than on the improvement of tenants' circumstances. Outcomes data suggested were minimal, but included:

- labour market indicators
 - obtaining employment
 - losing employment
- education
 - staying in education
 - obtaining new qualifications.

Financial information

More transparency in financial metrics would greatly assist policy makers to make prudent investment decisions and improve the financial viability of social housing. For registered community housing agencies this task is undertaken by the Housing Registrar. The Registrar

receives yearly financial statements from each registered agency and reports aggregated metrics in sector performance reports.

For public housing, financial statements are combined with the Department of Families, Fairness and Housing, making it difficult to make cross-sector comparisons on financial metrics. The Department of Families, Fairness and Housing release estimates of the total cost of public housing each year as part of annual performance reporting. According to its figures, the total output cost of public housing was \$672.2m in 2019–20.⁴⁰⁰

By contrast, the Report on Government Services records the net recurrent cost of public housing as \$498.9m in 2019–20.⁴⁰¹ Both public sources differ from the figures quoted in Homes Victoria's financial statements, which were obtained for the Review. According to Homes Victoria's operating statement, total expenses from transactions are listed at \$1.4b for 2019-20.⁴⁰² There is considerable work to be done in generating comparable financial metrics across social housing sectors.

Sector comparisons of the cost of delivering social housing is important in determining the most-efficient means of delivering government-subsidised housing to disadvantaged tenants. While it is possible to benchmark a limited number of performance metrics between public and community housing, including maintenance-related indicators, any comparison of financial metrics is not possible given the lack of dependable public information.

³⁹⁹ Victorian Department of Health and Human Services. 2020. *Housing assistance additional service delivery data*, available at: <https://www.dhhs.vic.gov.au/housing-assistance-additional-service-delivery-data-2019-20>.

⁴⁰⁰ Victorian Department of Families, Fairness and Housing. 2022. *2020–21 DFFH Annual Report — machine readable dataset: Portfolio performance reporting*, table 2, available at: <https://www.dffh.vic.gov.au/publications/annual-reports-department-families-fairness-housing>.

⁴⁰¹ Australian Government, Productivity Commission. 2021. *Report on Government Services 2021*, Table 18.43, available at: <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/housing-and-homelessness/housing>

⁴⁰² Homes Victoria. 2021. *Comprehensive operating statement for the financial year ended 30 June 2021* (unpublished statement).

Appendix E: Social and affordable housing regulator functions and powers

Regulator functions

A social and affordable housing regulator's functions should include to:

- register rental housing agencies, and maintain a public register (encompassing community and public housing)
- establish, maintain and periodically evaluate systems to enable effective participation by social housing tenants, prospective tenants and representatives of tenants in the regulator's activities (including monitoring and assessing the performance of registered housing agencies)
- develop performance standards for approval by Ministers (the Ministers responsible for the regulator and for housing) with respect to matters set out below.
- develop or adopt performance standards developed by Aboriginal organisations with respect to Aboriginal cultural safety, to apply to all social housing providers, in partnership with Aboriginal housing organisations and representatives of Aboriginal communities
- monitor, assess and report publicly on the activities and performance of registered social housing providers and on their compliance with the performance standards and the Act, including in a way that allows current and prospective tenants to make reasonable comparisons between providers
- monitor, assess and report publicly on the financial health and governance of registered social housing providers (other than Homes Victoria)
- monitor the use and disposal of housing assets (over time, the regulator could be given the responsibility for approving particular types of asset disposals)
- publish information and guidance, including alerts about emerging or current financial risks to the social housing sector, or any part of the sector
- publish information about its regulatory activities
- secure co-operation of and share relevant information with other regulators (within and outside Victoria) and Homes Victoria to avoid unnecessary duplication and overlap of regulatory and data reporting regimes affecting social housing providers and minimise the compliance burden on registered entities
- notify other regulators of registered agencies of any information that the regulator obtains that the regulator reasonably believes may be relevant to their regulatory functions
- carry out or commission research or studies to inform its approach to regulation
- engage with social housing providers, funders and potential investors to enhance their knowledge and understanding of the regulatory regime
- regularly seek feedback from stakeholders, and periodically undertake or commission evaluations of its performance
- administer a central register of affordable housing properties.

Performance standards

Performance standards should cover matters such as:

- tenancy services and support co-ordination
- the information to be provided to current and prospective tenants (including ensuring that information can be understood by all tenants, regardless of their level of education or cultural background)
- tenant engagement, participation in the development of registered housing agencies policies and procedures, and the management of registered housing agencies

- governance and management
- probity
- risk management
- financial viability
- property repairs and maintenance
- asset management systems
- fire risk assessment and reporting
- energy efficiency and heating/cooling performance
- allocation of properties
- tenancy sustainment
- tenant safety and amenity
- sub-letting and tenant absences
- disability modifications
- rental affordability and rent reviews
- provider complaints handling and dispute-resolution systems and performance
- data collection and reporting.

The performance standards could either apply to all providers, or to a designated class or classes of providers — giving the regulator the flexibility to tailor the standards where needed. There could be good reasons to differentiate (for example, generalist versus specialist providers; or to minimise administrative burden by recognising where providers are already complying with other systems that address matters to be covered in standards, for example, with respect to asset management). The regulator would need to justify any decision to design and apply standards to a class or classes of provider.

In developing new standards, the regulator will need to ensure that the standards are compatible with the *Charter of Human Rights and Responsibilities Act 2006*. This will be especially relevant when considering standards that relate to tenancy sustainment and related issues. A number of rights set out in the Act will be engaged including:

- s.13 - right to privacy - this includes the right not to have a person's privacy, family or home unlawfully or arbitrarily interfered with
- s.17 - right to protection of families and children
- s.19 - cultural rights, including the distinct cultural rights of Aboriginal persons
- s.20 - property rights
- s.24 - right to a fair hearing

Consideration could be given to giving the regulator a power to set specific system wide performance improvement targets (either in the legislation itself or via standards), as is the case in Scotland. However, this might be considered premature without a body of relevant benchmarking data.

Consideration could be given to requiring the regulator to periodically publish a statement of how it intends to perform its functions and the matters it intends to give priority to (as is the case in Scotland), reflecting the feedback from its engagement with tenants. However, there is currently a whole-of-government administrative process, where Ministers issue a statement of priorities to regulators within their portfolios which outlines the broad themes and issues the Ministers want the regulator to focus on and each regulator provides their formal written response, which is published. It would be necessary to consider the intersection between these processes, noting that the regulator could highlight the issues tenants feel are most important in its interactions with Ministers.

Regulator powers

Powers of the regulator should include:

- all powers necessary or convenient to perform the functions listed above
- the specific additional powers recommended in this report.