

# Social housing in Victoria

Interim Report

Social Housing Regulation Review



December 2021

# Social Housing Regulation Review

## Interim Report

### Overview

The independent Review Panel has been asked to assess the settings and implementation of regulation of Victoria's social and affordable housing (Appendix A). In preparing its interim report the Panel has taken an expansive approach to this task, broadly defining regulation in its various forms including legislation, contract, policies and procedures, industry codes, regulatory tools, dispute resolution mechanisms and other influences on sector behaviour and outcomes.

The Review takes place following several decades of steady development of a non-profit community housing sector alongside the State's public housing system. It now stands at the doorstep of the State Government's \$5.3 billion Big Housing Build - Victoria's largest investment in social and affordable housing. It also takes place in parallel with the development of the Government's Ten-year social and affordable housing strategy, and other policy activity that will shape the sector over the coming years and decades. It is important that regulation is aligned with these new and evolving policy settings.

Housing assistance in Victoria (and Australia) has historically taken different forms, with rental housing and home purchase assistance provided to eligible cohorts by State and Commonwealth governments. Aside from income support via Commonwealth Rent Assistance, State government owned and delivered public housing was, and remains the dominant form of direct housing assistance. That said, the role of the public housing provider has changed over time and its scope of activity has expanded. Homes Victoria, the State's public housing landlord, also invests in community and affordable housing, contracts community housing agencies to manage assets, and develops policy for the social housing sector. By way of its rent and tenure policies it effectively provides both social and market rental, depending on the tenant's income.

Since the late 1970s the non-profit community housing sector, with its origins in housing cooperatives, has grown up beside the public housing system. A policy shift to expand community housing, and to allow for greater diversity and choice, saw the establishment of the Victorian Regulatory Scheme for non-profit rental housing agencies in 2004. At that time, it was geared to building government and investor confidence in the non-profit sector to develop and operate a viable community housing sector. While still relatively immature compared to international jurisdictions (such as in Europe and the United Kingdom), Victoria's community housing sector is now a collectively more experienced, professional and sophisticated sector, which has proven its capability to develop and deliver housing to Victorians in need.

The key features of social housing in Victoria are that it is highly targeted to those with the greatest needs, and as is appropriate for this group, offers secure long-term tenancies with eviction as a last resort. New tenants are mostly chosen from the priority lists, which means they face a range of social challenges, including family violence, mental health issues, alcohol and drug abuse and homelessness, often in some combination. Almost all are on

modest government income support. Rents, in most cases, are based on household incomes. When arrears, costs arising from property damage and maintenance of an ageing stock are added to the equation, the social housing system struggles to break even on a cash basis. Some combination of public funding and financing or philanthropic support is essential for its financial viability.

Community housing providers have responded to this situation by cross subsidising their social housing activities with 'affordable' (discounted) rental, in some cases market rental housing, and other commercial activities. The boundaries that have traditionally defined housing assistance by owner-provider type are less relevant today than in the past, and there is a case to reconceptualise regulation accordingly.

### Priorities for reform

The Terms of Reference note that the Review is to be forward looking – it is not a response to a systemic failure of regulation or major incident in Victoria's social housing sector, but an opportunity to put in place regulatory settings that will take the sector into a new phase of growth and uplift in service delivery. The Panel's proposed approach to reform is to therefore build on the features and strengths of the existing system. That said, the scope for reform across the key aspects of social housing regulation – service delivery, governance and financial management – is significant.

The papers in this Interim Report deal with the content, design and implementation of the regulatory arrangements for social, affordable and public housing. The themes have been chosen according to the issues identified by stakeholders. Papers 1 through to 9 largely consider changes to existing regulation, policies and processes to place social housing tenants, regardless of who their landlord may be, at the centre of the system. These papers deal with service delivery issues, dwelling standards and safety, dispute resolution mechanisms, and the potential need for regulation of 'affordable' housing. Importantly, changes to improve delivery and increase the stock of housing for Aboriginal tenants are put forward.

Papers 10 through to 15 consider provider needs and address matters of system structure and operation. These include the case for a single, whole of sector social housing regulator, and consistent service delivery standards for public and community housing. They propose changes to existing community housing regulation to reduce unnecessary administrative burden and barriers to registration, as well as changes that will enable the system to adapt and effectively manage risks associated with an increasingly complex sector. Paper 14 focuses on the roles of regulation (and the regulator) in actively growing the sector. Much turns on the effectiveness of implementation and Paper 15 looks at the resourcing and capabilities needed by a social housing regulator to implement the proposed changes. These matters are significant when contemplating a move to a hybrid system that includes an inspection program, regulation of complex corporate structures, oversight of public housing service delivery and asset management, and embedding the infrastructure for tenant consultation and codesign.

Consideration has also been given to the benefits of Victoria's participation in the National Regulatory System for Community Housing (NRSCH) (Paper 17), which the Panel considers to be a worthwhile pursuit in principle. While the reform proposals being put forward in this Review take Victoria further from the NRSCH, it is recommended that work begin immediately with NRSCH jurisdictions to investigate ways in which the systems can achieve greater alignment, thereby enabling Victoria to join.

Appendix B provides a complete list of the proposals in this Interim Report, and an indication of what the Panel considers to be the priority individual reforms.

## Key system reforms

### Greater focus on tenants and service delivery

The purpose of social housing is to serve the needs of tenants. Regulation helps to keep providers accountable and well governed, for the benefit of a range of stakeholders, not least for providers and investors, but ultimately for the benefit of current and future tenants. Moreover, these diverse interests need not be in conflict. The Panel has consistently heard that investors view good service delivery and satisfied tenants favourably. Financial and governance performance should continue to be a high priority for the regulator given how critical it is to investors in the sector and thus to tenant and prospective tenant interests.

Victoria's performance standards were designed using a combination of the National Community Housing Standards, and the English and Scottish approaches, the latter of which is well known for its focus on tenant outcomes and consultation. This has provided Victoria's community housing regulation with a strong foundation, which is reflected in the approach taken by Victoria's Housing Registrar to service delivery standards and reporting. In 2011 the tenant-centred orientation of Scotland's regulatory system was strengthened with the formation of tenant panels, and by embedding in legislation requirements for tenant and prospective tenant input to regulatory decision-making, development and review of the tenant charter, policy reviews and communication of sector performance.

There is scope for the Victorian system to follow Scotland's lead and to formalise its focus on tenants and prospective tenants (in both public and community housing). This can be achieved by revising the objectives of the *Housing Act 1983*, the creation of a common tenant charter, and through the explicit inclusion of registered agencies in the Charter of Human Rights and Responsibilities. It is important to ensure that a strong tenant focus is retained in the midst of sector growth over the coming years. Emulating the Scottish system, there is an opportunity now to strengthen tenant voice in social housing by legislating for tenant input and developing the 'consultation infrastructure', including a tenant scrutiny panel. These should complement and build on the existing mechanisms for obtaining tenant input and advice. With appropriate resourcing this would be a natural step for the Victorian regulator to take.

Bringing prospective tenants into focus introduces a long-term perspective to the regulatory requirements. There is a need to consider long-term maintenance of existing stock, growth of new housing stock, and the general health and viability of the sector to continue to serve not only current tenants but future tenants. Notwithstanding the Big Housing Build, hyper-rationing and overwhelming demand are likely to remain system features, and the need for trade-offs between the wellbeing of current and prospective tenants will continue to be an unwelcome reality. This then begs consideration of the predicaments of those eligible for social housing who are unable to access it, and how to better align the standards for private rental accommodation with the needs of vulnerable and disadvantaged households, while avoiding excessive burden on the small-scale investors that currently provide the bulk of rental housing in Victoria.

### Consistency of service standards and best practice governance

Now more than ever there is a case for consistency in service standards across public and community housing to deliver a seamless system to tenants and prospective tenants, and to entitle them to a level of service that meets a certain minimum standard regardless of who their landlord may be. Common minimum standards across the sector should not come at

the expense of the highly valued diversity and specialisation that the community housing sector offers.

Service delivery and asset management standards, a common tenant charter, similar workforce capabilities and oversight by a single, whole-of-sector social housing regulator would move the system towards this goal. In some cases, achieving consistency could involve additional costs to community housing agencies, including such things as disability modifications. These would need to be accompanied by funding. Similarly, additional funding would assist community housing agencies to match public housing in accommodating high needs and very low-income applicants on the Victorian Housing Register.

Against the backdrop of the Big Housing Build and the associated growth and increased complexity in the sector, there is a need to consider best practice principles of governance in relation to public housing delivery and the government's role in social housing more broadly. In the first instance, any provider or entity that receives government subsidy of any kind should be subject to regulatory oversight. A greater degree of transparency, not only of the financial management of public housing, but in the purchasing of community housing and contracting with private sector participants would be a desirable outcome of regulatory reform.

### Approach to regulation and achieving 'good' growth

The Panel is conscious that the regulatory settings are critical for ensuring that any growth is 'good growth' – that is, that the expansion of stock and operations does not come at the expense of service delivery to tenants, quality of new dwellings or appropriate maintenance of existing properties. Prudent financial management and good governance are also critical, especially in this environment of transition.

The Panel welcomes readers to consider

- i. whether the proposed reforms contained in the papers of this Interim Report will address the issues they propose to address;
- ii. what the implications of their implementation would be; and
- iii. what, if any, alternative solutions should be pursued.

## Cover page

### Acknowledgement

The Victorian Government 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 Interim Report has been prepared by the Independent Panel of the Social Housing Regulation Review, December 2021:

- Emeritus Professor David Hayward, Chair
- Dr Heather Holst, Panel member
- Dr David Cousins, AM, Panel member.

### Why this review?

The purpose of the Social Housing Regulation Review is to consider the need to modify the regulations governing social and affordable housing in Victoria so that they best support the long-term well-being of existing and prospective tenants and the growth of social housing. The focus of this Review is on long-term housing.

The need for the Review has been brought about by the State Government's Big Housing Build – the largest single investment in social housing in the State's history. It is important that this investment is made wisely and well, not just to enhance the long-term interests of current and future tenants to the greatest extent possible but also for taxpayers and potential private investors.

The scope of the Review is defined by its Terms of Reference (Appendix A).

### How you can respond to the Interim Report

- Make a submission via the Engage Victoria website in response to this paper by 28 February 2022
- Provide input via the Engage Victoria website form ([link](#))
- Email the Review at [info@shrr.vic.gov.au](mailto:info@shrr.vic.gov.au)
- Post your submission to Social Housing Regulation Review, c/o- Old Treasury Building, 20 Spring Street, East Melbourne VIC 3002.

**Please note it is not expected that submitters respond to all questions for consideration throughout this Interim Report.**

# Table of contents

Overview.....	1
Cover page.....	5
Table of contents.....	6
Approach to the Review and methodology.....	7
Acronyms and abbreviations used.....	10
1. Tenant at the centre.....	11
2. Common service delivery standards and regulation across public and community housing.....	16
3. Tenant empowerment.....	20
4. Tenancy sustainment.....	26
5. Dwelling standards.....	32
6. Dispute resolution.....	40
7. Aboriginal housing.....	48
8. Professionalisation of the frontline social housing workforce.....	54
9. Affordable housing.....	60
10. A social housing regulator: structure and governance.....	64
11. Regulation of public housing and Homes Victoria.....	69
12. Growth and innovation I: reducing unnecessary regulatory burden and barriers.....	73
13. Growth and innovation II: emerging models.....	78
14. The role of regulation in sector growth.....	83
15. Regulatory approach.....	86
16. Performance reporting for transparency and accountability.....	91
17. National regulation and the National Regulatory System for Community Housing (NRSCH).....	95
18. Prospective social housing tenants.....	100
Appendix A – Review of Social Housing Regulation Terms of Reference.....	106
Appendix B – Summary of proposals and indicative scheduling.....	111
Appendix C – Consultation.....	122
Appendix D – Data gaps.....	134

## Approach to the Review and methodology

The Terms of Reference given to the Panel asked it to consider future regulatory arrangements relating to both public and community housing, as well as affordable housing (Appendix A). The Panel interpreted the scope of its Terms of Reference broadly. In particular, its view of regulation encompasses legislation, contract, policies and procedures, industry codes, regulatory tools, dispute resolution mechanisms and other influences on sector behaviour and outcomes.

In undertaking its Review, the Panel also considered the current Victorian regulatory system from the perspective of providers of social housing as well as the users of social housing – current and prospective tenants.<sup>1</sup> This approach meant that the Panel looked at those eligible for social housing living in other tenure types, and how the broader housing system accommodates those people. The Panel has met with both the Minister for Housing and the Assistant Treasurer twice during 2021 to keep them informed of this approach and to hear of any areas of particular concern in a timely way.

Preliminary consultation and research undertaken by the Panel indicated that the regulatory system for community housing was not broken, had several strengths, and had been moving forward on a pathway of improvement and development since its establishment in 2004. Rather than undertake a systematic, technical review of the Victorian regulatory system, the Panel focused on the issues raised by stakeholders between March and October 2021. A similar approach was taken in relation to public and affordable housing. The Interim Report presents these issues and corresponding proposals around a series of themes that make up the 18 individual papers of this Report.

In formulating its proposals, the Panel has had consideration for 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
  - consistency and certainty
- appropriate governance and structure of the regulator
  - independence
  - Minister/Board/CEO composition/relationship
  - appropriate regulatory tools
  - adequate capacity – staff and funding
- transparency and accountability
- co-ordination
- efficiency.

What is proposed is 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. Moreover, many aspects of the policy environment are under development at the time of undertaking the Review. Attempts have been made to signpost policy and system design matters, and in many instances, they are included purposefully for completeness, either



because the policy position is uncertain or because the Panel wishes to draw attention to a particular issue.

Between the release of the Interim Report in December 2021 and delivery of the final report in May 2022, the Panel will consult further with stakeholders to obtain further feedback on the proposals. Early in 2022, the Panel will hold a community Q&A event that was originally planned for tenants, community groups and support services in September. That event did not proceed because of COVID-19 restrictions. The Panel will also conduct a series of round tables and workshops with key stakeholders.

Along with written responses to the Interim Report, the feedback from the community Q&A event, round tables and workshops will be used by the Panel to refine its proposals in preparation for its final report which is due at the end of May 2022.

## Methodology

The Panel's research methodology has been heavily impacted by COVID-related travel restrictions which limited its ability to undertake face-to-face consultations and meant the Panel needed to rely on online forms of communication and interaction. Despite this, the Panel has managed to undertake significant and wide-reaching consultation with stakeholders. The Panel was impressed by the level and degree of engagement evident across Victoria and beyond.

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.

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

During the period June to August 2021, the Panel released three substantive consultation papers on the Engage Victoria website (<https://engage.vic.gov.au/social-housing-regulation-review>):

- Consultation paper 1: Background and scoping paper
- Consultation paper 2: Service delivery and the tenant experience
- Consultation paper 3: Role of regulation in sector accountability viability and growth.

In response, 80 written submissions were made from housing providers, tenants, advocacy groups, service providers, academics and government agencies. In addition, 82 contributions to questions posed on the [Engage website](#) (Appendix C) were made.

To give tenants further opportunity to contribute to the Review, the Panel commissioned two research projects focussed on current, past and prospective tenants of community and public housing. Both projects 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 that may not have participated in surveys. The final reports for these projects have been published on the Engage Victoria website at: <https://engage.vic.gov.au/social-housing-regulation-review>.

Input from community and public housing tenants was also sought through an 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 1,200 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. Over 80 responses were received (Appendix C).

The Panel commissioned a dedicated Aboriginal Housing consultation. 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, the Project's [Findings and Options paper](#) was released on the Engage Victoria website for further public comment.

Finally, 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 these 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 for distribution to community housing organisations by the Victorian Housing Registrar (Housing Registrar) with a request that the material be shared with tenants. Similar materials were developed for Homes Victoria to distribute to public housing tenants via hard copy mail.

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

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<sup>1</sup> 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*.

## Acronyms and abbreviations used

ACCO	Aboriginal Community Controlled Organisation
AHV	Aboriginal Housing Victoria
AIHW	Australian Institute of Health and Welfare
AHURI	Australian Housing and Urban Research Institute
CEO	Chief Executive Officer
CHIA Vic	Community Housing Industry Association Victoria
CHO	Community Housing Organisation
CRA	Commonwealth Rent Assistance
DFFH	Department of Families, Fairness and Housing
DTF	Department of Treasury and Finance
ESC	Essential Services Commission
FTE	Full Time Equivalent
NDIS	National Disability Insurance Scheme
NHFIC	National Housing Finance and Investment Corporation
NRAS	National Rental Affordability Scheme
NRSCH	National Regulation System for Community Housing
Q&A	Questions and Answers
RTA	<i>Residential Tenancies Act 1997</i>
SPV	Special Purpose Vehicle
VAGO	Victorian Auditor-General's Office
VCAT	Victorian Civil and Administrative Tribunal
VPTA	Victorian Public Tenants' Association

# 1. Tenant at the centre

## What is the problem?

- There is a profound market failure in providing suitable and affordable housing for low-income and vulnerable cohorts in the community.
- The *Housing Act 1983* does not provide a clear objective for the social housing regulatory system.
- There is scope for greater clarity of the expected service standards for tenants and prospective tenants of social housing.

## The objective of the regulatory system

Demand for social housing far outstrips supply. In addition, many tenants face social challenges arising from the trauma of escaping family violence, struggling with mental health issues, drug and alcohol addiction, and escaping homelessness. As a result, tenants in social housing often have limited ability to choose or switch providers and many people in similar circumstances must remain in the private rental market. Absent regulation, there would be little incentive for providers to offer a service that meets the needs of tenants, besides their not-for-profit, mission focus; the price mechanism relied upon in well-functioning private markets will not work. Regulation provides a tool to protect tenants and ensure that they get the services they need. This should be the focus of the regulatory system.

However, there is a view that the social housing system has become predominantly focused on the operations of providers and managing waiting lists.<sup>1</sup> Throughout the consultation process, many participants suggested that the focus on tenants (including prospective or future tenants) should be greater.<sup>2</sup> The Housing Registrar does include promoting tenant outcomes as one of its key purposes in its corporate plan and also notes that it is committed to safeguarding the interests of tenants and prospective tenants,<sup>3</sup> but there is little guidance in legislation as to what the objectives of the regulatory system should be.

## The service standards for tenants

Several participants to the review suggested the service standards that tenants can expect from community housing are unclear and fall short of those provided by public housing.<sup>4</sup> For example, the Joint Community Legal Centres suggested that there is often a gap in standards and accountability for community housing tenancies, which has an effect on renter outcomes.<sup>5</sup> On the other hand, community housing tenants often express higher satisfaction than public housing tenants.<sup>6</sup> Regardless, many tenants surveyed across both public and community housing were unaware of what service standards they should expect from their social housing landlord.<sup>7</sup>

## The experience of tenants in social housing

The net result of the above is a system where many social housing tenants have negative experiences. These include issues such as a lack of responsiveness to maintenance requests, tenants feeling like their voice is being ignored, perceptions of poor service, and a lack of support.<sup>8</sup> Other cases highlighted were of tenants being evicted into homelessness,

or not receiving the support they need, or being effectively forced to leave their homes because of the behaviour of a neighbour.<sup>9</sup>

Of course, there are trade-offs between the interests of current and future tenants – factors such as growth are important to meet the needs of prospective tenants. This will necessitate resources which could otherwise be directed to improving service delivery and supports for existing tenants. However, development should not come at the expense of basic standards for tenants – such as having a well-maintained house, having the support needed to stabilise tenancies, and feeling safe and secure.

## What is proposed?

1.1 Include in the *Housing Act 1983* an explicit objective for the regulatory system. This objective could be:

- to protect and safeguard the interests of current, prospective and future tenants.

This approach implicitly encompasses growth of the social housing sector as this is in the interests of current, prospective and future tenants. Importantly, in keeping the interests of tenants at the centre, it provides guidance as to the type of growth that is to be pursued, particularly in relation to dwelling quality and standards.

These details could be articulated in supporting documentation such as an annual statement of ministerial priorities and other guidance material produced by the regulator.

- 1.2 Establish a charter outlining the service standards that tenants can expect from their public or community housing landlord.
- 1.3 Clarify that the *Charter of Human Rights and Responsibilities Act 2006* applies to registered community housing agencies insofar as their functions are of a public nature for the purposes of that Act.

## Rationale for this approach

Put together, the three reforms outlined above aim to establish tenants (including prospective and future tenants) as the main focus of the regulatory system. Of course, these changes alone will not lead to a tenant-focused system – they are only the first step, and many other proposals throughout this Review seek to improve standards for tenants. But by establishing tenants as the central consideration of the regulatory system, it will help embed a culture that will flow through the system.

### The approach is modelled on the Scottish regulatory approach

Aspects of this approach are modelled on the Scottish regulatory system for social housing. In 2011, the Scottish Government introduced an explicit, tenant-focused objective for the regulator, as well as a tenant charter which outlines the performance standards that tenants can expect to see from their landlord.<sup>10</sup> Since this time, tenant satisfaction with providers has increased at a slow, but steady pace (from an already high bar).<sup>11</sup>

The Scottish social housing system is very different to Victoria's – notably in size, scope, maturity, as well as a higher level of historical funding. Nonetheless, an explicit tenant-

focused objective and charter could drive improvements in standards of service delivery and performance in Victoria.

### A focus on tenants can encompass a range of priorities

There would be benefits in enshrining the objective of safeguarding the interests of current, prospective and future tenants in legislation to ensure a clear focus on tenants in both public and community housing.

A focus on current, prospective and future tenants is a broad concept. It can include, for example, improving service delivery, ensuring that tenants have a voice, ensuring homes are well maintained, helping providers grow the social housing stock to meet the needs of future tenants, and ensuring that providers are financially viable. This broad objective could be supplemented with sub-objectives in the legislation, ministerial guidance, or left to the regulator's discretion to determine how to best achieve the objective.

Importantly, the focus on prospective and future tenants means that the system should ensure that social housing is fit for purpose over the long term.<sup>12</sup> It allows for the regulator to consider ways that the stock of social housing can grow, and the waiting list can be reduced, while also focusing on ensuring that the housing (and services delivered) is suitable for the needs of tenants. It also means that people who are homeless should have a say in the design of the system going forward, such as through being included on tenant panels (Paper 3). As noted above, there can be trade-offs between the interests of current and prospective tenants, and this objective should mean that these trade-offs are made more explicit.

An alternative approach is that taken in the English regulatory system, which includes both economic and consumer objectives for the regulator. This may give greater guidance to the regulator, but at the risk of introducing conflicting priorities. The Panel's preference is for the regulatory objective to clearly focus on tenants (and future tenants) and for this to guide implementation of any secondary objectives. This is not to say that the regulator should not consider the views of other stakeholders, including providers, funders and the broader community, nor that it should not consider economic objectives – indeed, achieving economic objectives, including promoting provider efficiency, will be critical for achieving good outcomes for tenants.

### The charter of service standards

The purpose of the proposed charter of service standards is to make clear to tenants what they can expect from social housing landlords, whether public or community (Paper 2).<sup>13</sup> This would not preclude providers from having their own charters that go beyond the minimum standards outlined in regulation. It would sit over the top of the existing performance standards but would not impose additional burdens on providers – rather, it is a mechanism to assist tenants to hold providers to account. This Review proposes some changes to the standards, and these would also be reflected in the charter.

Tenants' rights (and responsibilities) under their tenancy agreements are also contained in the *Residential Tenancies Act 1997*. There is scope to clarify this, the interaction of the provisions of the RTA and reasonable expectations of housing providers.

### The Charter of Human Rights

Several participants outlined examples where the *Charter of Human Rights and Responsibilities Act 2006* has offered protection to tenants in social housing, and prevented unnecessary evictions.<sup>14</sup> Nonetheless, its status in community housing is unclear.<sup>15</sup> Several reviews have recommended clarifying the role of the charter in community housing<sup>16</sup> and this

approach has been undertaken in other states.<sup>17</sup> Such a change would help ensure that tenants in community housing have their rights protected, and are placed on an equal footing to tenants in public housing.

## Questions for consideration

- 1.1 What should the objective/s of the regulatory system be? Are there any practical issues with an objective that puts tenants at the centre of the regulatory system?
- 1.2 Do you think a tenant charter would improve the culture of the regulatory system? Would this be a positive step?
- 1.3 Are there practical issues or implications with including community housing providers under the *Charter of Human Rights and Responsibilities Act 2006* that should be taken into consideration?

<sup>1</sup> For example, see 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*, AHURI Report no. 332, p. 22.

<sup>2</sup> 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).

<sup>3</sup> Housing Registrar 2021, *Corporate Plan 2020-22*, pp. 2,5, available at:

[https://www.vic.gov.au/sites/default/files/2021-08/HR%20Corp%20Plan%202020-22\\_160821.pdf](https://www.vic.gov.au/sites/default/files/2021-08/HR%20Corp%20Plan%202020-22_160821.pdf).

<sup>4</sup> 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).

<sup>5</sup> Community Legal Centres – Joint Response (submission 5, p. 3).

<sup>6</sup> Steering Committee for the Report on Government Services 2021, *Report on Government Services*, Tables 18A.40 and 18A.42.

<sup>7</sup> For example, of the 219 community housing tenants surveyed, 70 (about 30 per cent) felt like they could not stay in their home for as long as they would like, and about half of these were due to a fear of being evicted. Of the public housing tenants surveyed, over 30 per cent did not agree that their rights as a tenant were protected (18 per cent of community housing tenants did not agree that their rights were protected).

<sup>8</sup> For example, see Social Changes Projects. 2021, *Report on individual submissions: Social Housing Regulation Review*.

<sup>9</sup> See, for example, RedRoad Consulting. 2021, *Social Housing Regulation Review: Public Housing Tenants' Engagement, Findings Report* and 89 Degrees East. 2021, *Community Housing Tenant Engagement Project*. Also see Tenants Victoria (submission 29, pp. 19-20, 40-41) and Justice Connect (submission 58, pp. 10, 14, 15, 18, 30).

<sup>10</sup> The Scottish Social Housing Charter was reviewed in 2016 (and is currently under review). Most participants who responded to the 2016 review suggested that its introduction had improved the quality of landlord services – including better communication, more accountability, greater focus on tenant priorities and encouragement of tenant led scrutiny (Scottish Government. 2016, *Consultation on a Review of the Scottish Social Housing Charter: An Analysis of Responses*, p. 4), available at: <https://www.gov.scot/publications/consultation-review-scottish-social-housing-charter-analysis-responses/>.

<sup>11</sup> Overall tenant satisfaction in Scotland 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 tenant 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. See 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> and Scottish Housing Regulator. 2015, *National Report on the Scottish Social Housing Charter: An analysis of landlords' 2013/14 annual returns*, available at:

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<https://www.housingregulator.gov.scot/media/1144/national-reports-national-report-on-the-scottish-social-housing-charter-2013-14.pdf>.

<sup>12</sup> 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.

<sup>13</sup> 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. 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.

<sup>14</sup> For example, see Inner Melbourne Community Legal (submission 56, p. 12) and Justice Connect (submission 58, p. 13). Tenants Victoria (submission 29, p. 19) highlighted an example where use of the Charter may have led to better outcomes for a community housing tenant.

<sup>15</sup> The Charter of Human Rights and Responsibilities primarily relates to public authorities – a key question is whether community housing providers are providing a public duty. An appeal against an eviction from community housing in 2019 found that the organisation was not making its decision in the performance of a public duty, and thus was not subject to the charter. See *Durney v Unison Housing Ltd* [2019] VSC 6. Several submitters noted this issue, including Community Legal Centres Joint Response (submission 5, p. 3); Tenants Victoria (submission 29, p. 18); Victorian Council of Social Service (submission 39, p. 17); Peninsula Community Legal Centre (submission 40, p. 4); and Victoria Legal Aid (submission 62, p. 17).

<sup>16</sup> Brett Young, M. 2015, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006*, available at: [https://files.justice.vic.gov.au/2021-06/report\\_final\\_charter\\_review\\_2015.pdf](https://files.justice.vic.gov.au/2021-06/report_final_charter_review_2015.pdf); Parliament of Victoria, Legislative Council Legal and Social Issues Committee. 2021, *Inquiry into Homelessness in Victoria, Final Report*, available at: [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry\\_into\\_Homelessness\\_in\\_Victoria/Report/LCLSIC\\_59-06\\_Homelessness\\_in\\_Vic\\_Final\\_report.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Homelessness_in_Victoria/Report/LCLSIC_59-06_Homelessness_in_Vic_Final_report.pdf).

<sup>17</sup> For example, Queensland's *Human Rights Act 2019* defines a function of a public nature as including 'a housing service by a funded provider or the State under the Housing Act 2003' (s. 10(3)(vi)).



## 2. Common service delivery standards and regulation across public and community housing

### What is the problem?

- Different oversight mechanisms, service delivery standards and asset management standards across public and community housing have contributed to the following issues:
  - inequities for tenants
  - complexity and confusion for tenants, their advocates and dispute resolution bodies
  - a lack of transparency and accountability for public housing arising from a lack of regular external scrutiny as well as limited financial and service delivery performance information that is comparable to that available for community housing.

### Inequities for tenants

While both sectors are subject to the *Residential Tenancies Act 1997* (RTA), there are inconsistencies in performance standards between public and community housing. Community housing organisations (CHOs) are subject to the Housing Registrar's tenant and housing services standard (among other performance standards), which regulates how providers manage rents, eligibility, allocations, termination of assistance, complaints, tenant engagement, and tenant satisfaction. By contrast, standards for public housing are determined by the Department of Families, Fairness and Housing (DFFH). While it is subject to the checks and balances that apply to all public agencies, it is not subject to the requirements and regular monitoring of an external regulator.

As a result, tenants are subject to different rent setting policies, dwelling standards, customer service standards, maintenance arrangements, dispute resolution processes and likelihood of eviction depending upon provider type.

Aspiring to greater consistency across public and community housing should not detract from the diversity and specialisation that the community housing sector offers, nor should it deter providers from exceeding the common minimum standards. The purpose rather is to deliver a social housing system that meets a consistent minimum level of service delivery based on best practice.

Differences in rent setting and allocations requirements are two areas of significant inconsistency across public and community housing. These are essentially policy settings for government rather than regulatory. Responsibilities for those functions are considered further in Paper 11.

There is an opportunity for regulation to require clearer communication and perhaps a greater degree of standardisation of rent setting policies within the sector. The Panel has heard that the variation in rent setting policies creates confusion for tenants and advocates, and contributes to inequity, perceived if not real. Community housing organisations generally can charge up to 30 per cent of household income plus any Commonwealth Rent Assistance. However, some community housing organisations treat family payments as main

income, rather than applying a flat 15 per cent. Several assess the income and payments of a dependent (such as Youth Allowance) as main household income,<sup>1</sup> while others apply a lower flat rate.<sup>2</sup> 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.

### Complexity and confusion

Different policies and processes for public and community housing can create confusion among tenants looking to make complaints and settle disputes (Paper 6). This fact was brought to the Panel's attention by several participants to the Review, and in several submissions.

Domestic Violence Victoria and Domestic Violence Resource Centre Victoria pointed to the increased complexity in the dual-sector system.<sup>3</sup> The Community Legal Centres Joint Response pointed out that while there was a detailed Tenancy Management Manual for public housing governing issues such as disability modifications, temporary absences, tenant breaches, arrears and evictions, community housing tenants were subject to the policies of their particular community housing organisation.<sup>4</sup> The differences that result from community housing organisations formulating their own policies does not necessarily lead to a diminution of rights, though it can make navigating the system more difficult, both for tenants and advocates.

Flexibility for community housing organisations to determine their tenant management policies (within the bounds of the regulator's performance standards and the RTA) allow them to manage their property portfolio and tenant cohort while maintaining financial viability. Mandating a single policy across public and community housing could put at risk investments made by providers under current regulatory settings. However, there may be room for greater consistency between public and community housing, and among community housing organisations, to reduce confusion and give greater scope for positive tenant experiences. This is important because of the significant power imbalance between tenants and providers.

### Need for greater transparency and accountability in public housing

Community housing organisations face the risks of failure if they take on too much debt and have poor governance. Public housing does not face the same risks of insolvency and is not subject to the commercial disciplines that community housing organisations face.

While Homes Victoria (and public housing) are subject to Parliamentary oversight, it is not required to meet the performance standards of an external independent regulator. Victorian Auditor-General's Office's (VAGO) Reports over the past decade have 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.<sup>5</sup> 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.

Some performance information is available on public and community housing, although much of it is not comparable across sectors (Paper 16). The lack of financial information for public housing makes it difficult for policymakers and sector participants to benchmark the cost of provision, asset management, and other metrics relating to financial viability. Without this data it is difficult to ascertain the relative efficiency of service provision across sectors, or to determine the appropriate level of ongoing subsidy. Mallee Family Care noted the lack of adequate financial oversight and available data for public housing, adding that the stock management issues reflect the fact that it is not subject to the same rigorous oversight and enforceable directions that apply to community housing organisations.<sup>6</sup>

## What is proposed?

2.1 Apply a uniform set of service delivery and asset management standards to public and community housing, combining best practice elements from both sectors. Existing arrangements for the oversight of public housing governance and financial management would remain. However, greater transparency, coupled with the ability of the regulator to comment on areas for improvement or best practice, would benefit the system as a whole.

Other proposals presented in further chapters will also address the consistency issues in public and community housing. These include a tenant charter (Paper 1), a single social housing regulator (Paper 10), uniform performance reporting requirements (Paper 16) and change to the functions of Homes Victoria (Paper 11).

## Rationale for this approach

The Review's proposals are designed to create a system where providers of social housing are regulated consistently and subject to transparent, independent and effective oversight. Such a system would be simpler for a regulator to oversee and for tenants and sector participants to navigate. It also could help bring consistent processes and service standards for tenants, regardless of whether they live in public or community housing.

Uniform standards do not imply identical policies for both public and community housing. Consistent standards for social housing providers also apply in other social housing jurisdictions, particularly where a single regulator oversees both government and non-government providers. In Scotland the social housing regulator is responsible for the performance of both local government authorities and non-profit providers. For non-profit providers, its remit also includes governance and financial wellbeing, while for local authorities this is out of scope.<sup>7</sup>

In England, the Regulator of Social Housing is responsible for oversight, which includes ensuring non-government providers and local authorities are well managed and financially secure. 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). These apply to all registered providers except for local authorities because the regulator has no power to set economic standards for them (excepting rents).<sup>8</sup>

A single social housing regulator in Victoria would have similar exemptions for public housing, to prevent duplication of regulatory oversight and to ensure scrutiny via the Parliament is accorded a priority (Paper 10). The regulator would nevertheless retain arm's length involvement through regular monitoring of performance across standards that are common to all social housing providers.

Several submitters to the Review noted the benefits of a single set of standards. Mallee Family Care pointed to the benefits of the recently announced Social Services Regulator as a model for social housing, including streamlined and simplified regulation, a single set of standards, less red tape, bolstered enforcement powers and separation in decision making.<sup>9</sup> 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.<sup>10</sup> The Australian Housing and Urban Research Institute pointed to the appetite amongst stakeholders of the 5-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.<sup>11</sup> Consistent standards also help to bring about greater competitive neutrality, a goal noted in the Terms of Reference.

## Question for consideration

- 2.1 What are the practical barriers to applying the same service delivery regulation to both public and community housing? Are there key differences in public housing that make it incompatible with being regulated in the same way?

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<sup>1</sup> Such as Unison Housing.

<sup>2</sup> Common Equity Housing applies 15 per cent 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).

<sup>3</sup> Domestic Violence Victoria & Domestic Violence Resource Centre Victoria (submission 28, p. 6).

<sup>4</sup> Community Legal Centres Joint Response (submission. 5, p. 4).

<sup>5</sup> 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=>.

<sup>6</sup> Mallee Family Care (submission 42, p. 2).

<sup>7</sup> The Scottish Housing Regulator. 2019, *Regulatory Framework*, available at: <https://www.housingregulator.gov.scot/for-landlords/regulatory-framework>

<sup>8</sup> Regulator of Social Housing. 2020, *Regulatory Standards*, available at <https://www.gov.uk/guidance/regulatory-standards>.

<sup>9</sup> Mallee Family Care (submission 42, p. 2).

<sup>10</sup> Community Housing Industry Association Victoria (submission 4, p. 3).

<sup>11</sup> Australian Housing and Urban Research Institute (submission 17, p. 4).

# 3. Tenant empowerment

## What is the problem?

- The usual market mechanisms by which customers signal service, price and quality preferences to providers are absent in social housing.
- Provider incentives to respond to customer preferences are unclear and the system relies on the culture and mission focus of housing providers (and regulation) to provide high-quality services.
- Without sufficient and appropriate mechanisms in place to enable social housing tenants (and prospective tenants) to express their preferences, both individually and collectively, they can be left disempowered.
- Social housing in Victoria is highly targeted to those most in need. This poses additional challenges for tenant involvement.

## There are many ways to involve tenants

Tenant involvement and empowerment refers to ways that tenants can influence the decisions of their housing provider – both strategic and operational (as well as the broader policy and regulatory environment).<sup>1</sup> These approaches seek to give tenants voice. At its lowest level, tenant involvement might involve regular satisfaction surveys, while at its highest level it might involve tenants running their own cooperatives and choosing operational managers and even staff. This is highlighted by the International Association for Public Participation's Public Participation Spectrum, which places information and consultation at one end of the spectrum, with collaboration and empowerment at the other.<sup>2</sup> Increasingly community housing organisations in places such as Scotland and Wales are inviting tenants to critically examine their services in new ways such as tenant panels which have access to up-to-date performance data and information.<sup>3</sup>

Many organisations that have effective tenant involvement approaches use a range of these strategies.

## The benefits of tenant involvement

Tenant involvement enables tenants to have a say or 'voice' in decisions that affect their housing. Many tenants say they value the interaction the participation brings and some gain skills as a result, which can benefit other aspects of their lives.<sup>4</sup> Of course, not all tenants want to be formally engaged in the processes of their housing provider, but it is important that there are avenues for them to be able to do so.

Tenant involvement can benefit housing providers and the sector by:

- raising tenant satisfaction
- identifying solutions and interventions that organisations had not considered
- better allocation of scarce funds to the services that tenants actually want
- enabling a more respectful relationship between tenants and providers, compared to paternalistic approaches in which providers dictate terms and conditions.

Research out of the United Kingdom has highlighted cost savings that have resulted from tenant involvement – as the organisation can reduce funding to services that tenants do not value.<sup>5</sup>

### More work is needed to give tenants a greater voice in Victoria

There has been little systematic assessment of the tenant involvement practices of community housing organisations within Victoria.<sup>6</sup> However, views expressed through consultations and submissions suggest that more work needs to be done to give tenants a greater voice in Victorian social housing.<sup>7</sup> As a whole, tenant satisfaction with involvement in their organisation has been declining over the past few years. It peaked at 82 per cent in 2016-17 but has since declined to 69 per cent in 2019-20 – below the Housing Registrar’s target of 75 per cent.<sup>8</sup>

Tenant involvement can be challenging for organisations to achieve. This is particularly the case in the Victorian context where tenants entering the system often have high needs and may be unwilling or unable to engage with their housing provider.<sup>9</sup> Some housing providers noted that it was difficult to get tenants involved, either because tenants do not wish to participate, or because they lack the funds to set up programs to meaningfully involve tenants. Other organisations highlighted programs that they have set up to involve tenants, and others are moving in this direction.<sup>10</sup> Nonetheless, even where tenant involvement opportunities have been established, some tenants raised concerns about their input being undervalued, or the process being tokenistic and not taken seriously.<sup>11</sup>

In public housing, participants have 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.<sup>12</sup>

### An advocacy body for community housing tenants

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

## What is proposed?

- 3.1 Embed tenant involvement in policy and regulatory development and decision-making. This could include:
  - formally requiring tenant involvement in the policies and processes of the regulator, such as through tenant advisory panels
  - strengthening guidance on best practices
  - requiring plain English approaches to regulation, reporting and policy documents.
- 3.2 Adjust the tenant involvement standard to place a higher requirement on providers to involve tenants in decision-making processes affecting tenancy management. This could include a requirement to:

- support tenants to be involved in the decisions of their housing organisation
  - have a publicly available tenant involvement strategy and to demonstrate the effects that tenant involvement has had on organisational decision-making. This would affect both public and community housing through a common standard (Paper 2).
- 3.3 Investigate learning and development approaches to improve tenants' capacity to engage with providers, and providers' capacity to engage with tenants.
- 3.4 Create a dedicated representation and advocacy function for community housing tenants:
- this function should cover both public and community housing
  - this could involve rebranding the existing public housing advocacy agency (VPTA), adapting its constitution and Board membership, and resourcing it appropriately
  - alternatively, a new body could be resourced to advocate for public and community housing tenants
  - the Panel is not inclined to support two separate bodies.

## Rationale for this approach

A meaningful shift in tenant empowerment will require a process of cultural change, at an organisational and regulatory level. Its success requires that social housing providers embrace tenant involvement at the most senior levels. Thus, the package of reforms outlined above is a multipronged approach that seeks to drive this cultural change over time.

### The regulator can drive cultural change

The Panel understands that the Housing Registrar is already engaged in continuous improvement in communication and accountability to tenants. It is beginning to engage more with tenant groups – it notes in its corporate plan that it is seeking to strengthen relationships with key stakeholders such as tenant advocates.<sup>13</sup> The Housing Registrar's 2021 annual forum had a focus on tenant voice, with insights from organisations and tenants.<sup>14</sup> However, the process is ongoing and more can be done.<sup>15</sup> As an example of good practice, the Scottish Housing Regulator has a tenant engagement plan, which 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.<sup>16</sup> This could be a useful model for the Housing Registrar going forward, to enable it to consider the views of a diverse range of tenants from various backgrounds.

The Housing Registrar has issued guidance on tenant involvement and uses this guidance to help community housing organisations improve their performance.<sup>17</sup> There would be merit in the guidance being updated, both to take account of international developments<sup>18</sup> (for example, the use of tenant scrutiny panels) and to take account 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 and could form the basis of a tenant involvement framework.<sup>19</sup> Further,

leadership from the Housing Registrar in incorporating this approach into their own operations should drive changes in provider performance in this respect.

It is difficult for tenants to be involved in processes when the underlying documentation is unclear to them. It is important that the information that the Housing Registrar publishes on provider performance is clear and shaped for the needs of tenants (Paper 16). Several tenant groups also noted that there are difficulties in understanding the policies of providers,<sup>20</sup> and the Housing Registrar should continue to push for 'plain English' approaches for provider policies, and for providers to publish meaningful information on their performance.

### A stronger standard for tenant involvement

Beyond this, a stronger standard would place a greater onus on providers to gain meaningful tenant input. The current standard does not impose requirements on organisations beyond having mechanisms to engage with tenants. This can be contrasted with approaches in other social services – for example, the Aged Care Standards require that consumer input is obtained in the development, delivery and evaluation of services and are supported in that engagement.<sup>21</sup> 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.<sup>22</sup>

It should not be sufficient for providers to establish mechanisms for engagement but have little uptake because tenants do not feel supported to engage. The new standard should make this clear. This standard would apply to both public and community housing (Paper 2).

### Providing tenants with necessary skills to engage

Improving mechanisms to allow for tenant involvement is likely to be less effective if tenants do not have the skills or the support to engage effectively with their provider, particularly given the profile of social housing tenants in Victoria.<sup>23</sup> As noted by the Community Housing Industry Association Victoria, the infrastructure to support and train tenants to engage does not exist.<sup>24</sup> As noted above, some onus should be placed on organisations to support their tenants to engage. However, there is also merit in a broadly available program that would provide support for tenants and providers in their tenant involvement activities. Examples of such programs include:

- Tenant Participation Advisory Services that operate in the UK countries. These are standalone organisations that provide a range of support for tenants and landlords.
- the Tenant Participation and Community Engagement Program in 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 tenants only.

### An advocacy body for community housing tenants

Finally, several participants identified the need for an independent, third party body to advocate for community housing tenants, and to provide a representative voice for all social housing tenants.<sup>25</sup> The Panel agrees that such a body is required. A new body could be created to advocate for public and community housing tenants. Alternatively, VPTA could be reconstituted to formally include community housing tenants, noting it has skills and experience in representing the views of public housing tenants.



## Questions for consideration

- 3.1 What should a tenant involvement performance standard look like? Are there any practical barriers to implementing a standard that imposes greater requirements on providers?
- 3.2 What approaches could the regulator take to increase tenant involvement in its operations and drive a greater culture of tenant involvement throughout the sector?
- 3.3 What approaches could be used to develop the skills of tenants to engage with their provider? Are there any other programs that could provide a useful model for Victoria?
- 3.4 Which body would be best placed to provide an advocacy role for community housing tenants?

<sup>1</sup> 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*, available at: <http://www.iut.nu/wp-content/uploads/2017/07/Resident-Involvement-in-Social-Housing-in-the-UK-and-Europe.pdf>.

<sup>2</sup> International Association for Public Participation. 2014, *IAP2's public participation spectrum*, available at: [https://www.iap2.org.au/wp-content/uploads/2019/07/IAP2\\_Public\\_Participation\\_Spectrum.pdf](https://www.iap2.org.au/wp-content/uploads/2019/07/IAP2_Public_Participation_Spectrum.pdf)

<sup>3</sup> Scottish Housing Regulator. 2019, *Guide to successful tenant participation*; Housing Registrar 2013, *Good Practice Guide: Getting Tenants Involved*, available at: <https://www.gov.scot/publications/guide-successful-tenant-participation/pages/5/>; Preece, J. 2019, *Understanding approaches to tenant participation in social housing: An evidence review*, available at: <https://housingevidence.ac.uk/wp-content/uploads/2019/07/190725-understanding-approaches-to-tenant-participation-in-SH.pdf>.

<sup>4</sup> Hickman, P. and Preece, J. 2019, *Understanding Social Housing Landlords' Approaches to Tenant Participation*, pp. 22-24, available at: <https://thinkhouse.org.uk/site/assets/files/1337/cache1219.pdf>

<sup>5</sup> IAP2 2014, *IAP2's Public Participation Spectrum*, available at: [https://www.iap2.org.au/wp-content/uploads/2019/07/IAP2\\_Public\\_Participation\\_Spectrum.pdf](https://www.iap2.org.au/wp-content/uploads/2019/07/IAP2_Public_Participation_Spectrum.pdf)

Hickman, P. and Preece, J. 2019, *Understanding Social Housing Landlords' Approaches to Tenant Participation*, pp. 20-21, available at: <https://thinkhouse.org.uk/site/assets/files/1337/cache1219.pdf>; Manzi, T., Simpson, I., Bailey, N. and Glover-Short, C. 2015, *Success, Satisfaction and Scrutiny: The Business Benefits of Involving Residents*, available at:

[https://westminsterresearch.westminster.ac.uk/download/1e6d5b38488a1486851fa15d1ebb19c33b6da58f4eb9c98d650348e9049ec3b0/3011108/AH\\_final%20report\\_published\\_270315.pdf](https://westminsterresearch.westminster.ac.uk/download/1e6d5b38488a1486851fa15d1ebb19c33b6da58f4eb9c98d650348e9049ec3b0/3011108/AH_final%20report_published_270315.pdf).

<sup>6</sup> This point was noted by Community Housing Industry Association Victoria (submission 68, p. 13), which noted that the nature and effectiveness of current practices have not been evaluated.

<sup>7</sup> 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); Council to Homeless Persons (submission 36, p. 9).

<sup>8</sup> Housing Registrar. 2021, *Sector Performance Report 2019-20*, p.18, available at: <https://www.vic.gov.au/housing-registrar-reports>.

<sup>9</sup> Community Housing Industry 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.

<sup>10</sup> For example, Launch Housing (submission 12) highlighted its Lived Experience Advisory Program which enables it to hear from a wide and diverse client group.

<sup>11</sup> 89 Degrees East. 2021, *Community Housing Tenant Engagement Project*.

<sup>12</sup> 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>.

<sup>13</sup> 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](https://www.vic.gov.au/sites/default/files/2021-08/HR%20Corp%20Plan%202020-22_160821.pdf).

<sup>14</sup> Housing Registrar. 2021, *Housing Registrar newsletter – September 2021*, available at: <https://www.vic.gov.au/housing-registrar-newsletter-september-2021>.

<sup>15</sup> 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.

<sup>16</sup> 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>.

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<sup>17</sup> 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>.

<sup>18</sup> 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](https://gov.wales/sites/default/files/publications/2019-07/hearing-the-tenants-voice_0.pdf)) have recently updated guidance on tenant involvement and voice.

<sup>19</sup> 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.

<sup>20</sup> 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).

<sup>21</sup> Aged Care Quality and Safety Commission. 2021, *Aged Care Quality Standards*, Standard 8, available at: <https://www.agedcarequality.gov.au/providers/standards/standard-8>.

<sup>22</sup> 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>.

<sup>23</sup> This was noted by the Council of Single Mothers and their Children (submission 24, p. 2), who stated that ‘participation needs to be informed, equitable and well-resourced.’

<sup>24</sup> Community Housing Industry Association Victoria (submission 68, p. 13).

<sup>25</sup> 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).

# 4. Tenancy sustainment

## What is the problem?

- Tenancies in social housing can fail for a range of reasons. Where they do fail, the costs to the tenant, housing providers and broader society are high.
- There is a wide variance in approaches taken by housing organisations to sustain tenancies.
- Support services are a crucial component to sustain tenancies – but such support is often unavailable or limited.

For many people social housing is their option of last resort. Absent the safety net that social housing provides, they would either be in severe rental stress in the private sector or homeless. When social housing tenancies fail, these are the options that many people face – and the likelihood of cycling back through the system applying and waiting for social housing.<sup>1</sup>

## How many social housing tenancies fail?

There is little evidence available on why people leave the social housing system.<sup>2</sup> This alone is cause for concern (data needs are covered in Paper 16 and Appendix D). In addition, defining what ‘failure’ means in the social housing context is challenging – it can include, for example, people leaving social housing of their own accord (perhaps due to unsuitable housing or a situation with their neighbours) into an unstable situation in the private market. Educated guesses can be made on the number of tenancies that fail based on available data and research:

- about 3,000 tenants left public housing in 2019-20<sup>3</sup>, and about 2,000 tenants exited long-term community housing in 2018-19.<sup>4</sup> Not all of these will be negative exits – some tenants exit social housing to enter other tenure types of their own choice. However, research by Unison Housing Research Lab suggests that roughly half of exits from Unison Housing between 2014 and 2016 were for negative reasons<sup>5</sup>
- there were 3,726 applications for eviction from public housing in 2019, mostly relating to rent arrears.<sup>6</sup> There were 166 evictions from public housing in 2018-19, and about 170 tenants were evicted from long-term community housing<sup>7</sup>
- a recent study by the Australian Housing and Urban Research Institute (AHURI)<sup>8</sup> 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 leave into the private market (and remain there). However, there is a subset of people who have unstable tenure. About 3 per cent of social housing tenants in the sample briefly exited social housing, before re-entering. About 8.5 per cent had multiple periods of entry then exit from social housing. 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.

Available research also notes that tenancies are most at risk in the initial stages. This suggests that a key focus needs to be on providing tenants with the support they need upon entering a tenancy.

## The cost of failed tenancies

The likelihood of homelessness following a failed tenancy is high, given that tenants exiting social housing often face high barriers to renting privately. Tenants can enter a 'revolving door' of homelessness – whereby they are housed, subsequently evicted into homelessness, and become priority entrants back into the social housing system.<sup>9</sup> Beyond the physical deprivations associated with homelessness, it can have lasting impacts on a person's mental health and wellbeing.

Aside from the costs to the individual, homelessness often results in high costs to the community – 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.<sup>10</sup>

This highlights that sustaining tenancies is crucial, given the high cost to both the tenant and the community when tenancies fail. If the number of preventable exits into homelessness from social housing were as low as 100, the costs to society could already be in the millions of dollars, let alone the substantial personal costs to those affected.

## The trade-offs involved in sustaining tenancies

Several participants highlighted costs involved in not evicting tenants – including for neighbours who may be left feeling unsafe in their homes.<sup>11</sup> This outcome is not desirable either and can also lead to the failure of tenancies of those impacted by neighbour disputes or antisocial behaviour. This highlights that the onus is also on tenants 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.<sup>12</sup> Approaches to resolve disputes between neighbours are discussed in Paper 6.

Of course, while sustaining tenancies is important, it is not the only priority for social housing organisations – which face a range of competing priorities, including managing rent arrears and anti-social behaviour. An increased focus on sustaining tenancies could lead to increases in factors such as rent arrears, or organisations avoiding housing tenants considered to be at high risk of tenancy failure. These trade-offs would need to be considered in the design of any sustaining tenancies standard.

## There are examples of positive practice – but more could be done

The Panel has heard some positive examples from community housing organisations of successful approaches to sustaining tenancies. For example, some providers place a focus on transferring tenants rather than evicting them and providing them with support to settle into their new home.

An assessment by West Heidelberg Community Legal based on previously published Housing Registrar data suggests that there is wide variance in eviction rates across housing associations.<sup>13</sup> Additionally, there was a general view amongst Review participants that community housing tenants have less security of tenure than public housing tenants.<sup>14</sup> Some participants stated that the reason for 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. Regardless, the available data suggest that more can be done to help tenants sustain tenancies over the long run.<sup>15</sup>

## Support services

A key aspect of sustaining tenancies is providing access to suitable support services. Defining exactly what support is needed remains challenging,<sup>16</sup> 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 rental arrears or managing antisocial behaviour), as well as supporting tenants to access other assistance (such as mental health services).

Support services have been demonstrated to be a crucial component of sustaining tenancies and reducing evictions.<sup>17</sup> Tenants participating in this Review highlighted support services as one of the key components of social housing.<sup>18</sup> Despite this, many of these tenants raised issues with the available support services:

- available supports are seen as disjointed and not well integrated with other types of support such as mental health, support for people who have experienced homelessness or trauma<sup>19</sup>
- support services can be difficult to access and lack continuity, including when a person first enters social housing.<sup>20</sup>
- it can be difficult for tenants and housing providers to navigate the available supports and there is no central comprehensive database of support services.

There is variation in views among providers in relation to where their role as a social landlord<sup>21</sup> begins and ends.<sup>22</sup> The Panel heard that many providers often provide tenants supports for which they are not funded, and which are typically considered beyond the responsibilities of a tenancy manager. However, as social housing providers there are certain supports that they are expected to provide under the Housing Act to assist tenants sustain their tenancies. These include, for example, assistance establishing the tenancy (such as obtaining necessities for the home and setting up utilities) or linking tenants to appropriate specialist supports. Greater clarity of the roles and responsibilities of providers would be worthwhile to ensure the services of tenancy managers include those things that are critical to sustaining tenancies.

## What is proposed?

### 4.1 Develop a stronger standard on sustaining tenancies.

- The Review is undertaking further work on how such a standard could be designed.
- The Panel wishes to explore the feasibility of a 'no evictions into homelessness' policy, where a tenant would be transferred with conditions, or alternative accommodation found with appropriate supports provided (akin to the supported transition approach in the education system).<sup>23</sup> Such a policy would be best paired with a whole-of-system approach, and may require the power for providers to move tenants.

### 4.2 Provide greater guidance to registered housing organisations on best practice approaches to sustain tenancies by the Housing Registrar, in conjunction with tenants and the sector, including on:

- alternatives to eviction and ways to detect and manage actions and behaviours that put a tenancy at risk
- what support should be offered by housing providers and what the role of tenancy managers and housing providers is in sustaining tenancies.

## Rationale for this approach

### Standards for sustaining tenancies

Currently, community housing providers are required to have a policy on sustaining tenancies, and evictions must be treated as a last resort. There may be scope to provide greater guidance and support to implement this standard, such that it is feasible for providers to achieve. The Panel is seeking further input from participants as to what is a best practice standard for sustaining tenancies.

In addition, it is unclear what 'eviction as a last resort' means in practice. Some housing providers have very low rates of evictions, preferring to transfer tenants where issues arise and provide them support in their new accommodation, whereas others have much higher rates of eviction. Some participants stated that further guidance is needed on this definition.<sup>24</sup> There is scope for the Housing Registrar to provide guidance on this issue and highlight examples of good practice for housing organisations to work towards.

One possible definition of 'eviction as a last resort' is that there should be no evictions into homelessness. Instead, tenants who are facing difficulties sustaining their tenancies would be transferred to a new property, with appropriate support. This would need to be combined with the power for providers to move tenants (rather than simply evict them). Of course, there are practical issues with such an approach – it could have effects on rental arrears and make it more difficult to resolve neighbourhood disputes (and therefore have implications for other tenants). However, it would minimise the issue of tenants being evicted simply to end up back on the waiting list for social housing. The Panel wishes to explore this concept further and is seeking participant views on the workability of such an approach, or a modified version of it.

### Support services

There are examples of effective programs of support for people in, or who need, social housing. For example, Housing First approaches that provide housing for people and offer wrap around services to enable them to sustain their home, are highly regarded.<sup>25</sup> However, it can be difficult for people to access these services as they are in short supply. By and large, these issues relate to the funding, design and availability of support programs – these issues go beyond the scope of this Review, but the recent inquiry into homelessness in Victoria made a range of recommendations targeted at improving 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.

A key issue for this Review relates to the role of housing organisations in providing support. Some providers offer wrap around supports. Others do not directly offer support but refer tenants to other service providers. The best model to use depends on the skill set of the housing providers themselves, reflective of a diverse community housing sector.<sup>26</sup>

The Panel has commissioned additional work on support services to provide additional evidence on the available support services and highlight current gaps in support. This will be available in early 2022.

## Questions for consideration

- 4.1 What should be included in a performance standard for sustaining tenancies?
- 4.2 What does eviction as a last resort mean? Are there examples of good practice in avoiding evictions? How would an approach of restricting evictions into homelessness work in practice? Are there any alternatives?
- 4.3 What should the role of the tenancy manager be in providing support, particularly in the initial stages of a tenancy?

<sup>1</sup> Peninsula Community Legal Centre (submission 40, p. 6) highlighted that social housing renters who are evicted can have a high likelihood of homelessness.

<sup>2</sup> This point was highlighted by Johnson, G., McCallam, S. and Watson, J. 2019, *Who Stays, Who Leaves, and Why? Occupancy Patterns at Unison Housing Between 2014 and 2016*, Unison Housing Research Lab Report no. 2), who noted that there is no commonly applied framework to drive data collection for exit motivations.

<sup>3</sup> Australian Institute of Health and Welfare. 2021, *Housing Assistance in Australia 2021*, Supplementary data table no. HOUSEHOLDS.22, available at: <https://www.aihw.gov.au/reports/australias-welfare/housing-assistance>.

<sup>4</sup> Housing Registrar. 2021, *Sector Performance Report 2019-20*, available at: <https://www.vic.gov.au/housing-registrar-reports>.

<sup>5</sup> 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*, Unison Housing Research Lab Report no. 2.

<sup>6</sup> Victorian Civil and Administrative Tribunal, Unpublished data.

<sup>7</sup> West Heidelberg Community Legal (submission 52, att. 1).

<sup>8</sup> 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 final report no. 326, available at: <https://www.ahuri.edu.au/sites/default/files/migration/documents/AHURI-Final-Report-326-Social-housing-exit-points-outcomes-and-future-pathways-an-administrative-data-analysisv2.pdf>.

<sup>9</sup> The recent inquiry into homelessness in Victoria highlighted the high costs of homelessness (Legislative Council Legal and Social Issues Committee 2021, *Inquiry into homelessness in Victoria, Final Report*, pp. 28-29, available at: [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry\\_into\\_Homelessness\\_in\\_Victoria/Report/LCLSIC\\_59-06\\_Homelessness\\_in\\_Vic\\_Final\\_report.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Homelessness_in_Victoria/Report/LCLSIC_59-06_Homelessness_in_Vic_Final_report.pdf)

<sup>10</sup> For example, Witte, E. 2017, *The case for investing in last resort housing*, MSI 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.

<sup>11</sup> See RedRoad Consulting. 2021, *Social Housing Regulation Review: Public Housing Tenants' Engagement, Findings Report* and 89 Degrees East. 2021, *Community Housing Tenant Engagement Project*). Security and safety were the top issues raised about social housing in the individual submissions to this Review. See Social Change Projects. 2021, *Report on individual submissions: Victorian Social Housing Regulation Review*.

<sup>12</sup> 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'*. Policy Press.

<sup>13</sup> West Heidelberg Community Legal (submission 52, att. 1).

<sup>14</sup> Tenants Victoria (submission 29, p. 20); Geelong Housing Action Group (submission 38, p. 5); West Heidelberg Community Legal (submission 52, p. 5).

<sup>15</sup> 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.

<sup>16</sup> Watson, J. 2021, *Staying in place: Social housing and support services*, available at: <https://unison.org.au/news/staying-in-place-social-housing-and-support-services>

<sup>17</sup> For example, Zaretzky, K. and Flatau, P. 2015, *The cost effectiveness of tenancy support programs for formerly homeless people*, AHURI Research Report no. 252, note that tenancy support programs have proven successful at enabling formerly homeless people to access and sustain housing and reduce evictions.

<sup>18</sup> Social Change Projects. 2021, *Report on individual submissions: Victorian Social Housing Regulation Review*.

<sup>19</sup> 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); Eastern Homelessness Service System Alliance (submission 37, p. 1).

<sup>20</sup> 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).

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<sup>21</sup> 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 etc. See Social Housing Regulation Review Consultation Paper 1, p. 18: <https://engage.vic.gov.au/social-housing-regulation-review>.

<sup>22</sup> 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.

<sup>23</sup> Department of Education and Training 2020, *School Operations: Expulsions*, available at: <https://www2.education.vic.gov.au/pal/expulsions/guidance/supported-transition>.

<sup>24</sup> Peninsula Community Legal Centre (submission 40, p. 5) recommended that the Housing Registrar draft model policies that set out best practice for how evictions could be treated as a last resort.

<sup>25</sup> See for example, Australian Association of Social Workers (submission 33, p. 8); South Port Community Housing Group (submission 47, p. 7).

<sup>26</sup> 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 to raise concerns with. 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 themselves.



# 5. Dwelling standards

## What is the problem?

- Minimum standards introduced in the *Residential Tenancies Act 1997* apply at the point of re-leasing, meaning long term tenancies will not benefit from changes. Social housing tenants are disproportionately affected because their tenancies are generally longer and will not come up for re-lease in the foreseeable future.
- Many social housing tenants suffer with high energy costs and poor thermal comfort due to poor energy efficiency in their homes. The complex needs of social housing tenants – including lower incomes, old age and a higher incidence of chronic health conditions – make them less able to tolerate extreme temperatures.
- There is a lack of reliable information on social housing property conditions – as relevant to energy efficiency status but also maintenance more generally.
- Evidence indicates that preventable house fires and associated deaths disproportionately affect social housing properties and tenants.
- There are accessibility issues for public and community housing tenants. Community housing tenants sometimes struggle to obtain modifications to their homes to make them adequately accessible because of the need to obtain an alternative funding source.

## Minimum standards

One of the features of social housing is longer tenancies due to the comparatively lower tenant turnover.<sup>1</sup> Recent changes to tenancy regulations introduced in March 2021 include 14 minimum standards which all properties must comply with when they are leased.<sup>2</sup> These apply to all rental properties, including social housing, and are designed to cover basic things that make a dwelling habitable such as bathrooms, kitchens, laundry facilities, ventilation, structural soundness, mould and damp, heating and electrical safety.

The standards apply to tenancies signed or renewed after March 2021. This allows a gradual upgrading of properties to the new benchmark as tenancies expire. In the private market where properties are turned over more often, there can be a steady upgrading of buildings to the new standards as leases made after their introduction are released or rolled over. Given the longer average length of social housing tenancies, reletting may not occur for many years, sometimes decades. As a result, those properties do not need to comply with the minimum standards and tenants may be living in dwellings that are not considered habitable.

## Energy efficiency

Poor energy efficiency and thermal comfort is a problem that affects both private rental and social housing tenants alike. 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 generally older and where there are likely to be considerable maintenance issues. 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.<sup>3</sup> The Victorian Auditor-General's Office (VAGO) reported similar issues in 2017, as well as finding that renewal and acquisition programs had been postponed to manage the short-term cash position, leaving a repair and maintenance backlog. The Victorian Auditor-General's Office reported similar issues in 2017, as well as finding that renewal and acquisition programs had been postponed to manage the short-term cash position, leaving a repair and maintenance backlog. Unfortunately, the report also found that adequate data on the condition of dwellings were not available, making it difficult to know whether the stock is deteriorating at a faster rate than it is ageing.<sup>4</sup>

Older buildings are not as thermally efficient as newer dwellings, which leaves tenants vulnerable to heat and cold. For those that have heating or cooling installed, they will need to keep these appliances on for longer, running up high energy costs. Some may avoid using heating/cooling facilities altogether to avoid high running costs. Recent tenant surveys commissioned by the Review showed that about 60 per cent of public housing tenants<sup>5</sup> and 40 per cent of community housing tenants<sup>6</sup> are unhappy with their dwelling's energy efficiency or heating and cooling, suggesting a major effort is needed to ensure residents are comfortable in their homes throughout the year.

Managing energy efficiency and maintenance issues forms a considerable part of social housing providers' long-term asset management. A recent study on social housing asset management noted that across both public and community sectors, maintenance backlogs are producing unacceptable conditions for many tenants.<sup>7</sup> Where there is inadequate data, such as the case of poor public housing condition data,<sup>8</sup> problems are unlikely to be detected until a crisis occurs. At this point, rectifying the cost of 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.<sup>9</sup>

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.<sup>10</sup> The program installs reverse cycle air-conditioning to provide 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 earlier initiative which finished in 2020, which focussed specifically on public housing.<sup>11</sup> 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 property. There are a range of initiatives social housing providers could enact and which should form part of their asset management strategies. Efforts could be simple and related to maintenance (such as repairing broken windows and patching insulation gaps in walls or ceilings) or could be more substantial, such as improving air-tightness, installing ceiling and roof insulation or fitting double-glazed windows. The Department of Health and DFFH recently released a Climate Change Adaptation Action plan, which included several actions to increase energy efficiency in social

housing to help tackle climate change.<sup>12</sup> 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 a raft of potential options for retrofitting ranging from the simple and cost-effective to the complex.<sup>13</sup> 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, air-tightness adaptations (draft stoppers/door snakes) and other suggestions.

Energy efficiency is largely a policy and funding issue. However, the regulator may have 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.

### Management of maintenance claims

Research with public and community housing tenants commissioned by the Review found that management of maintenance ranked as the top issue. Tenants reported waiting considerable time for repairs to be scheduled, contractors failing to attend scheduled maintenance jobs, ineffective repair jobs and poor communication from contractors and the landlord.<sup>14</sup> These complaints were predominantly made about public housing rather than community housing.

To be fair, 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.<sup>15</sup> A submitter to this Review (a public housing tenant) noted the lack of information available for incoming tenants on past repairs and expected future repairs.<sup>16</sup> Such information would give tenants a basis for dealing with the property and to anticipate potential issues. The submitter also noted the absence of follow through mechanisms with the tenant, which allowed scheduled repairs to go unattended or remain incomplete.

In community housing, tenants' general experience was that landlords were responsive; however, instances of mould or pest control tended to take a long time or cause major disputes.<sup>17</sup> People with disabilities faced long waits for modifications, and the ongoing standoff between housing providers and the National Disability Insurance Scheme (NDIS) about who is responsible for modifications presented more barriers.<sup>18</sup>

### Fire safety

The importance of fire-resistant building materials has been brought into sharp 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.<sup>19</sup> This ban, however, does not include class 1 buildings<sup>20</sup> – the majority of which are single detached buildings, but also includes rooming houses for up to 12 residents.<sup>21</sup>

There are other non-cladding fire risks, including evacuation procedures, fire separation, door furniture and sprinkler systems. Fire Rescue Victoria data suggest social housing tenants represent a disproportionate share of victims of preventable house fires, with six of 44 people (or about 14 per cent) who died in preventable house fires from June 2016 to

September 2021 were living in public housing<sup>22</sup> – a large proportion considering public housing comprises 2.5 per cent of Victorian housing stock.<sup>23</sup> Another report looking across Australia found for all deaths between 2003 and 2017, about 8 per cent were people in public housing and 3 per cent were people in community housing.<sup>24</sup> Risks factors for preventable deaths in public housing include:<sup>25</sup>

- hoarding, which contributes to high fuel load and blocking of exits
- unsafe smoking or alcohol use
- unsafe candle use, particularly if power has been disconnected
- chronic illness, disability and old age, which may contribute to starting of fires and can make escape difficult.

## Accessibility

There are over 1 million people in Victoria who are considered to have a disability.<sup>26</sup> Many of these people 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.<sup>27</sup> Across Australia, 41 per cent of social housing tenancies have at least one person with a disability.<sup>28</sup>

Of key interest for this group is ensuring that the housing they live in is accessible and can be modified to meet their changing needs. Going forward, new housing builds will need to comply with accessibility standards in the National Building Code from 2022 (such as step-free entries and step-free showers).<sup>29</sup> However, the existing stock of housing may not meet these standards, and participants to the Review 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 not resolved to tenants' satisfaction<sup>30</sup>
- there is a lack of suitably accessible dwellings for people with disabilities.<sup>31</sup>

Results from the latest National Social Housing Survey suggest that Victoria's performance is declining in this area, particularly in community housing – 77 per cent of community housing tenants noted that modifications met their needs in 2018, compared with 88 per cent in 2016.<sup>32</sup>

In large part, this is likely because there are different policies that apply to modifications in public and community housing properties:

- 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)<sup>33</sup>
- 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 disability modifications that are considered reasonable adjustments in public housing<sup>34</sup>
- community housing organisations are required to have a publicly available policy on disability modifications. The content of these policies varies, particularly in relation to who bears the costs of modifications. Some providers will pay for reasonable modifications on a case-by-case basis, while other policies note that the organisation will not bear the costs of modifications.<sup>35</sup>

Put together, these rules mean that people 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 source for such modifications is the NDIS. 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.<sup>36</sup> Finally, some people with a disability may not qualify for access to NDIS funding.<sup>37</sup>

The net result of this is that people in community housing may not be able to receive the disability 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.

## What is proposed?

- 5.1 Amend the *Residential Tenancies Act 1997* to require all properties to be compliant with minimum standards in the *Residential Tenancies Regulations 2021* by January 2024.
- 5.2 Identify obstacles to meeting minimum standards by January 2024.
- 5.3 Review public housing maintenance contracts, service delivery standards and processes. Consideration should be given to maintenance being provided in-house.
- 5.4 Amend the performance standard requiring social housing providers to keep information 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.
- 5.5 Establish the extent of heightened fire safety risks in social housing, identify specific drivers, and agree on any necessary actions.
- 5.6 Conduct an immediate assessment of the costs and benefits of mandating for new social housing:
  - provisions for the installation of sprinkler systems (on class 1 buildings) and auto cut-off switches on cooking appliances
  - prohibiting the use of combustible cladding on any building type.
- 5.7 Require all social housing providers to undertake disability modifications, to be accompanied by funding from the Victorian Government where otherwise not funded.

## Rationale for this approach

### Minimum standards

The proposed change to minimum standards provisions under the RTA would apply to ongoing tenancies in both the private rental sector and social housing sector from the proposed date. The sector was consulted on the application of minimum standards as part of the review of the RTA. Given the relatively higher turnover of property in the private rental

market, this proposal would be expected to have a minimal effect on private rental providers, particularly since many will have already had to make their properties compliant, or will otherwise need to do so at some point in the near future. In any case, introduction in 2024 would provide a reasonable time period to prepare for the change.

Once the provisions have taken effect, a sitting tenant could identify non-compliance and the landlord would have an obligation to make the property compliant. The minimum standards include things that the government deems required for a dwelling to be fit for habitation so there is no reason why any property that is being leased should not meet them. Large landlords, such as Homes Victoria, could request an exemption where necessary, such as in cases where they did not meet the more stringent requirements for energy efficient heaters.<sup>38</sup> The Review's proposal would also help mitigate the negative health effects emanating from prolonged periods of time in dwellings that do not meet the minimum standards for habitation.

### Energy efficiency

New homes built as part of the Big Housing Build will meet a 7-star energy efficiency rating,<sup>39</sup> but raising the energy efficiency of current housing stock, particularly public housing, would involve a considerable cost. Managing these costs over time is an integral part of a social housing providers' long-term asset management strategy.<sup>40</sup> Greater accountability and oversight of public housing asset management will be pursued by bringing both public and community housing under the same regulatory framework and subjecting them to the same performance standards and regulator (Paper 2).

Requiring social housing providers to report on the energy efficiency of their housing stock and their heating/cooling facilities would allow for additional accountability. It would bring about some additional (albeit limited) competitive pressure to social housing providers to improve their stock's energy efficiency into the future and would give a comparative indication of how comfortable the stock is for tenants. Implementing the proposal should not be onerous since community housing organisations are already required to keep an updated inventory of their housing stock. The proposal would have funding implications that would need to be quantified.

### Fire safety

If social housing tenants and properties are disproportionately impacted by preventable house fires, there is a case for regulating safety standards over and above those that apply to non-social housing properties. The Panel recommends further work to establish the extent and nature of the risk commence with some urgency. Given the Big Housing Build is occurring in parallel with the Review there is an opportunity to incorporate the additional fire safety measures for new builds, which would be much cheaper than retrofitting in the future.

### Accessible housing

Inconsistencies in policies and funding arrangements for disability modifications is one area where inequities arise for tenants of public versus community housing. The proposed joint performance standards (Paper 2) should include a standard that brings community housing into line with the public housing policy on this issue. It is acknowledged that funding would need to be made available to community housing providers where it is otherwise available (such as through NDIS), and this is a policy matter for government.

## Questions for consideration

- 5.1 How can maintenance service standards and processes be improved in social housing? What changes are needed in relation to contracting of suppliers and contract management?
- 5.2 Will the proposed fire safety features address the issue of preventable house fires and deaths in social housing?
- 5.3 Are there any other safety features that are needed in social housing properties?
- 5.4 If funding issues could be resolved, what if any other barriers do you see to social housing providers accommodating disability modifications?

<sup>1</sup> Wiesel, I., Pawson, H., Stone, W., Herath, S. and McNelis, S. 2014, *Social housing exits: incidence, motivations and consequences*, Australian Housing and Urban Research Institute Limited.

<sup>2</sup> 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>.

<sup>3</sup> Parliament of Victoria, Legislative Council Legal and Social Issues Committee. 2021, *Inquiry into Homelessness in Victoria, Final Report*, available at: [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry\\_into\\_Homelessness\\_in\\_Victoria/Report/LCLSIC\\_59-06\\_Homelessness\\_in\\_Vic\\_Final\\_report.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Homelessness_in_Victoria/Report/LCLSIC_59-06_Homelessness_in_Vic_Final_report.pdf).

<sup>4</sup> Victorian Auditor-General's Office. 2017, *Managing Victoria's Public Housing*, p. ix.

<sup>5</sup> RedRoad Consulting. 2021, *Social Housing Regulation Review: Public Housing Tenants' Engagement, Findings Report*, p. iii.

<sup>6</sup> 89 Degrees East. 2021, *Community Housing Tenant Engagement Project*.

<sup>7</sup> Sharam, A., McNelis, S., Cho, H., Logan, C., Burke, T. and Rossini, P. 2021, *Towards an Australian social housing best practice asset management framework*, Australian Housing and Urban Research Institute Limited, p. 2.

<sup>8</sup> 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=>, p. ix.

<sup>9</sup> Sharam, A., McNelis, S., Cho, H., Logan, C., Burke, T. and Rossini, P. 2021, *Towards an Australian social housing best practice asset management framework*, Australian Housing and Urban Research Institute Limited, p. 2.

<sup>10</sup> Victorian Government. 2020, *Media Release: Energy Efficient Social Housing*, available at: <https://www.premier.vic.gov.au/energy-efficient-social-housing>.

<sup>11</sup> 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>.

<sup>12</sup> Department of Health and the Department of Families, Fairness and Housing. 2021, *Climate Change Adaptation Action Plan 2022 – 2026*, available at: <https://engage.vic.gov.au/aaps-healthandhumanservices>.

<sup>13</sup> Daly, D., Tibbs, M., Harada, T., Waitt, G. and Cooper, P. 2019, *Guide to Implementing Low Carbon Retrofits for Social Housing*.

<sup>14</sup> Social Change Projects 2021 *Social Housing Regulation Review: Report on Tenant Submissions*, p. 10.

<sup>15</sup> RedRoad Consulting. 2021, *Social Housing Regulation Review: Public Housing Tenants' Engagement, Findings Report*, p. 13.

<sup>16</sup> Cheesman, B., 2021, Tenant response to survey, 25 October 2021.

<sup>17</sup> 89 Degrees. 2021, *Social Housing Regulation Review: Community Housing Tenant Engagement*, p. 29.

<sup>18</sup> 89 Degrees. 2021, *Social Housing Regulation Review: Community Housing Tenant Engagement*, p. 4.

<sup>19</sup> 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>.

<sup>20</sup> Australian Building Codes Board. 2020, *Building classifications*, available at: [https://www.abcb.gov.au/sites/default/files/resources/2020/UTNCC\\_Building\\_classifications.PDF](https://www.abcb.gov.au/sites/default/files/resources/2020/UTNCC_Building_classifications.PDF).

<sup>21</sup> Department of Environment, Land, Water and Planning. 2020, *Options to ban combustible cladding in Victoria Cost benefit analysis*, available at: [https://www.planning.vic.gov.au/\\_\\_data/assets/pdf\\_file/0021/510096/Cost-Benefit-Analysis-Cladding-ban-in-Victoria-Final-Report-Dec-2020.pdf](https://www.planning.vic.gov.au/__data/assets/pdf_file/0021/510096/Cost-Benefit-Analysis-Cladding-ban-in-Victoria-Final-Report-Dec-2020.pdf).

<sup>22</sup> Fire Rescue Victoria. 2021, *Fire Fatalities at DFFH Properties* (unpublished data).

<sup>23</sup> Australian Bureau of Statistics. 2017, *2016 Census QuickStats*, available at: [https://quickstats.censusdata.abs.gov.au/census\\_services/getproduct/census/2016/quickstat/2?opendocument](https://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/2?opendocument); Steering Committee for the Review of Government Service Provision. 2021, *Report on Government Services 2021*, Table 18A.3.

<sup>24</sup> Coates, L., Kaandorp, G., Harris, J., van Leeuwen, J., Avci, A., Evans, J., George, S., Gissing, A., Robin van den Honert, R. and Haynes, K. 2019, *Preventable Residential Fire Fatalities in Australia July 2003 to June 2017*, p. 71.

<sup>25</sup> Fire Rescue Victoria. 2021, *Fire Fatalities at DFFH Properties* (unpublished data).

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- <sup>26</sup> Australian Bureau of Statistics. 2020, *Disability, Ageing and Carers, Australia: Victoria, 2018*, 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.
- <sup>27</sup> Australian Bureau of Statistics. 2020, *Disability, Ageing and Carers, Australia: Victoria, 2018*, 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.
- <sup>28</sup> Australian Institute of Health and Welfare. 2020, *People with disability in Australia: 2020*, 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>.
- <sup>29</sup> 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>.
- <sup>30</sup> 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).
- <sup>31</sup> Victorian Council of Social Service (submission 39, p. 12); National Disability Service (submission 43, p. 4).
- <sup>32</sup> Australian Institute of Health and Welfare. 2019, *National Social Housing Survey 2018L Supplementary data tables, Table S3.6*, available at: <https://www.aihw.gov.au/reports/housing-assistance/national-social-housing-survey-2018-key-results/contents/table-of-contents>.
- <sup>33</sup> *Equal Opportunity Act 2010*, s. 55; *Residential Tenancies Act 1997*, s. 64.
- <sup>34</sup> Department of Health and Human Services. 2020, *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>.
- <sup>35</sup> 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.
- <sup>36</sup> *National Disability Insurance Scheme (Supports for Participants) Rules 2013*, ss. 7.19; 7.20.
- <sup>37</sup> The Community Legal Centres Joint Response (submission 5, pp. 6-7) noted the example of a tenant who had a disability which was considered non-permanent and thus could not access National Disability Insurance Scheme funding.
- <sup>38</sup> 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.
- <sup>39</sup> Victorian Government. 2020, *Victoria's Big Housing Build*, available at: <https://www.premier.vic.gov.au/victorias-big-housing-build>.
- <sup>40</sup> Sharam, A., McNelis, S., Cho, H., Logan, C., Burke, T. and Rossini, P. 2021, *Towards an Australian social housing best practice asset management framework*, Australian Housing and Urban Research Institute Limited, p. 27.



# 6. Dispute resolution

## What is the problem?

- Tenants are often unable or unwilling to exercise their rights – highlighting the importance of a clear, low-cost and accessible dispute resolution system.
- Complaints and dispute resolution processes for community housing are unclear. There are several complaints handling bodies for social housing, which have different and sometimes overlapping jurisdictions, which causes confusion and delays in resolving issues.
- Many tenants, housing providers and service providers have raised neighbourhood disputes as a key issue.

Complaints and dispute resolution are important for those renting in all tenure types. Research suggests that tenants across the board (not only vulnerable and disadvantaged tenants) are often unwilling and unable to exercise their rights.<sup>1</sup> These issues are likely to affect vulnerable and disadvantaged tenants to a larger degree than others, as they have little opportunity to switch providers if disputes cannot be addressed or resolved. The tenant consultation processes conducted for this Review identified that many tenants are fearful of making complaints, as social housing is the last step between them and homelessness – which highlights the need for an effective, non-adversarial system of complaints and dispute resolution.<sup>2</sup>

## What are the pathways for complaints and disputes?

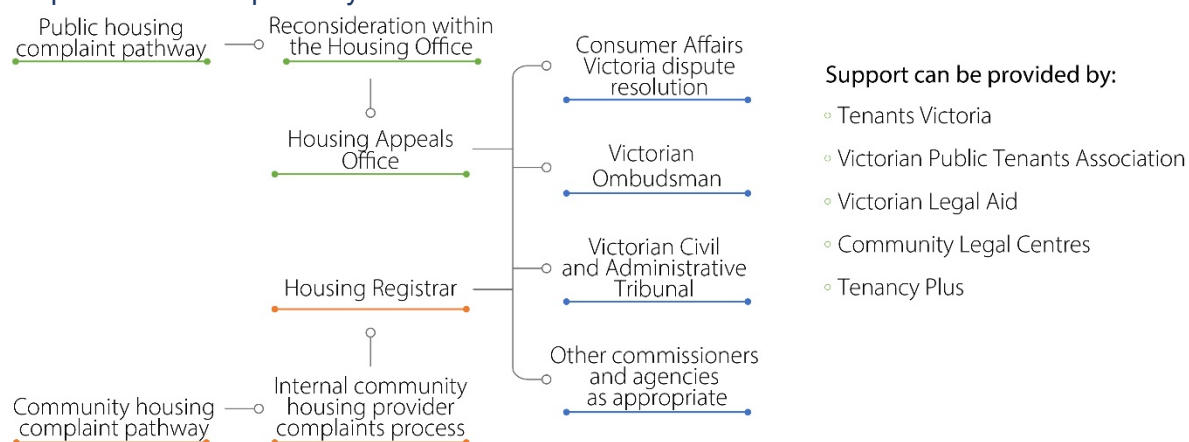
The figure below shows a stylised and simplified representation of the dispute resolution process within social housing. The first complaints handler is the housing provider themselves. In 2019-20, community housing providers received 1,143 complaints, of which 428 were from tenants or prospective tenants (many complaints also come from outside the system).<sup>3</sup> Between February and July 2021, the Department of Families, Fairness and Housing (DFFH) received 897 housing-related complaints.<sup>4</sup>

Following this, the pathways for dispute resolution diverge between public and community housing:

- Public housing tenants have recourse to the Housing Appeals Office (an internal dispute resolution body within DFFH, which assesses policy related issues such as eligibility for housing and the housing offered. Public housing tenants also have recourse to the Victorian Ombudsman, which received 1,029 complaints relating to public housing in 2020-21.<sup>5</sup> Complaints generally relate to maintenance issues, a lack of heating, and safety concerns.<sup>6</sup>
- The primary recourse for community housing tenants is the Housing Registrar. The Registrar can investigate complaints about rental housing matters that have been unable to be resolved by a community housing organisation after 30 days, although they have limited resources to investigate individual complaints. The Housing Registrar received 113 enquiries and complaints in 2020-21, of which 5.3 per cent required a regulatory response.<sup>7</sup> Community housing tenants also have recourse to the Victorian Ombudsman, although this is not widely known.<sup>8</sup> The Ombudsman received 67 complaints relating to community housing in 2020-21.<sup>9</sup>

- Both public and community housing tenants can also access generally available services, such as those through Consumer Affairs Victoria (which received 1288 queries relating to public housing in 2018-19),<sup>10</sup> Victorian Legal Aid and Tenants Victoria. Support and advocacy can also be provided through services such as Tenancy Plus and the Victorian Public Tenants Association (VPTA).
- Tenants also have recourse to the Victorian Civil and Administrative Tribunal (VCAT). It is not known how many social housing tenants lodge disputes through VCAT, although, in general, tenants are much less likely than landlords to lodge disputes at VCAT. 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.<sup>11</sup>

### Dispute resolution pathways



### Internal complaints handling mechanisms

Community housing providers are required by regulation to have a complaints and disputes mechanism that is easily accessible and provides for prompt and effective resolution of complaints.<sup>12</sup> Each of these processes vary by CHO, but in general, complaints will be referred to a complaints officer, and escalated to senior management if the complainant is still unhappy with the decision. Public housing offices also have internal complaints processes before appeals are considered by the Housing Appeals Office.

There is a degree of dissatisfaction with the way complaints are handled internally. Of tenants who made a complaint in the past 12 months:

- 32 per cent of community housing tenants were unhappy with the way it was handled<sup>13</sup>
- about half of public housing tenants were unhappy with the way it was handled.<sup>14</sup>

It is unclear exactly what is leading to this level of dissatisfaction, although community housing tenants identified issues relating to a lack of a clear complaints process and perceived retribution from their landlord when they do complain. In public housing, the Victorian Ombudsman has noted its concern about the Department's approach to investigating complaints relating to social housing and intends to investigate this more closely over the coming year.<sup>15</sup> In part, these issues may be due to a lack of resourcing for complaints handling, particularly within public housing.

## The external dispute resolution pathway

As highlighted by the figure above, there is no shortage of bodies available to resolve complaints from social housing. Yet consistent themes of the Panel's consultations have been that tenants are unwilling to raise complaints, lack awareness of available options, and consider that the available pathways do not suit their needs.

A closer examination of the appeals pathways reveals why this is the case:

- many of the bodies involved in the process will only examine certain complaints. The Housing Appeals Office in DFFH will not examine issues that are referable to VCAT such as rental arrears and maintenance requests. The Housing Registrar's complaint mechanism is intended to focus on systemic complaints, and it is not resourced to investigate individual complaints. This can lead to frustration, as tenants who lodge complaints with the Registrar may not always see a direct action resulting from their complaint<sup>16</sup>
- the jurisdiction of some bodies is unclear. In particular, the Victorian Ombudsman has jurisdiction to investigate complaints relating to publicly funded services. This means that some (but not all) community housing is within its jurisdiction
- VCAT is often seen as a confronting option for tenants and, as highlighted by the numbers above, few choose to go down this path.

Due to this, tenants are often unsure of which pathway to take. Participants to the Review noted that the process was confusing and cumbersome.<sup>17</sup> As an example, over half of the complaints received by the Victorian Ombudsman in 2020-21 relating to public housing were closed because they were not within the Ombudsman's jurisdiction – often because the tenant had not gone through the agency complaint process.<sup>18</sup>

The net result is that tenants can be deterred from making a complaint in the first place.<sup>19</sup> Further, community housing tenants noted that the lack of a clear dispute resolution pathway exacerbated issues that could not be dealt with internally, especially in light of the clear power imbalance between landlords and tenants.<sup>20</sup>

The issues with complaints handling are not unique to the social housing sector. Several reviews are currently considering complaints handling, including the Review of the Retirement Villages Act and the Review of Victoria's Building System. It is important that approaches are coordinated so that a holistic approach to complaints handling is designed.

## Neighbourhood disputes

Many participants in the Review's tenant consultation processes raised intra-tenant disputes as a significant issue.<sup>21</sup> Tenants cited violence and safety issues, with housing providers being unwilling or unable to intervene. This was a concern across both public and community housing. While the Dispute Settlements Centre of Victoria could handle such disputes in theory, this process appears to have rarely been used by social housing tenants,<sup>22</sup> leaving tenants with little recourse to resolve disputes that significantly affect their quality of life.

## What is proposed?

6.1 Task a single body with resolving complaints across public and community housing. This could include:

- a new independent body, such as a Social Housing Commissioner

- an existing body, such as Consumer Affairs Victoria with oversight by the Commissioner for Residential Tenancies.
- 6.2 Apply generally available principles of dispute resolution, such as the Australian Government’s Key Practices for Industry-based Consumer Dispute Resolution.
  - 6.3 Establish robust information sharing arrangements between the complaints body and the regulator to allow the regulator to continue to identify and address systemic issues.
  - 6.4 Establish a single-entry point to help tenants to navigate the complaints and disputes pathways and link them with available support. This function could be performed within the body established in 6.1.
  - 6.5 Investigate options to resolve intra-tenant disputes in a non-confrontational and cost-effective way through a tenant-driven process. This could include a restorative justice type approach.

## Rationale for this approach

### Improving internal complaints management

By the time a dispute or complaint reaches an external dispute resolution body it has become messy, it has moved into a formal process and is likely to have become adversarial.

Therefore, it is critical that social housing providers continually improve their complaints processes. The Housing Registrar requires agencies to demonstrate continuous improvement across a range of service delivery outcomes. Lessons can be drawn from other providers, and the model of the DFFH Housing Appeals Office to resolve public housing complaints is one that community housing providers could also consider. Lessons can also be drawn from non-housing providers, and community housing organisations should apply generally applicable principles of good complaints management.

Several of the proposals in other papers of this report would contribute to these improvements. A more consistent set of performance standards for public and community housing would ensure that internal complaints processes for both types of housing are held to a similar standard (Paper 2). Workforce professionalisation would help to ensure that social housing workers are better equipped to manage disputes (Paper 8).

### Managing complaints within social housing

Where complaints have not been resolved through the provider’s internal process, there is a clear need for an independent complaints and dispute resolution pathway that applies across both public and community housing (and potentially other forms of housing). Consumer Affairs Victoria provides an early point of contact and provides conciliation services. While VCAT exists as a more formal option, tenants often perceive it to be adversarial and confronting, and can be deterred from making complaints.<sup>23</sup> As noted earlier, few tenants lodge disputes with VCAT. Some disputes will likely end up at VCAT and introducing an advocacy body to cover community housing would aid these tenants in this pathway (Paper 3).

Participants of numerous human services reviews have agreed on the need for a clear dispute resolution pathway. For example, the Inquiry into the Retirement Housing Sector

found that the time and expense of VCAT often stopped retirees from proceeding with disputes and recommended an alternative approach for low-cost dispute resolution.<sup>24</sup>

Views vary on what exactly a dispute resolution process should look like. Options proposed include:

- the DFFH Housing Appeals Office's remit be expanded to include community housing<sup>25</sup>
- the Victorian Ombudsman (with expanded powers to clarify its role in community housing)<sup>26</sup>
- an independent Housing Ombudsman.

These approaches are used in other jurisdictions. For example, in New South Wales the independent Housing Appeals Committee can hear complaints and disputes relating to both public and community housing. In Scotland, the Government Ombudsman hears complaints relating to social housing. In England, an independent Housing Ombudsman has been established to hear complaints relating to social housing (and some private rental housing).

All approaches have pros and cons. However, the DFFH Housing Appeals Office appears best placed to continue to play the role of internal appeals for public housing and, as noted above, similar entities could be set up within community housing providers. While the Victorian Ombudsman is well regarded, placing tenants at the centre of regulation will likely need a complaints body with housing-specific expertise and a more active approach to resolving problems on complainants' behalf.<sup>27</sup>

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.<sup>28</sup> Industry ombudsmen operate for a range of essential services, such as telecommunications, energy and water, and public transport. Such schemes are generally well supported – for example a review of the Electricity and Water Ombudsman of Victoria found that it enjoyed strong support from both consumer organisations and providers.<sup>29</sup>

Ombudsman schemes are more likely to be suitable where:

- essential services are involved
- the market has large firms and limited competition, leading to significant power imbalances
- consumers have difficulty in exercising their rights
- there are a large number of disputes.<sup>30</sup>

Housing fits these criteria as it is an essential service, there are significant power imbalances, and tenants have difficulties in exercising their rights. This leaves a question as to whether the scale of disputes is sufficient to justify a standalone complaints body.

There are reasons why a standalone body may be preferred. A standalone body could focus its expertise exclusively on housing matters, which means it may be able to handle disputes more effectively, and tailor its services to social housing tenants. However, a standalone body would be smaller and is likely to be less cost effective in terms of numbers of complaints handled. For example, the Productivity Commission found that government ombudsmen cost an average of \$420 per contact. Standalone ombudsmen and commissions responsible for areas such as privacy and freedom of information tended to receive low levels of complaints (500-1,000) and cost close to \$1,000 per contact.<sup>31</sup>

On balance there are likely to be higher net benefits in establishing the complaints function in an existing body. For example, the current review of the *Retirement Villages Act 1986* has raised the possibility of an ombudsman for that sector.<sup>32</sup> The Office of the Commissioner for Residential Tenancies has noted that its role could be expanded to include this function, with adjustments to allow for the handling of disputes.<sup>33</sup> The complaints function for social housing could conceivably sit alongside the retirement villages' function.

If these options are not feasible, then a standalone complaints body for social housing should be created, such as a Social Housing Commissioner that is available to both public and community housing tenants.

Irrespective of the complaints and disputes body chosen, there will continue to be several bodies involved in dispute resolution within social housing. If it is not the primary complaints body, the Victorian Ombudsman will still have a role as a complaints body for publicly provided or funded services. VCAT will continue to play a role. There are also other various dispute resolution bodies, such as the Victorian Equal Opportunity and Human Rights Commission. This will inevitably lead to an element of confusion about who to approach to lodge disputes.

A single 'front door' function is needed to help people to navigate the complaints and dispute resolution system and provide information to tenants to guide them through whichever appeals mechanism they choose. This would provide support to tenants who have raised issues about where to lodge their complaint.

The Aboriginal Housing paper also notes the importance of such a role to help Aboriginal people navigate the complaints and disputes processes (Paper 7). As noted in that Paper, there is also a need for culturally safe dispute resolution processes, and this would need to be considered in the design of any reform.

### The role of the regulator

The Panel considers that the regulator is not the best place for an external complaints function in its current form. This function diverts resources from its primary function – regulating housing providers. The regulator's primary focus should be on ensuring providers have in place appropriate complaint handling mechanisms. This is the role of an external dispute resolution body. Consistent with best practice regulation it is generally preferable to separate regulation and external dispute resolution functions. Otherwise, the regulator might, for example, seek to leverage its regulatory powers to obtain results that it desired to see with its dispute resolution function.

Whatever form the complaints management body takes, there will need to be clear lines of communication and strong information sharing arrangements with the regulator to ensure that it can continue to investigate systemic issues. As an example, the Scottish Housing Regulator has a Memorandum of Understanding with the Public Services Ombudsman to allow them to consult and cooperate in their functions.<sup>34</sup>

### Neighbourhood disputes

Resolving neighbourhood disputes is not easy and will require a multi-pronged approach. As a first step, preventing anti-social behaviour from occurring in the first place is the most desirable option, and the Review's proposals around sustaining tenancies and support services aim to provide support to tenants to manage the issues that can lead to disputes.<sup>35</sup> The onus is also on tenants to act in ways that are not disruptive, and the expectations for tenant behaviour should be set at the outset of the tenancy (Paper 4). For example, new public housing tenants receive, and must sign, a neighbourly behaviour statement. The

*Residential Tenancies Act 1997* (ss. 59 – 64) also sets out the legal obligations of renters, including an obligation to not interfere with the reasonable peace, comfort or privacy of neighbours.

Where these fail, it is important that mechanisms are in place to prevent issues escalating to the point where tenancies fail and/or people are severely impacted. The approach should be non-confrontational, cost effective, and driven by the tenants themselves within their local community. As noted by the Victorian Alcohol and Drug Association,<sup>36</sup> such a service must also be able to mediate between tenants with complex issues. One approach that has been raised by VPTA is a restorative justice type approach which focuses on relationship building between tenants and agreements between tenants.<sup>37</sup> The Panel will be investigating this area further for the final report and is seeking input from Review participants on what such a service could look like – but ultimately, such a process should be influenced by the preferences of tenants themselves.

As with all kinds of dispute resolution, having staff skilled in handling neighbourhood disputes is also key (Paper 8).

## Questions for consideration

- 6.1 Which would be the best body to manage external complaints and disputes within the social housing sector? Should a new body be established?
- 6.2 What would an effective mechanism for resolving neighbour disputes look like?

<sup>1</sup> For example, Parkinson, S., James, A. and Liu, E. 2018, *Navigating a changing private rental sector: opportunities and challenges for low-income renters*, AHURI Research Report no. 302, available at: <https://www.ahuri.edu.au/research/final-reports/302>, 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.

<sup>2</sup> 89 Degrees East. 2021, *Community Housing Tenant Engagement Project*.

<sup>3</sup> Housing Registrar. 2021, *Sector Performance Report 2019-20*, available at: <https://www.vic.gov.au/housing-registrar-reports>.

<sup>4</sup> Homes Victoria, unpublished data.

<sup>5</sup> Victorian Ombudsman, unpublished data.

<sup>6</sup> Victorian Ombudsman. 2021, *Annual Report 2020-21*, available at: <https://assets.ombudsman.vic.gov.au/assets/VO-ANNUAL-REPORT-2021.pdf>.

<sup>7</sup> Housing Registrar. 2021, *Regulatory update report 2020-21*, available at: <https://www.vic.gov.au/sites/default/files/2021-09/Regulatory%20Update%20Report%202020-21.pdf>.

<sup>8</sup> The definition of a public body in the *Ombudsman Act 1973* was expanded in 2019 to include a body that is performing a public function on behalf of the State.

<sup>9</sup> Victorian Ombudsman, unpublished data.

<sup>10</sup> Commissioner for Residential Tenancies. 2020, *Renting in Victoria: Snapshot 2020*, available at: <https://www.rentingcommissioner.vic.gov.au/rentingsnapshot2020>.

<sup>11</sup> Victorian Civil and Administrative Tribunal. 2020, *Annual Report 2019-20*, available at: <https://www.vcat.vic.gov.au>.

<sup>12</sup> *Housing Act 1983*, s. 97; Housing Registrar 2015, *Performance standards for registered agencies*, available at: <https://www.vic.gov.au/sites/default/files/2021-02/Performance%20standards%20for%20registered%20housing%20agencies%20%28NEW%29.pdf>.

<sup>13</sup> 89 Degrees East. 2021, *Community Housing Tenant Engagement Project*.

<sup>14</sup> RedRoad Consulting. 2021, *Social Housing Regulation Review: Public Housing Tenants' Engagement, Findings Report*.

<sup>15</sup> Victorian Ombudsman 2021, *Annual Report 2020-21*, available at: <https://assets.ombudsman.vic.gov.au/assets/VO-ANNUAL-REPORT-2021.pdf>.

<sup>16</sup> Peninsula Community Legal Centre (submission 40, p. 5) and Tenants Victoria (submission 29, p. 41) both noted that the Housing Registrar often does not investigate tenant complaints. Participants noted that most

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tenancy-related complaints are not considered by the Housing Registrar, which has diminished the confidence and trust of the sector in referring complaints to it.

<sup>17</sup> For example, Jesuit Social Services (submission 41, p. 6).

<sup>18</sup> Victorian Ombudsman, unpublished data.

<sup>19</sup> RedRoad Consulting. 2021, *Social Housing Regulation Review: Public Housing Tenants' Engagement, Findings Report*.

<sup>20</sup> 89 Degrees East. 2021, *Community Housing Tenant Engagement Project*.

<sup>21</sup> RedRoad Consulting. 2021, *Social Housing Regulation Review: Public Housing Tenants' Engagement, Findings Report*; 89 Degrees East. 2021, *Community Housing Tenant Engagement Project*.

<sup>22</sup> The Dispute Settlement Centre of Victoria has noted that its services are underutilised in this area. See Department of Justice and Regulation. 2016, *Access to Justice Review: Volume 1 Report and Recommendations*, p. 214, available at: <https://engage.vic.gov.au/accesstojustice>.

<sup>23</sup> Victorian Government. 2016, *Heading for Home: Residential Tenancies Act Review, Options Discussion Paper*, available at: [https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/2514/8660/1995/Publication\\_-\\_External\\_-\\_FSH\\_Residential\\_Tenancies\\_Act\\_Options\\_Paper\\_Guide\\_-\\_December\\_2016.pdf](https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/2514/8660/1995/Publication_-_External_-_FSH_Residential_Tenancies_Act_Options_Paper_Guide_-_December_2016.pdf).

<sup>24</sup> Legislative Council Legal and Social Issues Committee. 2017, *Inquiry into the retirement housing sector*, available at: <https://www.parliament.vic.gov.au/432-Isic-lc/inquiry-into-the-retirement-housing-sector>.

<sup>25</sup> For example, Peninsula Community Legal Centre (submission 40, pp. 5-6); Jesuit Social Services (submission 41, p. 6).

<sup>26</sup> For example, Victorian Public Tenants' Association (submission 15, p. 12).

<sup>27</sup> The 2011 inquiry into protecting Victoria's vulnerable children noted that, while the Ombudsman and the Auditor-General play important roles, they have responsibility for all government agencies and cannot provide the specialist oversight needed in the child protection area. A similar argument could be made for social housing. See Cummins, P., Scott, D and Scales, B. 2012, *Report of the Protecting Victoria's Vulnerable Children Inquiry*, p.514, available at: <https://aifs.gov.au/cfca/pacra/report-protecting-victorias-vulnerable-children-inquiry>.

<sup>28</sup> Department of Justice and Regulation. 2016, *Access to Justice Review: Volume 1 Report and Recommendations*, available at: <https://engage.vic.gov.au/accesstojustice>.

<sup>29</sup> cameron.ralph.khoury. 2019, *Electricity and Water Ombudsman of Victoria, Independent Review 2019*, available at: <https://www.ewov.com.au/uploads/main/2019-Independent-review-final-report.pdf>.

<sup>30</sup> Productivity Commission. 2014, *Access to Justice Arrangements*, available at: <https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume1.pdf>.

<sup>31</sup> Productivity Commission. 2014, *Access to Justice Arrangements*, available at: <https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume1.pdf>.

<sup>32</sup> Department of Justice and Community Safety. 2021, *Options for reforming the Retirement Villages Act 1986*, p. 78, available at: <https://engage.vic.gov.au/retirementvillagesact>.

<sup>33</sup> Commissioner for Residential Tenancies 2021, Comments on options for reforming the Retirement Villages Act 1986, p. 3.

<sup>34</sup> Scottish Public Services Ombudsman and Scottish Housing Regulator 2015, *Memorandum of Understanding Between the Scottish Public Services Ombudsman and the Scottish Housing Regulator*.

<sup>35</sup> Institute for Social Science Research. 2014, *Review of systemic issues for social housing clients with complex needs*, available at: <https://www.qmhc.qld.gov.au/sites/default/files/wp-content/uploads/2014/12/FINAL-report-Review-of-systemic-issues-housing-clients-with-complex-needs-September-2014-ISSR.pdf>) highlighted a range of approaches that can be taken to manage anti-social behaviour in tenancies.

<sup>36</sup> Victorian Alcohol and Drug Association (submission 51, p. 2).

<sup>37</sup> Victorian Public Tenants' Association. 2021, *2021-2022 Victorian Budget Submission*, available at: <https://vpta.org.au/wp-content/uploads/2019/10/VPTA-Budget-Submission-2020-21-compressed.pdf>.



# 7. Aboriginal housing

## What is the problem?

- Cultural safety<sup>1</sup> is not formally embedded in the system for the delivery of the social housing to Aboriginal<sup>2</sup> clients. This is a concern as many Aboriginal people live in housing provided by non-Aboriginal housing providers.
- Aboriginal Housing Victoria is the only Aboriginal controlled housing provider registered in Victoria. Without registration, it is difficult for Aboriginal Community Controlled Organisations (ACCOs) to access funding for housing stock, including through the Big Housing Build. Growth in the stock provided by ACCOs would be desirable given the preference of the majority of Aboriginal tenants and prospective tenants for an Aboriginal housing provider.

### Aboriginal Victorians:

- are a fast-growing population and are disproportionately reliant on social housing, with 1 in 4 Aboriginal Victorian households living in social housing compared with 1 in 50 general population households living in social housing. There are 2,999 Aboriginal households in public housing, 1,562 in Aboriginal Housing Victoria tenancies and 413 Aboriginal households in non-Aboriginal community housing at June 2021
- experience historical, complex disadvantage that results in issues that lead to extreme levels of unmet demands for social housing – 1 in 5 Aboriginal Victorians are on the Victorian Housing Register
- access homelessness services at the fastest growth rate in Australia with – 10 per cent of homeless Victorians are Aboriginal
- in many instances, are locked out the private rental market because of cost, apparent racism and lack of experience.<sup>3</sup>

A dedicated consultation process with Aboriginal tenants and housing providers found the following:

- Aboriginal tenants in social housing, and those seeking social housing, report:
  - perceptions of a lack of fairness and equity in allocations from the Victorian Housing Register
  - the need for government entities and housing providers to embed cultural safe practice and mechanisms to facilitate Aboriginal self-determination.
- Aboriginal housing providers reported:
  - a lack of understanding of the social housing regulatory system which is not accessible or suitable for smaller Aboriginal housing providers, and limits their access to funding and other growth opportunities
  - a lack of recognition of Aboriginal culture and cultural responses by institutions.

## What is proposed?

### Cultural safety:

- 7.1 Embed cultural safety in performance standards that apply to social housing providers and encourage the regulator to continue to build on the commitment demonstrated by the Housing Registrar to embedding cultural safety awareness and practices within its Office.

- 7.2 Provide for the establishment of culturally safe service charters by each social housing provider.
- 7.3 Provide for culturally sensitive, plain English information about the regulator, including its roles, services and complaints mechanisms, and for each social housing provider to provide the necessary information to support tenants and housing applicants.

#### Accountability to the community:

- 7.4 Require all social housing providers to ask and record whether housing applicants identify as Aboriginal and/or Torres Strait Islander, to report the number of Aboriginal and Torres Strait Islander tenants they house and the services that they receive to the regulator; and require that the regulator collate and report those data.
- 7.5 Ensure that data reports on system-wide performance indicators are made available to the Aboriginal community and relevant Aboriginal governance and community forums, and that the data reports include metrics such as Aboriginal tenant demographics, Victorian Housing Register waiting list and allocations, and social housing exits (including evictions).

#### Culturally appropriate advocacy and support:

- 7.6 Establish an independent tenant advocacy function that assists Aboriginal people to navigate their way through the social housing system and guides people on complaints and disputes processes. This function would be staffed by Aboriginal identified people.
- 7.7 Ensure navigable and culturally safe complaints and disputes processes that provide a clear pathway from the social housing provider to the regulator and to the Victorian Civil and Administrative Tribunal.
- 7.8 Establish an alternative dispute resolution mechanism that is culturally safe and includes informal and community-based complaints processes. Respected Aboriginal community members would form part of the dispute resolution process.

#### Supporting registration and Aboriginal self-determination:

- 7.9 Provide appropriate resourcing to establish and maintain a culturally safe pre-registration team within the regulator to undertake active outreach with Aboriginal Community Controlled Organisations (ACCOs) and require the regulator to develop model policies and templates to facilitate ACCO registration. This would include a 'Board information pack' to assist ACCO Boards consider the pros and cons of registration for their community and their strategic goals, thereby building on the initiatives implemented to date by the Housing Registrar. As part of the registration process, the regulator will be required to support ACCOs to develop action plans that map out the first year of registration and the actions needed to meet the first annual compliance review.

- 7.10 Require that information on the broader social housing system and social housing regulation is actively provided to ACCOs and the Aboriginal community.
- 7.11 Ensure information on landlord responsibilities and the *Residential Tenancies Act 1997* is provided in an accessible and readable format to ACCOs and community by the Commissioner for Residential Tenancies.
- 7.12 Investigate mechanisms to enable recognition of the multiple accreditation and regulatory requirements that ACCOs already meet.
- 7.13 Wind up provisions should ensure that Aboriginal resources remain in Aboriginal hands.

Concerns about wind up provisions have been raised by several unregistered housing providers. Should they become insolvent as a registered provider, they would like resources to be transferred to another provider whose values and focus align with those of their communities. Under the current winding up provisions the risk of the loss of long-held community assets from the communities they serve is at the core of their reluctance to seek registration. Further detail on the Review Panel's proposed approach on this issue is in Paper 12.

#### Performance standards for registered Aboriginal housing providers:

- 7.14 Ensure regulatory performance standards are flexible and recognise the strengths of ACCOs and their delivery of housing, knowledge of family and community circumstances, and approaches to managing arrears and evictions.
- 7.15 Establish 'Indigenous Governance Principles' that value, respect and inform how ACCOs may meet housing regulatory governance standards that are developed and agreed in partnership with the Aboriginal Housing and Homelessness Forum, and that those standards are integrated into the performance framework and provide a strength based, culturally appropriate alternative to mainstream governance standards.
- 7.16 Consider the Australian Indigenous Governance Institute toolkit as a model to be adapted to housing regulation.
- 7.17 Ensure 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.

### Rationale for this approach

The draft proposals are based on the outcomes of the dedicated consultation project commissioned by the Review. Participants included Aboriginal Housing Victoria, Aboriginal Community Controlled Organisations that provide housing for Aboriginal Victorians, the Aboriginal Outcomes Branch in Homes Victoria, and Aboriginal tenants across the social housing system. The detailed Findings and Options report was published on 25 October 2021 October on the Review's Engage page at: <https://engage.vic.gov.au/social-housing-regulation-review>.

## Cultural safety

*Mana-na worn-tyeen maar-takoort* – the Victorian Aboriginal Housing and Homelessness Framework<sup>4</sup> – is Victoria’s overarching Aboriginal Housing and Homelessness Policy Framework. It was developed by the Aboriginal community, for 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. Accordingly, the Review Panel has given particular attention to Objective 5.2 - Make the mainstream 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.

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.<sup>5</sup> Complementing that Framework is the Community Housing Aboriginal Cultural Safety Framework developed for the community housing sector by the Community Housing Industry Association Victoria (CHIA Vic).<sup>6</sup> The Panel acknowledges that the CHIA Vic Framework and its implementation by CHIA Vic members, provides a solid platform on which the sector and its regulatory system can build.<sup>7</sup>

Also acknowledged are the efforts in embedding culturally safe practices by the Office of the Housing Registrar. The Panel notes the advice of the Housing Registrar that a significant proportion of its staff has undergone cultural safety training and that this training is being extended through a tailored program to be delivered to the whole team by the end of 2021. The Panel also notes the advice that cultural safety training within the Office of the Housing Registrar 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 commencing late 2021.

## Supporting registration and performance standards for Aboriginal housing providers

The Panel understands that the current system that applies to the regulation of community housing provides a degree of flexibility that ensures the level of regulation applied is commensurate with the size of the housing provider and associated risk. It is encouraged by the advice of the Housing Registrar that the registration of ACCOs can be effectively supported within the current regulatory system, with some appropriate adaptations to take account of issues particular to the Aboriginal context.

A strong message received from the consultation with Aboriginal housing providers was to ensure that ACCOs are not seen as achieving ‘second rate’ accreditation. The Panel concurs with the views expressed that creating a perception that ACCOs operate at a lower standard would be detrimental to their reputation and discriminatory to their tenants. It therefore urges the social housing regulator to balance flexibility and assistance in achieving and maintaining registration by ACCOs with the application of performance standards commensurate with non-Aboriginal housing organisations of a similar size and degree of complexity.

The Panel recognises that dedicated efforts to work closely with prospective registrants in the pre-registration, registration and ongoing compliance phases is likely to require additional resourcing and notes that this work will not be limited to ACCOs. The need to provide sufficient, additional resourcing notwithstanding, consideration must also be given to the scope of the regulator’s activities and whether it is appropriate for that role to extend beyond assisting ACCOs to understand and prepare for registration. That consideration ought to include whether an advocacy function to support ACCO capacity building might be an appropriate extension of the role of the Department of Families, Fairness and Housing (DFFH).

## Questions for consideration

- 7.1 Given that public agencies (such as DFFH and the Housing Registrar) are legally required to provide safety in the workplace, what legislative changes, if any, are needed to require registered housing agencies to embed and implement culturally safe practices?
- 7.2 What would be an appropriate measure by which the regulator could assess compliance with standards for cultural safety?
- 7.3 Beyond the establishment of a culturally safe pre-registration team within the regulator to undertake active outreach with ACCOs to support registration and maintain that registration, do you foresee that the registration system presents any additional barriers to smaller ACCOs?

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<sup>1</sup> Aboriginal and Torres Strait Islander cultural safety is defined as an environment that is safe for Aboriginal and Torres Strait Islanders people, 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. 8, available at: <https://chiavvic.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).

<sup>2</sup> In this Paper ‘Aboriginal’ refers to Aboriginal and Torres Strait Islander peoples.

<sup>3</sup> Social Housing Regulation Review. 2021, *Aboriginal Housing: Findings and Options*, pp. 4 - 7, available at: <https://engage.vic.gov.au/social-housing-regulation-review>

<sup>4</sup> 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/>

<sup>5</sup> 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>

<sup>6</sup> Community Housing Industry Victoria. 2020, *Community Housing Aboriginal Cultural Safety Framework*, p. 14, available at: <https://chiavvic.com.au/wp-content/uploads/2021/06/CHIA-Vic-Cultural-Safety-Framework-FINAL-1.pdf>. 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

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- 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. See: 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>.
- <sup>7</sup> Key elements of culturally safe workplaces and services articulated in the Framework 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. See: 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>.

# 8. Professionalisation of the frontline social housing workforce

## What is the problem?

- The diversity and complexity of needs of social housing tenants places increasing demands on frontline housing staff and tenancy managers.
- Providers of social housing are expected to assist and manage tenants yet frontline staff<sup>1</sup> are not always equipped with the specialised skills to manage these needs. This is compounded, particularly in public housing, by high caseloads<sup>2</sup> which can lead to job dissatisfaction, burnout and high staff turnover.<sup>3</sup>
- Formal training opportunities for frontline housing staff and tenancy managers in public housing have, over the years, declined and workplace-based professional development and identity in the social housing sector is *ad hoc*.<sup>4</sup>
- Levels of remuneration of frontline housing staff, at least in government sector positions, are low and not commensurate with other services needing equivalent skills<sup>5</sup> and career progression opportunities are limited.<sup>6</sup>
- Many frontline housing staff are often confronted with threatening behaviours by tenants, face dangerous situations alone and feel ill-equipped to handle such situations. Some also reported instances of workplace bullying.<sup>7</sup>

A survey of workers in social housing and community services was commissioned by the Panel. 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 compared to only six responses from government-sector housing workers.

When asked what workers saw as the most challenging part of their work within the social housing system, and what they saw as the biggest workforce issues that impact successful housing outcomes, workers' responses included:

- finding safe and appropriate housing options for clients and the long wait times for housing
- a lack of a 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.

## What is proposed?

### Ongoing professional development:

- 8.1 Undertake a workforce development strategy for the social housing sector. This should be done by a group constituting public and community housing sectors, the regulator, government (Homes Victoria, Department of Families, Fairness and Housing (DFFH) and others as appropriate) union/s and any other expertise as required. The strategy should include but not be limited to:
- a review of the workforce capability framework
  - an induction program
  - a program for ongoing professional development
  - appropriate accreditation mechanisms
  - consideration of a minimum qualification (such as a Certificate IV in Community Services or Social Housing).
- 8.2 Require all social housing providers to embed a culture of ongoing professional development for frontline housing staff and managers that supports them to access and participate in formal training opportunities, as well as informal, workplace-based professional development.
- 8.3 Develop a framework for a sector wide code of conduct observable by all social housing providers. Providers’ individual codes of conduct should be consistent with the framework.

### Investing in a skilled and capable workforce

- 8.4 DFFH senior leadership group to demonstrate its commitment to providing ongoing support and recognition of the vital role played by its frontline housing officers by, in the first instance, creating a centre of excellence that engages central office and operational divisions’ housing officers with central office and operational divisions’ senior leadership to share knowledge and experience and promote development.
- 8.5 DFFH to engage with Worksafe Victoria and the group formed in 8.1 above to develop tools to support and equip frontline housing staff across the social housing sector who are at risk of, or have been subjected to, occupational violence and aggression.

## Rationale for this approach

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 barriers to entry into the sector. There are many highly skilled and experienced individuals in the sector, but the current social housing workforce is collectively ill-equipped to perform the role of social landlord.



Social housing in Victoria is highly targeted to applicants with the greatest need and therefore an increasing proportion of people in the system have complex health, social and personal needs.<sup>8</sup> Many tenants need a high level of assistance to sustain their tenancies and manage complex problems that can impact on their housing security. This, in turn, has seen the depth and diversity of skills for social housing workers change over recent years. In addition to managing tenancies and properties, frontline social housing workers are often called upon to perform other tasks to support tenants and their communities.<sup>9</sup>

Academics and other contributors to the Review have suggested that greater workforce professionalisation could act as an important driver of tenant outcomes and reduce reliance on regulation to ensure effective service delivery.

### The need for ongoing professional development

Social housing providers must ensure that staff are able to access and undertake ongoing professional development so that they are better equipped with the skills they need.<sup>10</sup> For new staff, a comprehensive induction program is critical. The Panel is aware that the Community Housing Industry Association Victoria (CHIA Vic) currently offers a such a program for new housing and tenancy workers as they start their careers in the community housing industry. The Panel encourages Homes Victoria to make this program available to its new frontline housing staff rather than develop its own program.

While acknowledging the concerns raised by some respondents that housing officers should build connection with support service providers and not try to duplicate their specialist skills and expertise,<sup>11</sup> resourcing constraints on support service providers often curtail their availability and reach, and considerable experience held by many social housing officers should not be underestimated or diminished.

In addition to expanding staff capabilities, other respondents acknowledged that to deliver on social landlord responsibilities in public housing, the sector will need to overcome resource constraints.<sup>12,13</sup> Put simply, more staff will be required.<sup>14</sup>

### Professionalisation of the workforce and career pathways

In comparable community services functions, a decade ago the Productivity Commission noted a trend in the professionalisation of direct care workers.<sup>15</sup> That trend did not extend to the social housing workforce. Commentators<sup>16</sup> have since argued that the non-professional status of housing staff is no longer appropriate. The Panel recognises that the social housing workforce in Victoria comprises a wide range of occupational and professional groups and staff hold various levels of educational qualifications. However, it is a front-line workforce that is increasingly dealing with more complex and diverse client needs and, unlike several human services practices such as paramedicine or Aboriginal and Torres Strait Islander Health Practitioners,<sup>17</sup> has no minimum competencies or qualifications.

Currently, base level, accredited higher education courses directed at social housing workers comprise the Certificate IV in Community Services and, until recently in Victoria, the Certificate IV in Social Housing. In addition, CHIA Vic offers a diverse range of training and professional development courses as well as bespoke training courses to meet identified needs.<sup>18</sup>

One respondent to the Review suggested that a Certificate IV in Community Services be mandated as a minimum qualification for housing officers<sup>19</sup> or the Certificate IV in Social Housing (if it were established in Victoria by a Registered Training Organisation). If the group preparing the workforce development strategy thought it appropriate, this could be phased-in in a way that did not create barriers to entry to the sector. This would be in

addition to the micro-credentialling opportunities being made available to staff through ongoing professional development.

The Panel recognises that classification levels for frontline housing staff in Homes Victoria have been seen as low compared to other services needing equivalent skills.<sup>20</sup> In government-sector positions salaries are tied to classification levels. Unlike the community and not-for-profit sector, salary packaging opportunities are not available to government sector employees. This results in levels of remuneration that are neither comparable across sectors nor are salaries necessarily commensurate with the knowledge or level of skills and personal accountability needed to manage a client base with complex needs. The Panel recommends that classification levels be reviewed and appreciates that this will have resourcing and industrial implications for government.

### Heavy caseloads hinder participation in development opportunities

Compounding the skills issue is the heavy caseload carried by frontline housing staff. This was noted in the 2017 Victorian Ombudsman's report on public housing<sup>21</sup> with the recognition that the sheer volume of clients for each staff member made it difficult to provide adequate client service.

While high caseloads are difficult to properly service even in a transactional manner, they impair genuine tenant-centred approaches to service delivery<sup>22</sup> – services that need a worker to listen, discuss and negotiate with applicants or tenants, or to build rapport with tenants needing additional support. The caseload also impacts on the ability of staff to set aside time for training, where it may be offered, since this means shifting their caseload to others in their absence.

### Employers' obligations to provide a safe workplace

Several respondents to the Review's survey of workers<sup>23</sup> raised concerns about their work being emotionally challenging and that often they were placed in situations that were considered by them to be dangerous. Many commented on their, and their work colleagues', experiences of vicarious trauma and how that has impacted their resilience, and that managing high caseloads has led to burnout.<sup>24</sup> Some even raised concerns about bullying in the workplace and employers' 'wilful ignorance' of workers' concerns.<sup>25</sup>

Victoria's *Occupational Health and Safety Act 2004* (the Act) provides a broad framework for improving standards of workplace health and safety to reduce work-related injury and illness. While employees have obligations under the Act, so too do employers. The Act requires employers, in so far as is reasonably practicable, to provide and maintain a working environment that is safe and free of risks to health.<sup>26</sup> Employers are obligated to provide employees with information, supervision and training that they need to work safely, to consult employees on issues which may affect health and safety, and ensure employees are represented on occupational health and safety issues in the workplace.

## Questions for consideration

- 8.1 Should a requirement to embed professional development and support for housing staff be made a regulatory requirement?
- 8.2 Is it feasible to require that a minimum qualification be mandated for all social housing staff or should minimum qualifications only be mandated for new entrants to the workforce?

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<sup>1</sup> 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.

<sup>2</sup> 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 Limited, Forthcoming publication. Housing and Urban Research Institute Limited, Melbourne; Anonymous respondents to the survey of social housing and support workers commissioned by the Panel.

<sup>3</sup> Anonymous respondents to the survey of social housing and support workers commissioned by the Panel.

<sup>4</sup> Milligan V., Pawson, H., Phillips, R. and Martin, C. 2017, *Developing the scale and capacity of Australia's affordable housing industry*, Australian Housing and Urban Research Institute report no. 278.

<sup>5</sup> 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 Limited, Forthcoming publication. Housing and Urban Research Institute Limited, Melbourne.

<sup>6</sup> Australian Housing and Urban Research Institute (submission 17, p. 4).

<sup>7</sup> Anonymous respondents to the survey of social housing and support workers commissioned by the Panel.

<sup>8</sup> 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 Limited, Forthcoming publication. Housing and Urban Research Institute Limited, Melbourne; Salvation Tenancy Plus Program (submission 22, p. 2); Victorian Council of Social Service (submission 39, p. 26).

<sup>9</sup> Tenants Victoria (submission 29, p. 44).

<sup>10</sup> Victorian Council of Social Service (submission 13, pp 4-5).

<sup>11</sup> Domestic Violence Victoria and Domestic Violence Resource Centre Victoria (submission 28, p. 5).

<sup>12</sup> Victorian Council of Social Service (submission 13, p. 5).

<sup>13</sup> Victorian Public Tenants' Association (submission 15, p. 6).

<sup>14</sup> Victorian Public Tenants' Association (submission 15, p. 6).

<sup>15</sup> Productivity Commission. 2010, *Contribution of the Not-for-Profit Sector*, Research Report, available at: <https://www.pc.gov.au/inquiries/completed/not-for-profit/report>.

<sup>16</sup> 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 Limited, Forthcoming publication. Housing and Urban Research Institute Limited, Melbourne.

<sup>17</sup> Australian Health Practitioner Regulation Agency and National Boards, <https://www.ahpra.gov.au/>

<sup>18</sup> <https://chiavic.com.au/>.

<sup>19</sup> Correspondence to the Review Panel, 5 July 2021, Anonymous.

<sup>20</sup> 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 Limited, Forthcoming publication. Housing and Urban Research Institute Limited, Melbourne.

<sup>21</sup> Victorian Ombudsman. 2017, *Investigation into the management of maintenance claims against public housing tenants*, available at: <https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-the-management-of-maintenance-claims-against-public-housing-tenants/>). 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.

<sup>22</sup> 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.

<sup>23</sup> An online survey of individuals working in housing and support services commissioned by the Review Panel was opened on 30 August 2021 and closed on 20 September. A total of 83 responses were received. The majority (57) were from people working in, or who had worked in, the homelessness sector with less from non-profit housing providers (28) and other community services. (23). One of the recurring themes was workforce issues including high demand/workload, need for more/different forms of support, training and qualifications, pay and conditions and the high levels of stress, burn-out and turnover.

<sup>24</sup> According to the 2018-19 Housing Registrar Sector Performance Report (available at: <https://www.vic.gov.au/sites/default/files/2021-01/Sector-Performance-Report-2018-19.pdf>), staff turnover across the community housing sector averaged 19 per cent, which declined from 26 per cent in 2017-18. While it is noted that registered community housing organisations that returned high staff turnover generally have a small number of employees where a small change in staff numbers can have a more profound impact on the staff turnover percentages, the Panel is nonetheless concerned about staff turnover. That is because high staff turnover is a critical problem that jeopardises the sector's viability and capacity to provide quality service. The Department of Health and Human Services annual report 2019-20 (available at:

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<https://www.dhhs.vic.gov.au/publications/annual-report-department-health-and-human-services>) indicates that from 2019 to 2020 housing staff numbers declined by just over 4 per cent of staff.

<sup>25</sup> Anonymous respondents to the survey of social housing and support workers commissioned by the Review Panel.

<sup>26</sup> Worksafe Victoria. 2021, *Occupational health and safety – your legal duties*, available at: <https://www.worksafe.vic.gov.au/occupational-health-and-safety-your-legal-duties>.

# 9. Affordable housing

## What is the problem?

- Affordable housing is a growing sector and work is underway in Government to inform how it is delivered going forward.
- The definition of affordable housing in the *Planning and Environment Act 1987* is relatively broad and this could be an issue for targeting to the desired income cohorts.
- There is no clear allocation mechanism for affordable housing.
- There is little ongoing oversight for the delivery of affordable housing that has been supported by local government and the community through the Planning and Environment Act's section 173 agreements.
- The end of the National Rental Affordability Scheme (NRAS) will leave some renters facing rent increases and eviction.

The Terms of Reference for this Review require the Panel to examine the regulatory arrangements for both social and affordable rental housing.

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).<sup>1</sup> For the purposes of this Review, affordable housing refers to rental housing that excludes social housing.

Affordable housing can be delivered by registered community housing providers, with different rent settings to social housing properties (generally a discount to market rent rather than income-based rent). It can also be delivered and sometimes managed by the private sector, such as within build-to-rent developments.<sup>2</sup>

## Current and future affordable housing stock

Affordable housing is a relatively small sector in Victoria, a large proportion of which is the result of the NRAS. As of June 2021, the NRAS was providing support for about 5,400 affordable homes in Victoria.<sup>3</sup> 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.<sup>4</sup>

Beyond this scheme there has been some affordable housing constructed through mixed-use developments and some through section 173 planning agreements.<sup>5</sup> There has been no comprehensive analysis of the properties constructed under these schemes to date, however it is understood that the Department of Environment, Land, Water and Planning is currently collating information on the status of section 173 agreements that involved a planning amendment. 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.<sup>6</sup> Nonetheless, there is little ongoing oversight of these agreements despite the

developments having received some form of local government planning concessions or subsidy, which is effectively paid for by the community.

The focus on affordable housing is increasing. The Victorian Government has committed to constructing 2,900 affordable and market dwellings as part of the Big Housing Build.<sup>7</sup> Additionally, local governments are seeking to attract affordable housing, particularly as part of a push to construct housing for 'key workers'.<sup>8</sup> Governments are also focusing on the build-to-rent sector, which can include affordable housing, and land tax concessions will be granted for these projects from next year.

As part of the increased focus on affordable housing, work is underway that will inform how affordable housing is to be delivered going forward. This will have implications for the regulatory settings for affordable housing, and it is important that the regulatory framework be flexible to accommodate changes in the policy environment.

### The definition of affordable housing

Affordable housing exists to fill a perceived gap in the market between social housing, which is increasingly targeted at the most vulnerable tenants, and private rental housing, which is unaffordable for many low to moderate income households, particularly in areas that offer proximity to jobs and amenities.<sup>9</sup>

However, this is a broad cohort and there is a divergence of views as to where on this spectrum the focus of affordable housing should be. This is in part because the definition of affordable housing in the *Planning and Environment Act 1987* is relatively broad. This can cause confusion amongst proponents and lead to developers choosing to construct the affordable housing that has the least financial impact on developers, rather than that which most benefits vulnerable renters.<sup>10</sup>

There is also little guidance on the characteristics of affordable housing that government considers important beyond affordability. A ministerial notice<sup>11</sup> specifies a range of matters that must be had regard to when considering whether a property is affordable housing (including allocation, tenure and integration), but there is little guidance on how these matters are to be considered.

There are issues relating to security of tenure in affordable housing. In particular, in NRAS properties, tenants who exceed the income limits by 25 per cent for two consecutive years cease to be eligible tenants, creating a strong incentive for eviction. Tenancy stability is one of the important benefits of social and affordable housing, and such provisions can undermine these benefits.

### How should affordable housing be regulated?

Affordable housing is delivered by registered housing providers (including public housing), unregistered not-for-profit providers and by private providers.

Affordable housing delivered by registered providers is regulated by the community housing regulatory system. Few concerns were raised in this area, and most participants supported the current arrangement.<sup>12</sup>

However, where affordable housing is delivered by unregistered providers or private providers, there is little regulatory oversight (aside from requirements under funding programs such as the NRAS). Not-for-profit providers have some incentive to deliver long-term affordable housing (through tax incentives and their mission), but some participants raised concerns about whether affordable housing delivered by private providers would continue to be delivered as such over the longer term, particularly where the housing is built

as a result of section 173 agreements.<sup>13</sup> This is of concern where a developer has received a government subsidy (which could include a financial subsidy, or 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 offer affordable housing over the long term.

## What is proposed?

The policy environment for affordable housing is currently under review and development. The outcomes of this activity will have implications for the regulation of affordable housing. Further analysis of the regulatory environment for affordable housing will be carried out for the final report of the Review.

- 9.1. Where affordable housing receives a government subsidy, an accountability mechanism must be in place to ensure that the investment partner delivers on the agreement.
- 9.2. Consider establishing an allocation mechanism for affordable housing within the Victorian Housing Register.

## Rationale for this approach

The policy environment for affordable housing is in a state of flux, which makes designing a regulatory system for affordable housing challenging. Going forward, it is likely that a sizable proportion of affordable housing will be delivered by registered housing agencies. This would be akin to the approach in England, where affordable rental housing delivered through section 106 agreements must be managed by a registered provider (unless delivered as part of a build-to-rent development).<sup>14</sup>

The affordable housing delivered by registered providers is covered by the regulatory system for community housing, and participants have raised few concerns with this arrangement. One question is whether the Victorian Housing Register could be used as an allocation mechanism. The Register could be adapted to accommodate affordable housing applicants, and thus ensure that affordable housing is accessed by the targeted cohort.

A possible regulatory gap exists where affordable housing is delivered by unregistered providers (and a subsidy granted to the provider). The Panel is seeking feedback on how significant this issue is likely to be going forward, and what regulatory arrangements are needed for these providers.

It is anticipated that additional clarity will be given on the affordable housing policy settings prior to the final report of this Review, which should allow for a more detailed assessment of the regulatory environment.

### Questions for consideration

- 9.1 Are any changes needed to the regulatory system for community housing to accommodate affordable housing?
- 9.2 Is there a need for a regulatory system to cover unregistered providers of affordable housing?

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<sup>1</sup> Section 3AA. 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)*, available at: [https://www.planning.vic.gov.au/\\_\\_data/assets/pdf\\_file/0026/489014/Final\\_Specified-Matters-Under-Section-3AA2-Ministerial-Notice.pdf](https://www.planning.vic.gov.au/__data/assets/pdf_file/0026/489014/Final_Specified-Matters-Under-Section-3AA2-Ministerial-Notice.pdf)).

<sup>2</sup> Affordable Housing Industry Advisory Group (submission 14, p. 4) provided some examples of the types of affordable housing.

<sup>3</sup> Australian Government. 2021, *National Rental Affordability Scheme Quarterly Performance Report*, available at: <https://www.dss.gov.au/our-responsibilities/housing-support/programmes-services/national-rental-affordability-scheme/national-rental-affordability-scheme-performance-reporting>. Note that the definition of affordable housing under the NRAS is different from that used in the Planning and Environment Act.

<sup>4</sup> For example, Geelong Housing Action Group (submission 38, p. 6).

<sup>5</sup> 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 agreement 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 interest free loans (Planning Panels Victoria. 2020, *Priority Projects Standing Advisory Committee Report, Moreland Planning Scheme, Referral No 5: 10 Dawson Street, Brunswick*, available at: [https://www.planning.vic.gov.au/\\_\\_data/assets/pdf\\_file/0022/506380/Priority-Projects-SAC-Referral-5-Report.pdf](https://www.planning.vic.gov.au/__data/assets/pdf_file/0022/506380/Priority-Projects-SAC-Referral-5-Report.pdf)).

<sup>6</sup> 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.

<sup>7</sup> Homes Victoria. 2020, *Victoria's Big Housing Build*, p. 2, available at: [https://www.vic.gov.au/sites/default/files/2020-11/hv\\_more\\_homes\\_for\\_more\\_Victorians\\_0.pdf](https://www.vic.gov.au/sites/default/files/2020-11/hv_more_homes_for_more_Victorians_0.pdf).

<sup>8</sup> For example, the City of Melbourne. 2020, *Affordable Housing Strategy 2020-2030*, p. 61, available at: <https://www.melbourne.vic.gov.au/SiteCollectionDocuments/affordable-housing-strategy.PDF>) has placed a focus on a key worker strategy to secure affordable rental housing for key workers.

<sup>9</sup> For example, Palm, M., Raynor, K. and Whitzman, C. 2018, *Project 30,000: Producing Social and Affordable Housing on Government Land*, available at: <https://apo.org.au/node/251431>, estimated that there was a need for an additional 164,000 homes affordable to very low and low income people.

<sup>10</sup> For example, Coates, B., Nolan, J. and Chen, T. (2020, *Tackling Homelessness in Australia: Grattan Institute submission to the Standing Committee on Social Policy and Legal Affairs' Inquiry into Homelessness in Australia*, p. 15, available at: [https://grattan.edu.au/wp-content/uploads/2020/07/HF\\_homeless\\_submission\\_2020.pdf](https://grattan.edu.au/wp-content/uploads/2020/07/HF_homeless_submission_2020.pdf)) argued that, due to the eligibility thresholds under the NRAS, the properties constructed tended to be allocated to people on moderate or higher incomes.

<sup>11</sup> Wynne, R. 2018, *Specified Matters Under Section 3AA(2)*, available at: [https://www.planning.vic.gov.au/\\_\\_data/assets/pdf\\_file/0026/489014/Final\\_Specified-Matters-Under-Section-3AA2-Ministerial-Notice.pdf](https://www.planning.vic.gov.au/__data/assets/pdf_file/0026/489014/Final_Specified-Matters-Under-Section-3AA2-Ministerial-Notice.pdf)).

<sup>12</sup> 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.

<sup>13</sup> For example, City of Port Phillip (submission 64, p. 5). Other local councils also raised similar concerns during consultations.

<sup>14</sup> Ministry of Housing, Communities and Local Government. 2021, *National Planning Policy Framework*, Annex 2, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1005759/NPPF\\_July\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NPPF_July_2021.pdf).



# 10. A social housing regulator: structure and governance

## What is the problem?

- The Housing Registrar is currently a small entity with a legal form and structure that was designed for the regulation of a nascent community housing sector.
- The regulator's current structure and governance arrangements will need to be adapted to enable it to perform the increased scope and volume that the Panel proposes.

Overall, the changes that the Panel is proposing will transform the regulator to one which plays a central role in promoting continuous improvement across the social housing sector and managing higher levels of risk (Papers 1,2,3,13 and 14). It is necessary to strengthen the regulator's structure and governance arrangements so that they are suitable to regulate both government and non-government providers of social housing, enable effective regulation in a more complex environment and promote confidence in the regulatory system going forward.

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.<sup>1</sup> The Housing Registrar's office has 14 Full Time Equivalent staff located in the Department of Treasury and Finance (DTF), who are DTF employees. It was initially situated within the Department of Health and 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.<sup>2</sup>

The Panel has heard that, to encourage private investment, investors need confidence that there is stable regulatory regime with an independent regulator. The Housing Act currently provides that the Governor in Council can remove the Housing Registrar at any time and that the Registrar is subject to the direction and control of the Minister.<sup>3</sup> These provisions may give the impression that the regulator is not sufficiently independent to regulate both government and non-government entities, or to engender confidence that regulatory decision making will be impartial, and evidence based.<sup>4</sup>

To make the regulatory system more tenant centred, the regulator will need to enhance its systems and capability to enable deep engagement with tenants across the State as well as people seeking access to social housing. This feedback will provide valuable intelligence to inform monitoring and benchmarking of providers' performance and inform policy development. While the Housing Registrar is subject to the oversight and accountability mechanisms that apply to government agencies generally, it does not have a governing body to provide continuous oversight of its activities and bring diverse perspectives and expertise to its strategic planning process.

## What is proposed?

- 10.1 Establish the regulator as an independent statutory body governed by a board, with a Chief Executive Officer (CEO) whose responsibilities are outlined in the legislation.

The board should comprise between 5 and 7 individuals who collectively possess skills and expertise that are relevant to the regulator's functions including lived experience as a social housing tenant, social and affordable housing, finance, law, regulation, Aboriginal housing, community engagement or other relevant skills and experience.

Board members to be appointed for up to 5 years and be eligible for re-appointment. Other conditions of appointment would be in accordance with relevant Government guidelines applicable to boards of public entities.

#### 10.2 Strengthen the regulator's independence by:

- confining grounds for its removal to misconduct, incapacity, failure to perform duties, proven incompetence, insolvency and like matters
- confining the Minister's power to give directions to broad matters of regulatory policy, and requiring any Ministerial directions to be given in writing and published
- providing for regulatory staff to be employed by the organisation's CEO (staff with appropriate skills would continue to be seconded from public sector agencies).

#### 10.3 Include as responsibilities of the board:

- appointing the CEO and approving the strategic plan
- developing organisational structure and key policy documents.

Regulatory functions and decision making would ordinarily be delegated to the CEO and appropriate management positions within regulator's office. The CEO would report to the board.

#### 10.4 Require that minutes of board meetings be published along with the regulator's planning documents, policies, standards, processes for decision making, regulatory decisions and reasons for decisions.

#### 10.5 Align the regulator with the Essential Services Commission to maximise opportunities for synergies, cross learning and sharing of support services. The governance implications of possible approaches to alignment to be explored further. Consideration could also be given to cross member board appointments, to enhance co-ordination between these bodies.

## Rationale for this approach

### Establishment of a board

Good governance is the foundation for high performance.<sup>5</sup> It enables organisations to perform efficiently and effectively, and to respond strategically to changing demands. The social housing sector is in a transitional phase, and a shift in regulatory approach is needed to ensure it aligns with, and positively contributes to, a more mature sector.

The Panel has considered governance models for regulators in other comparable jurisdictions. In both England and Scotland, the social housing regulators are governed by a multi-member board which is accountable for ensuring that the regulators meet their

statutory objectives.<sup>6</sup> The boards operate transparently, and the minutes of board meetings are published. They appoint the CEO, which is a statutory position.

The Panel considers that making the regulator a statutory entity governed by a board comprising people with diverse skills and experience will assist the regulator to transform its approach, enable oversight of the regulator's performance and ensure that it maintains a focus on continuous improvement. The inclusion of members with lived experience as a social housing tenant and expertise in community engagement will strengthen the regulator's capacity to meet its key objective - to put tenants and prospective tenants at the centre of the regulatory system.

It is important that the board's role in regulatory decision making is clear. The Panel envisages that, although the board would be the regulator's governing body, regulatory decision making would ordinarily be delegated to the CEO and senior staff in accordance with clear and transparent policies and procedures. The board would have an oversight role and would appoint the CEO. Making provision for the regulator to have a CEO who is accountable to the board and enabling the regulator to second staff from the Essential Services Commission (ESC) and appoint staff who may come from outside the public sector would strengthen its organisational capacity and independence.

The Panel intends to explore whether the proposed governance structure could affect Victoria's capacity to work closely with the jurisdictions participating in the National Regulatory System for Community Housing (NRSCH) through the Registrars' Forum. Although Victoria is not currently a signatory to the NRSCH, the Housing Registrar participates in the Forum and this helps minimise inconsistency of regulatory approaches for community housing organisations operating in multiple jurisdictions (Paper 17). The Panel has heard that having an advisory board to the Housing Registrar rather than a board of governance might better facilitate national consistency so is keen to consider stakeholders' views on this issue.

### Independence of the Regulator: location and form

The legislation establishing a regulator - its design, structure, decision-making and accountability structures all contribute to its effectiveness in delivering on its regulatory objectives.<sup>7</sup> In addition, a large body of literature highlights the importance of independence in performing regulatory functions, when long commitments in regulation are crucial, hence the Panel is proposing legislative changes to strengthen the regulator's independence.<sup>8</sup>

The Panel has considered four options for the legal form and location of a social housing regulator:

- integrating it into the new Social Services Regulator
- retaining the status quo – the regulator to remain as an entity within DTF with changes to legislation to reinforce its independence
- creation of a stand-alone entity; or
- aligning it with the ESC - an independent 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 essential services such as energy, water and transport.

#### *Integration with the Social Services Regulator*

The Panel has concluded that there is insufficient alignment of regulatory objectives, scope and the fundamental skills, knowledge and capabilities required for effective regulation to recommend integrating the social housing and Social Services regulators. The Social Services Regulator is not a prudential regulator. Its role centres on protecting vulnerable

children and adults from abuse and neglect and improving the safety and efficacy of social services including child protection, youth, family, family violence, disability, homelessness and supported residential services. It will also manage a scheme to exclude workers or carers who pose a risk to children from looking after children in out of home care.

A social housing regulator must have a strong focus on prudential regulation, and this is growing in importance in the current growth environment. The regulator will need specialised professional skills and strong financial acumen to manage the risks to organisations and the sector presented by a more complex and dynamic environment, including capacity to analyse complex financial and legal arrangements.

As public housing is proposed to come into scope of regulation, it is essential that the regulator remains at arms-length from Homes Victoria and the Department of Families, Fairness and Housing (DFFH) to avoid any perception that Homes Victoria or DFFH have the capacity to influence the regulator's decisions.

The Panel is mindful that there is scope for some entities, particularly those that provide homelessness services, to be regulated under both schemes and is proposing specific actions to address any duplication of reporting (Paper 12).

#### *Status quo*

The Panel has not heard that there have been any issues with the Housing Registrar's independence while located in DTF. Retaining the regulator within DTF is a reasonable option and assists the regulator to secure staff with the necessary skills to enable it to perform its prudential regulation functions. However, there may be additional public benefits to be gained from aligning the regulator with the ESC.

#### *A standalone regulator or alignment with the ESC*

In principle, a standalone regulator allows for deep specialist sector knowledge and expertise, but the potential downsides are a risk of insularity, the limited resources of a small entity and the risk that the regulator could become too close to the sector. Integration into a much larger multi-sector regulator such as the ESC would enable learning from the experience of regulating other sectors, access to a broader pool of staff resources and expertise, enhanced support, and reduced complexity in the overall regulatory landscape.

Moreover, the social housing regulator would be a good fit with the ESC. It would position housing more strongly as an essential service. The ESC is well positioned to regulate services to consumers experiencing or at risk of vulnerability. Its recent 'Getting to Fair' strategy<sup>9</sup> outlines a plan for breaking down barriers to essential services by engaging with consumers and supporting them to exercise their rights, supporting regulated sectors to become more responsive, inclusive and accessible and becoming more responsive, inclusive and accessible as a regulator. There are other synergies and potential benefits, as the ESC has a strong focus on regulating in the long-term interests of consumers, established mechanisms for community outreach and expertise in economic regulation and enforcement.

That said, alignment with the ESC need not mean full organisational integration. For example, the Australian Energy Regulator is established under the *Competition and Consumer Act 2010* with its own statutory functions, powers, and an independent board but shares staff, resources and facilities with the Australian Competition and Consumer Commission.<sup>10</sup> This model would allow for deep sector expertise and engagement while addressing the challenges facing a small sector specific regulator. The Panel considers that

alignment with the ESC, whether through full integration or some other approach has considerable merit, and that the governance implications of this option should be explored further.

Given that social housing is not a viable commercial product without subsidy and that providers are not for profit organisations, the Panel is not proposing the introduction of a user pays model to fund the regulator at present. However, 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 in the future. Nonetheless it is envisaged that if the regulator were to be collocated with the ESC, it would be appropriately funded for both its core operations, and shared corporate services.

## Questions for consideration

- 10.1 Will these proposals help equip the regulator to perform its expanded functions effectively?
- 10.2 Could having a board of governance for the regulator make a difference to the regulator's work towards national consistency of regulatory approach? If so, how?
- 10.3 Are there any other relevant factors that should be taken into account?

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<sup>1</sup> *Housing Act 1983* ss.75 and 78.

<sup>2</sup> Victorian Auditor-General. 2010, *Access to Social Housing*, p.33, available at: <https://www.audit.vic.gov.au/report/access-public-housing?section=>. The transfer of the Housing Registrar's office and functions to the Department of Treasury and Finance took place in the 2011-12 financial year: Housing Registrar, *Report 2011-12*, p.4, available at: [https://www.vgls.vic.gov.au/client/en\\_AU/search/asset/1295637/0](https://www.vgls.vic.gov.au/client/en_AU/search/asset/1295637/0).

<sup>3</sup> *Housing Act 1983*, s.80.

<sup>4</sup> OECD (2014) *The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy*, p.49. OECD Publishing.

<sup>5</sup> 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/>.

<sup>6</sup> *Housing (Scotland) Act 2010*, ss.8 and 13; *Housing and Regeneration Act 2008* (UK), ss.80B and 80D.

<sup>7</sup> OECD. 2014, *The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy*, p18. OECD Publishing; Victorian Public Sector Commission 2013, *Legal Form and Governance Arrangements for Public Entities*.

<sup>88</sup> "Given that regulatory bodies make decisions that affect the rights of businesses and individuals, impartiality in decision making is of particular importance to avoid perceptions of favouritism and corruption. Accordingly, the legal form of a public entity with regulatory functions should provide for considerable autonomy and in some cases a very high level of independence in the performance of its functions, with limits on Ministerial powers of direction". Victorian Public Sector Commission. 2013, *Legal Form and Governance Arrangements for Public Entities*, p.25, available at: <https://vpssc.vic.gov.au/resources/legal-form-and-governance-arrangements-for-public-entities-guidelines-revised-may-2013/>.

<sup>9</sup> <https://www.esc.vic.gov.au/other-work/regulating-consumer-vulnerability-mind>.

<sup>10</sup> <https://www.accc.gov.au/about-us/australian-competition-consumer-commission/about-the-accc>.

# 11. Regulation of public housing and Homes Victoria

## What is the problem?

- The creation of Homes Victoria has been crucial in enabling the Big Housing Build to become a reality. However, this in turn has created regulatory challenges in relation to clarity, responsibility, and accountability.
- Improved clarity is needed around the objectives of Homes Victoria and the rationale for its scope of functions.
- Improved clarity is needed around the roles and responsibilities for the delivery of public housing within government.
- While public housing is subject to the checks and balances that apply to public agencies and functions, it is not subject to the regular scrutiny of an independent regulator.
- A single system of regulation for public and community housing would be helpful in ensuring tenants have clear information to enable a comparison to be made between the performance of all social housing providers.

## Public housing operations

Homes Victoria was created in 2020 with a view to giving Victorians an agency with a single goal of growing and delivering a sustainable social housing system. Its creation was welcomed by many submissions to this Review as was the Big Housing Build.

Public housing is delivered by the Community Services Operations Division of the Department of Families, Fairness and Housing (DFFH)<sup>1</sup> under delegation from the Homes Victoria Chief Executive Officer (CEO).<sup>2</sup> The CEO is also an Associate Secretary of DFFH<sup>3</sup> and, in that capacity, has governance responsibilities for DFFH as a whole. The Panel understands that the Community Services Operations Division also manages the DFFH state wide call centre, and the Victorian Housing Register. Homes Victoria's CEO retains ultimate statutory responsibility for all delegated functions.

These arrangements are quite complex, and the Panel could not find any public information to explain how they work, or to identify who is accountable for providing responsive service delivery to public housing tenants. While a call centre and on-line applications for social housing enable efficiencies, the Panel has heard that it can be difficult for vulnerable citizens to navigate systems like these without assistance, and their use can also reduce local housing officers' knowledge and visibility of the circumstances that vulnerable tenants and prospective tenants are facing.

The Panel has found it difficult to identify publicly available information about the relationship between Homes Victoria and DFFH, and there appears to be limited information regarding the strategy behind the formation of Homes Victoria and the rationale for its particular structure and scope of functions. There is scope for further consideration of how the roles of public housing landlord; oversight of public housing; policy setting for public and community

housing; and social housing investor could best be delivered. It may be that integration of these functions is the best way to leverage partnerships and retain an understanding of what is needed to deliver services successfully on the ground. This Review provides an opportunity to assess how these functions are best organised.

## Public housing delivery, asset management governance, and financial management: transparency and accountability

Although DFFH and Homes Victoria are covered by the oversight and accountability mechanisms that apply to government agencies, public housing delivery is not transparently assessed against social housing performance standards by an external regulator with powers to issue enforceable directions or publish findings and recommendations. Papers 2 and 10 propose that community and public housing be subject to a consistent set of performance standards and to scrutiny by a social housing regulator. These changes would go some way to bringing about greater transparency and accountability.

Victorian Auditor-General's reports have identified persistent problems of public housing financial sustainability being managed using short-term approaches, lack of asset management, deferred maintenance, and other ongoing issues. In addition, financial information is not available on a housing office basis. The lack of transparent public housing performance data makes it difficult to make an accurate assessment of costs, or comparisons of performance and costs of public and community housing.

## What is proposed?

It has been proposed in Papers 2 and 10 that a single regulator oversee both public and community housing, with common regulatory standards for service delivery and asset management.

- 11.1 Transfer responsibility to the regulator for monitoring compliance by all social housing providers with the applicable regulatory standards.
- 11.2 Transfer additional statutory powers to the regulator to monitor and enforce compliance with the standards applying to both public and non-public sector social housing providers. For example, the regulator could be given powers to issue improvement notices requiring corrective actions to be taken within a specified time and to issue fines and public censure statements where there has been repeated or flagrant breaches of standards.
- 11.3 Require that the regulator has full visibility of all DFFH contracts (including for public housing management transfers). Require information sharing between funder and regulator.
- 11.4 Give powers to make regulations governing policy issues such as criteria for access to social housing, categories of priority access, principles for rent setting and frequency of rent reviews exclusively to the responsible Minister and require that any regulations be made following a detailed public engagement process, including with tenants and prospective tenants. This would separate the policy responsibilities of the Minister from the operational responsibilities of the Director of Housing, or Homes Victoria.
- 11.5 Homes Victoria to communicate to tenants and other stakeholders their respective roles and responsibilities.

11.6 The Review Panel to consider the merits of the current Homes Victoria structure during its next phase of deliberations.

## Rationale for this approach

The Director of Housing's current roles, powers and functions can be traced back to 1983 when the government was the monopoly provider of government subsidised rental housing. However, they appear to be out-of-date now that not-for-profit organisations are significant providers and given the policy goal to encourage growth and private investment in the not-for-profit sector.

Since the 1990s, public housing service delivery has generally been incorporated into large social services departments, with the Director's financial statements incorporated into consolidated accounts. As noted in Papers 2 and 16, the lack of transparent data about public housing makes it difficult to make accurate comparisons between the performance and cost of services of public and community housing.

A range of organisational and institutional factors influence the effectiveness of regulation.<sup>4</sup> There is a case for a regulatory level playing field overseen by an independent regulator where both government and non-government organisations are operating in the same field.<sup>5</sup> To promote growth in social housing stock and encourage investment in the sector, investors may need to be confident that there is a stable, independent regulator who will make judgements in an impartial and transparent manner. Retaining Homes Victoria's capacity to influence the conduct of regulated housing agencies may add to investor perceptions of regulatory risk, reducing the scope for not-for-profit housing organisations to attract investment.

While a level playing field in the regulatory standards for government and non-government providers is appropriate, it is not possible or appropriate for the regulatory system to treat public and non-government providers exactly alike. The ultimate consequences for very serious failures will necessarily differ as the Housing Registrar's step-in powers under the *Housing Act 1983* cannot be applied to public bodies. It will be necessary to redesign the legislative framework to include sanctions that can be applied to non-compliance with standards and regulations by public and community housing providers.

Under the Housing Act, the Housing Registrar has significant intervention powers, including the power to recommend the appointment of suitable individuals to the organisation's governing body, propose a merger between housing agencies or order the appointment of an administrator or the winding up of an agency and transfer of its assets to another registered agency. These powers exist to ensure service continuity for tenants and protect housing assets in the event of serious governance or organisational failures by non-government organisations. They cannot be applied to State public entities which are subject to a distinct governance and legislative framework.



## Questions for consideration

- 11.1 Should community and public housing be subject to a consistent set of performance standards and scrutiny by an independent social housing regulator to bring about greater transparency and accountability? Are additional changes needed?
- 11.2 Is there merit in further exploring formal institutional separation of public housing delivery and asset management from wider social housing policy and commissioning functions? Is an integrated provider a better way to achieve long-term growth in social housing that is genuinely tenant focused?

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<sup>1</sup> The Department of Families, Fairness and Housing was established on 1 February 2021. It has portfolio responsibilities for child protection, housing, disability, family violence prevention, multicultural affairs, LGBTIQ+ equality, veterans, women and youth. See: <https://www.dffh.vic.gov.au/>

<sup>2</sup> The *Housing Act 1983*, s.9 provides for the appointment of the Director of Housing and makes the Director of Housing a body corporate. The Act vests broad powers and functions in the Director of Housing in order to give effect to the Act's objects. Under s.35 of the Act, with the prior approval of the Minister, the Director of Housing may delegate any of the Director's powers, directions, functions or authorities under any legislation.

<sup>3</sup> Department of Families, Fairness and Housing organisational chart dated 11 October 2021, available at: [https://www.dffh.vic.gov.au/sites/default/files/documents/202110/DFFH\\_OrgChart%2011-10-2021.pdf](https://www.dffh.vic.gov.au/sites/default/files/documents/202110/DFFH_OrgChart%2011-10-2021.pdf)

<sup>4</sup> New Zealand Productivity Commission. 2014, *Inquiry into regulatory institutions and practices*, available at: <https://www.productivity.govt.nz/inquiries/regulatory-institutions-and-practices/>

<sup>5</sup> OECD. 2014, *The Governance of Regulators, OECD Best Practice Principles for Regulatory Policy*, OECD Publishing

# 12. Growth and innovation I: reducing unnecessary regulatory burden and barriers

## What is the problem?

- There is an urgent need for continued growth in social housing stock.
- Regulatory burden and inflexibility are deterring some community services organisations who own land that could be used for social housing from becoming registered under the *Housing Act 1983*.
- Duplication between regulation and contract and inflexibility in the regulatory framework are increasing compliance costs for some registered housing agencies.

Continued growth is imperative to help ensure that, over time, sufficient social housing stock is available so every Victorian can access suitable housing at a price within their means.<sup>1</sup>

Although registration as a housing agency is optional, it is a pre-requisite for accessing government funds and loans through the National Housing Finance and Investment Corporation to develop social housing.<sup>2</sup> The Panel considers that registration should continue to be required to receive funding and has heard that some features of the current regulatory system may deter not-for-profit agencies whose mission is to serve culturally and linguistically diverse communities from seeking registration. In particular:

- they exist to serve people in need from their own communities and are unsure whether, if registered, they could exclusively target their clients from among the applicants on the Victorian Housing Register
- they are concerned that the “wind up” provisions of the Housing Act could potentially see their assets transferred to other housing agencies that do not share their mission.<sup>3</sup>

The wind-up provisions are also a concern for church-based and Aboriginal Community Controlled Organisations (ACCOs).<sup>4</sup> 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.

Some organisations deliver a broad range of health and community services and face a very high cumulative regulatory burden due to the need to comply with an array of accreditations, standards, and program reporting requirements. This is a particular challenge for ACCOs and has been a key factor in deterring them from seeking registration.<sup>5</sup> Registered housing agencies report substantial duplication of funding contracts and regulation which imposes unnecessary costs.

Reduction of barriers to registration could help to unlock land and resources for the purpose of social housing. There is also a need to reduce duplication and unnecessary compliance costs for registered agencies, including by reviewing aspects of the regulatory scheme that may limit flexibility.

The Housing Act specifies the kinds of not-for-profit legal entities that can be registered to provide social housing and regulates their activities as social landlords. Thus, the Housing

Registrar oversees registered agencies' governance, management and financial viability and can step in to protect tenants and ensure continuity of publicly funded social housing assets if there is a significant entity failure. It also brings the registered entity's entire portfolio within scope of the regulatory scheme, not just the designated housing assets that have been purchased with the assistance of state funds.

The Panel has heard that this approach may impose unnecessary costs on providers and differs from the approach under the National Regulatory System for Community Housing (NRSCH).

To ringfence their housing assets, multi-service organisations establish separate legal entities specifically for their housing operations. And social housing organisations that are registered under the NRSCH system and operate in Victoria need to create a separate Victorian entity.<sup>6</sup> This creates administrative and compliance costs. Further, the Director of Housing must individually approve land transactions by registered housing agencies in which it has an interest. The Panel has heard that it can take some time to obtain approval, and this can cause the agency to be less agile and responsive to opportunities.<sup>7</sup>

Outcomes-based regulation would better balance the need to ensure that the social housing asset base funded by taxpayers is maintained and "recycled" for social housing purposes in perpetuity, with giving community housing organisations the flexibility to manage assets across their portfolio. Ideally, legislation would not dictate the legal form an organisation must adopt to manage its social housing operations unless this can be shown to be the best way to regulate social housing providers effectively, and the benefits outweigh the costs.

## What is proposed?

- 12.1 Review the circumstances in which a registered agency whose mission is to serve a particular community can target applicants from their community from the applicants on the Victorian Housing Register.
- 12.2 Amend the *Housing Act 1983* wind up provisions to provide certainty that, as far as possible, the assets of a specialist housing agency being wound up will transfer to another registered housing agency that exists to serve the same cohort of tenants.
- 12.3 Require the regulator to perform its functions in a way that is proportionate and targeted only to where action is needed, and to work with other regulators to minimise duplication and administrative burden for registered agencies wherever possible.
- 12.4 Prevent funding contracts from duplicating regulatory requirements and enable regulator reports to be provided to the funder.
- 12.5 Enable the regulator to share information with other regulators of registered agencies and, where feasible, to recognise their approval or be delegated as the primary approver of a regulated agency's generic governance and management arrangements.
- 12.6 Replace the requirement for Director of Housing approval for individual land transactions with a requirement to notify the regulator under certain circumstances, modelled on the relevant provisions of the *Housing (Scotland) Act 2010*.

12.7 Explore enabling organisations to designate assets for the purposes of the regulatory scheme so that they can avoid establishing and operating a specific legal entity for their social housing operations.

## Rationale for this approach

Taken together, these reforms should encourage more not-for-profit agencies to register, reduce duplication and compliance costs for registered agencies and introduce greater flexibility into the regulatory system.

There is tension between the need to minimise administrative burden on providers and encourage those outside the system to be registered, while also enabling effective regulation. Social homes are valuable, publicly subsidised, long term assets requiring life-cycle asset management in the interests of tenants and prospective tenants. Raising finance for social housing development and growth can entail assuming significant financial risks. These factors require sound risk-based supervision of providers.

All contemporary regulators and regulated entities must navigate a complex environment of multiple regulators and overlaps between regulatory schemes. Memoranda of understanding, collaboration and information sharing among regulators as well as a practical problem-solving mindset are essential to help minimise duplication and remove unnecessary burdens for those who are regulated.

Regulatory frameworks can influence how regulators operate and authorise information sharing, which is an essential enabler for reducing regulatory burden and overlap. For example, both the English and Scottish social housing regulators must perform their functions in a way that is proportionate and targeted only to where action is needed.<sup>8</sup> The Scottish Regulator is designated as the principal regulator of Scottish social housing agencies, most of which are charities. Registered agencies report their financial and governance information to the social housing regulator and legislation enables this information to be “passported” to the Scottish charities’ regulator, thus reducing the need for dual reporting. It also enables the charities regulator to delegate certain regulatory functions to the social housing regulator which can act on its behalf.

Although Australia’s federal system of government adds further complexity in some areas, there is scope for incorporating similar requirements into Victorian legislation to help manage overlaps between the social housing regulatory framework and other regulatory schemes and enable the Housing Registrar to share information with other regulators, including those in other jurisdictions. Some registered housing agencies, especially those providing homelessness services, will face a degree of overlap with the new Victorian regulatory scheme for providers of social services to vulnerable clients. However, the *Social Services Regulation Act 2021* contains provisions to minimise regulatory burden including by requiring the social services regulator to recognise compliance by registered social services providers with other regulatory schemes and aim for consistent approaches to decision making.<sup>9</sup> There is also a power to make regulations exempting providers from registration under that Act.<sup>10</sup> There may also be scope to streamline and better align financial reporting to the regulator and key national regulators such as the Australian Charities and Not for Profits Commission and the Australian Securities and Investments Commission.

The regulatory framework could also prevent government funding contracts from duplicating regulatory requirements and enable cross reporting to the regulator as well as the funder. The funder and regulator would be able to exchange information about the performance of a

registered provider, and the funder could have regard to information and evidence provided by the regulator about performance (and vice versa).

The regulator could be empowered to approve certain types of asset disposals and provide greater flexibility so that not every transaction requires approval. For instance, in Scotland the social housing regulator approves the disposal of housing land or assets and may give general consents for disposals (e.g. to specified landlords, 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.<sup>11</sup> There is also an obligation on the landlord to consult with their tenants about proposed property disposals. The English regulatory scheme also requires the regulator to be notified of asset disposals and empowers the regulator to intervene in certain circumstances.<sup>12</sup> These laws provide a useful model for Victoria.

Where social housing is one business activity of a large not-for-profit organisation, having to establish a separate legal entity for housing entails significant additional costs. That said, it ensures there is a governing body with a specific housing focus that is clearly accountable for social housing operations and ringfences responsibility for housing from the other parts of their business in the event of organisational change (such as a merger or winding up).

It also facilitates efficient regulation as the regulator does not need to attempt to disentangle the finances and performance of the social housing business from the other community services activities. It may be that the creation of a separate legal entity is an appropriate approach for these reasons. However, several housing agencies have told the Review that they have created a separate housing entity for the purpose of designating the assets that are to be regulated, so that the non-community housing assets of their larger parent organisations are not subject to the Regulator's intervention powers. Given that housing agencies effectively nominate the assets to be included in the regulatory scheme when they create a separate legal entity, the Panel would like to explore whether this can be done without them having to create and maintain the entity. The regulation of special purpose vehicles also requires specific consideration in this context (Paper 13).

## Questions for consideration

- 12.1 Should changes be made to the regulatory framework to encourage specialist providers of services to designated communities to register? What consequences could these changes have for the system?
- 12.2 Is regulatory inflexibility, duplication and overlap a major problem? Are the proposed solutions the right ones? Are there any other potential solutions?
- 12.3 Do you agree that there is a need to allow greater flexibility in the regulatory system to enable 'recycling' of taxpayer investments in social housing to benefit future tenants? Are the proposals presenting the right solutions? What are the risks to government of the proposed approach?

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<sup>1</sup> Section 6 of the *Housing Act 1983* includes the following objective: "to ensure that every person in Victoria has adequate and appropriate housing at a price within his or her means".

<sup>2</sup> Australian Government. nd, *National Housing Infrastructure Facility Fact Sheet*, available at: <https://www.nhifc.gov.au/media/1576/nhif-fact-sheet.pdf>

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<sup>3</sup> For example, Fronditha Care and Jewish Care support people in need within the Greek and Jewish communities and own land that could be used for social housing development. They have advised the Panel that these issues are barriers to seeking registration; Review of Social Housing Regulation: *Aboriginal Victorians and Social Housing Regulation Findings and Options*. 2021, p. 10, available at: <https://engage.vic.gov.au/social-housing-regulation-review>

<sup>4</sup> Review of Social Housing Regulation: *Aboriginal Victorians and Social Housing Regulation Findings and Options*. 2021, pp. 9-16, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

<sup>5</sup> Review of Social Housing Regulation: *Aboriginal Victorians and Social Housing Regulation Findings and Options*. 2021, pp. 9-16, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

<sup>6</sup> The Housing Registrar is empowered to register “rental housing agencies”. These must be not-for-profit corporations, incorporated associations or non-trading co-operatives that provide or are established to provide rental housing to qualifying persons. This object is required to be in the entity’s constitution.

<sup>7</sup> *Housing Act 1983*, s.109.

<sup>8</sup> *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.

<sup>9</sup> *Social Services Regulation Act 2021*, s.8 (a statement of guiding principles for the Regulator).

<sup>10</sup> *Social Services Regulation Act 2021*, s.316(1)(i).

<sup>11</sup> *Housing (Scotland) Act 2010* Part 9.

<sup>12</sup> *Housing and Regeneration Act 2008* (UK), s.176.

# 13. Growth and innovation II: emerging models

## What is the problem?

- As Victoria's community housing sector matures and organisations respond to the need for innovation to achieve growth in housing stock, particularly in light of the constraints of the revenue earning capacity from social housing, funding models and investment vehicles are growing in complexity.
- The regulatory system needs to adapt to this changing investment landscape and the regulatory challenges it presents.

The regulatory regime for community housing was designed nearly two decades ago to encourage the development of a nascent sector, promote investment in community housing and provide an alternative to public housing.<sup>1</sup> The community housing sector has grown in maturity. Because of the opportunities presented by the Big Housing Build, community housing organisations (CHOs) are set to rapidly scale up and the investment landscape is evolving, with new funding models and investment vehicles emerging. These changes present opportunities and risks. A more sophisticated approach to regulation is now needed which allows CHOs the flexibility to innovate and grow while effectively managing the new types of risk presented by a more complex environment.

At present, entities need to be registered to receive funding from the State or the National Housing Finance and Investment Corporation (NHFIC), and the *Housing Act 1983* only allows for registration of not-for-profit entities. The Review's Terms of Reference require consideration of whether for-profit entities should be able to be registered as providers of social housing. The Panel considers that, in principle, where any taxpayers funds are allocated for social or affordable housing (Paper 9), the provider should be regulated to ensure accountability for the use of those funds and systematic ongoing scrutiny of providers' performance. However, any change to the legislation to permit registration of for-profit providers of social housing is a policy decision for government.

The community housing sector exists to serve vulnerable tenants and brings a mission focus and specific culture to tenant service delivery which adds a layer of value that is not offered by for-profit organisations. To date, the Panel has not seen any evidence from those jurisdictions that allow for-profit providers to suggest greater system innovation or improvements in tenant service delivery. The evidence suggests that allowing for-profit providers into the system increases financial and governance risk and the regulatory effort required to manage these risks.<sup>2</sup>

Even though registered community housing agencies are not-for-profit organisations, more complex financial models and new investment vehicles are emerging which are altering the sector's risk profile. Developments involving a mix of social, 'affordable' and market priced housing delivered by multi-party consortia are emerging in response to the Big Housing Build. This model is encouraged by the 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.<sup>3</sup> While this model may result in greater growth in social housing than would otherwise occur, CHOs are expected to take on

higher levels of private debt (albeit at historically low cost) to help fund growth and must manage the risks involved.

CHOs are becoming involved in multi-party special purpose vehicles (SPVs) which enable for profit businesses to access funds and become involved in not-for-profit housing beyond the traditional roles played by the private sector in housing construction and lending. These entities may take various legal forms and have complex governance structures that differ significantly from the existing registered housing agencies. The introduction of for-profit entities and new entrants in the sector as SPV participants, and the upscaling of development activity, may pose risks in relation to service delivery and tenant outcomes, financial stability, governance and probity and reputation risks to the sector if things go wrong. There are examples from overseas jurisdictions where the involvement of for-profit partners and/or a relaxation of regulatory scrutiny of providers' investment activities have resulted in poor outcomes for tenants and the social housing sector.<sup>4</sup> The current regulatory regime was not designed with these arrangements in mind.

The regulatory system will need to be able to adapt to these risks, while at the same time allowing the sector to harness the opportunities and assist more tenants. As outlined in Paper 12 there will be a need to strike the right balance, allowing CHOs the flexibility to manage their businesses and portfolios, and minimising unnecessary costs while effectively implementing a more sophisticated approach to regulation.

Homes Victoria is also evolving its approach to commissioning social housing in response to the Big Housing Build. In future, Homes Victoria could seek to enter into arrangements with private sector entities to provide social housing either directly or through separate legal entities. Should this occur, it is essential that the regulator has oversight of these arrangements, and the providers are subject to the regulatory regime.

## What is proposed?

- 13.1 Require registration of any organisation that receives government funding or support for social housing. It is not recommended that any non-registered entity be funded.
- 13.2 Augment the regulator's powers to enable effective regulation of special purpose vehicles and any other novel forms of partnerships or joint ventures involving registered agencies and/or Homes Victoria including by:
  - giving the regulator full visibility of all legal arrangements involving registered social housing providers and joint venture partners (however structured)
  - providing for the publication of minutes of meetings of boards of all registered entities
  - introducing specific requirements for reporting and disclosures of any related entity transactions, multiple entity directorships and senior management appointments and disclosures of conflicts of interest.
- 13.3 Introduce requirements for disclosure of board and executive salaries and other forms of remuneration for all registered social housing providers.



13.4 Give the regulator clear monitoring and inspection powers including to conduct regular scheduled and random inspections, audits and to demand a wide range of documents.

13.5 Review the regulator's step-in powers and whether the regulatory system should require ringfencing, through the lens of SPVs and corporate groups.

## Rationale for this approach

Submissions to the Review that commented on the question of whether for profit entities should be permitted to be registered have expressed overwhelming support for maintaining the *status quo*.

By law, not-for-profit entities must ensure that any surplus is applied to further their beneficial objects and cannot make distributions to members or shareholders.<sup>5</sup> In a constrained funding environment with limited scope to raise revenue from social rents, the need to generate a profit for business owners and investors would likely mean less funds are available to support customer focussed tenant service delivery and social housing growth. The private sector has valuable expertise to contribute to the development, construction, and financing of social housing, but the not-for-profit sector has specific expertise in providing social housing services to vulnerable tenants.

Confining registration to not-for-profit entities is also a regulatory control to help ensure that social housing providers remain mission focussed, especially in an environment of growth, and to help prevent their involvement in commercial activities from becoming the pre-dominant focus over time.<sup>6</sup> 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 the not-for-profit status of 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. Because the current approach to regulation has been designed with the not-for-profit sector in mind, specific consideration would need to be given to what regulatory controls would be needed to ensure effective regulation if a policy decision were made to allow for profit entities to be registered.

Ensuring the long-term viability of registered housing agencies and the social housing system requires a fit for purpose regulatory system that can cope with increasingly complex relationships between a regulated housing agency and its joint venture partners, influenced by the current funding model. These multi-party arrangements may endure for decades, and it is important to ensure that there is no incentive or opportunity for any party to achieve gains by devaluing the assets and standard of services to tenants over time.

The emergence of SPVs, which may take different forms, raises some similar issues to the regulation of corporate groups which has been described as one of the most challenging areas of corporate regulation.<sup>7</sup> There is a risk that the creation of 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. There is a risk that SPVs could be merely '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.

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 complex web of

relationships between the regulated entity and its joint venture partners. This must include the power to access all relevant documents (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 entities.

If a registered housing agency is involved in a partnership, consortium, joint venture, corporate group or SPV (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.

At present, regulation covers registered entities as well as their social housing activities, enabling the regulator to focus on the governance and viability of the regulated entity and step in where required to manage risk and protect tenants and taxpayer funded assets. Given the emergence of special purpose vehicles that may pursue both social and commercial housing activities, it is appropriate to consider whether regulation should require ringfencing, so that social housing providers must undertake any commercial activities in separate legal entities with no or limited recourse to the regulated entity. The alternative is to set standards applicable to the entity as a whole (e.g. governance and financial viability) but only regulate the entity's social housing activities (property standards, access, rent reviews and the like).

To maintain public and investor confidence that these entities are acting in the interest of tenants and using taxpayer funds properly, specific regulations are proposed to ensure transparency of SPVs and like entities, to minimise the risk of leakage of public funds from social housing provision into private benefits, poor outcomes for tenants and resulting damage to the reputation of the social housing sector.

## Questions for consideration

- 13.1 Would the benefits of allowing for profit entities to provide social housing outweigh the costs and risks? Why or why not?
- 13.2 What issues can you see with the proposed approach to regulating the provision of social and affordable housing in an increasingly complex investment environment?
- 13.3 Are there any other relevant factors that should be taken into account?

<sup>1</sup> *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.

<sup>2</sup> Inside Housing. *Never too big to fail*, 21 September 2012, available at: <https://www.insidehousing.co.uk/insight/insight/never-too-big-to-fail-33067>; Regulator of Social Housing. 2019, 2019, *Lease based providers of specialised supported housing*, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/792650/Lease-based\\_providers\\_of\\_specialised\\_supported\\_housing\\_-\\_April\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792650/Lease-based_providers_of_specialised_supported_housing_-_April_2019.pdf).

<sup>3</sup> National Housing Finance and Investment Corporation. 2021, *Delivering More Affordable Housing: A Sustainable Solution*, Australian Government Publishing, p. 3.

<sup>4</sup> Barrat, L. Inside Housing, *First Priority: the inside story of a housing association that almost went bust* Inside Housing, November 2018, available at: <https://www.insidehousing.co.uk/insight/insight/first-priority-the-inside-story-of-a-housing-association-that-almost-went-bust-58864>.

<sup>5</sup> 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

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purpose, and the income generated is directed to that charitable purpose. Australian Charities and Not for Profits Commission Commissioner's Interpretation Statement: Provision of Housing by Charities, revised November 2021, p.13.

<sup>6</sup> CHOs are subject to regulation by the Australian Charities and Not for Profits Commission under the *Charities and Not for Profit Commission Act 2012*.

<sup>7</sup> The Hon Chief Justice Marilyn Warren AC. 2016, *Corporate Structures, the Veil and the Role of the Courts*, Melbourne University Law Review Vol 40:657; Ramsay, I. and Stapledon, G. 1998, *Corporate Groups in Australia*, available at: [https://law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0017/1710260/150-CorporateGroupsResearchReport1.pdf](https://law.unimelb.edu.au/__data/assets/pdf_file/0017/1710260/150-CorporateGroupsResearchReport1.pdf).

# 14. The role of regulation in sector growth

## What is the problem?

- There is an urgent need for continued growth in social housing stock.
- Greater clarity of the roles of the regulatory system and the regulator in supporting ongoing social housing growth would increase its effectiveness.

The Big Housing Build is a landmark investment, and it is important that this investment is used to create ongoing long-term growth.

When the current regulatory system for community housing organisations was created, the government's aspiration was that it would stimulate growth in social housing through the community housing sector.<sup>1</sup> However, the legislation did not make supporting growth in social housing stock an explicit objective of the regulatory scheme, or a function of the Housing Registrar.

The Panel is proposing a single fundamental objective for the regulatory system: to protect and safeguard the interests of current and prospective tenants (Paper 1). Growth in the stock of social housing is implicit in the interests of prospective tenants. It follows that the regulatory system and the regulator have a role to play in supporting growth in social housing.

To play an appropriate role in supporting growth, the regulator needs clear policy settings to guide its actions, including about the design of the social housing system, how it is constituted and the preferred number, size and diversity of providers to best meet the varying needs and reasonable preferences of existing and prospective tenants, and allow for service innovation. As social housing is a long-term product, policy and planning needs to factor in a long-term horizon. The Government is currently working to develop a 10-year social and affordable housing strategy and deliver the Big Housing Build.<sup>2</sup> The Panel understands that new contracts are being put in place with 20-to-30-year commitments, but it is unclear whether long term planning is underway to ensure that the right policy settings are in place with that timeframe in mind.

Promoting ongoing growth also requires that planning for growth be an explicit focus of all registered social housing agencies and sector peak bodies, and there be increased engagement with potential private investors and philanthropic donors.

The *Housing Act 1983* currently distinguishes between registered housing associations and registered housing providers.<sup>3</sup> The system of categorisation is used as a risk assessment and management tool, which takes into account the size and scale of an agency's operations and its development pipeline. Housing associations must accordingly meet a higher level of governance and financial requirements.<sup>4</sup> Over time the categories have become a proxy for status and capacity amongst the sector and investors. Not only are they now a flawed indicator of risk; they may also limit the scope for housing providers to engage in growth. The Panel is proposing that this distinction be removed, to assist the regulator to continue to develop a more tailored approach to risk management (Paper 15) and dispel any impression that smaller agencies currently registered as housing providers need not have a focus on growing their stock.

It is important that all growth results in safe and suitable social housing that meets the varying needs and reasonable aspirations of different tenant groups. It should factor in issues such as build quality, thermal efficiency, tenant safety, and asset management. There should be an explicit focus on the incentives required to encourage providers to improve their performance and grow their stock.

Planning is needed to ensure that the needs for social and affordable housing can be met by the sector, specifically in terms of volume, location and any special requirements for various tenant groups and communities. Registered housing agencies may prefer to develop housing in areas they are familiar with, and where they have well established networks. It is important that growth is actively steered so that state funding is distributed based on data identifying unmet needs and gaps. Community housing organisations (CHOs) could be encouraged where appropriate to develop partnerships and expand into areas of identified need.

## What is proposed?

- 14.1 Encourage registered social housing providers to do all they reasonably can to address social housing need, to fully realise their objects as charitable or community housing providers.
- 14.2 Impose a statutory obligation on all registered agencies to develop short, medium and long-term strategic plans that articulate their plans for growth in social housing stock, and regularly measure and report to the regulator. The regulator to publish progress reports.
- 14.3 Homes Victoria to undertake system wide policy and planning with a long-term horizon in mind, including publishing data regularly on housing need across the state and actively commissioning social housing to ensure that state funded growth is steered towards identified areas of social or affordable housing need.
- 14.4 The Community Housing Industry Association Victoria to take the lead in sector development focussed on supporting registered agencies to grow their stock and enter into strategic partnerships for this purpose, with the support and active engagement of Homes Victoria.

## Rationale for this approach

Given the need for social housing, it is appropriate to expect that registered providers focus on doing all they reasonably can to grow their social housing stock, and fully realise their charitable or not for profit objectives.

That said, the Panel is mindful that a key constraint on growth is the availability of government subsidies to offset the cost for housing people with high support needs and very low incomes, and that there are trade-offs between improving service and accommodation for existing tenants and growing stock to increase access by prospective tenants. The Panel is also conscious of the importance of providers' legal obligation to remain financially viable. Thus, a regulatory duty to grow may not be reasonable in all circumstances. Instead, it is proposed that providers be required to plan explicitly for growth and demonstrate their progress towards achieving their plans, to ensure that growth remains a key focus of their boards.

Although low rental returns are the main barrier to private investment, the Panel has heard that other concerns may deter potential investors, including a lack of understanding about social housing, perceptions of risk due to the tenant profile and lack of knowledge about the

Victorian regulatory system. Active engagement by the regulator with potential investors could help alleviate some of their concerns, although investment decisions will be made on economic grounds.

The English social housing regulator has a statutory duty to encourage private investment in social housing.<sup>5</sup> It sees its role as encouraging private investment by contributing to a stable low risk environment and regards investment as beneficial to both tenants and investors. The regulator actively engages with investors and potential investors through its annual capital market investor conference as well as meetings with representative groups and firms.<sup>6</sup> The regulator's published reports highlight emerging sector issues and risks, and these also contribute to investors' understanding of the sector and help build confidence in the regulatory system.

Although the circumstances in England and Victoria differ, it is important to see potential investors as stakeholders in the social housing system and to increase engagement with investors as a means of helping to encourage growth in social housing.

A specific sector development function is also needed. This should focus on helping not for profit housing organisations to become established, develop and grow. In a maturing sector, it is appropriate that the industry take the lead in sector development itself, with appropriate support from and involvement of Homes Victoria.

## Question for consideration

14.1 Do the proposals describe the appropriate role of the regulation and of regulation in facilitating sector growth? What else should be included?

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<sup>1</sup> *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.

<sup>2</sup> Premier of Victoria, Media Release, 9 February 2021 Ten Year Vision for Social and Affordable Housing available at: <https://www.premier.vic.gov.au/ten-year-vision-social-and-affordable-housing>.

<sup>3</sup> The *Housing Act 1983*, s.85 provides that the Housing Registrar may register a rental housing agency as a registered housing association or a registered housing provider and must have regard to the prescribed registration criteria in determining the category of registration appropriate for the rental housing agency.

<sup>4</sup> Victorian Housing Registrar, *Categorisation of housing providers and housing associations*, available at: <https://www.vic.gov.au/categorisation-of-housing-providers-and-housing-associations>.

<sup>5</sup> *Housing and Regeneration Act 2008* (UK), s.92K.

<sup>6</sup> Regulator of Social Housing England (2019), *Information for Investors* available at: <https://www.gov.uk/guidance/information-for-investors>.

# 15. Regulatory approach

## What is the problem?

- The social housing sector is in a transitional phase, and a shift in regulatory approach is needed to ensure it aligns with, and positively contributes to, a more mature sector. In particular:
  - regulation and contractual requirements were designed to assist establish a nascent community housing sector that is now significantly more experienced and established
  - now that the sector is more mature in its governance and financial management, there is scope for the regulatory settings and the regulator's approach to be more tenant centred
  - the financing model for social housing is significantly increasing in complexity, creating new challenges for the regulatory system
  - the Housing Registrar is currently a small entity, which is not adequately resourced to perform the wider range of functions proposed by the Panel.

No systemic or cultural problems or failings have been identified by the Panel in relation to the Housing Registrar. That said, the Housing Registrar is a small entity operating under a regulatory framework designed in 2004 for a then nascent sector that had not yet proven it could adequately and sustainably supply social housing on behalf of the government.

The Panel has heard that there is scope for certain regulatory and contractual controls to be replaced with a more tailored and active approach to risk assessment and management, to allow the sector to be more agile and innovate.

This is especially relevant as the nature of risks has changed (Paper 13). For example, the financing model for community housing is increasing in complexity. Not for profit housing agencies are expected to take on higher levels of debt to grow their stock and are being encouraged to diversify their housing portfolio by including affordable and in some cases commercial rentals to help subsidise social housing. Special purpose vehicles are emerging which enable for profit participants to become involved in not-for-profit housing delivery. Identification and management of these changing risks will require additional effort and adaptation of priorities.

The Panel understands the Victorian Regulatory Scheme was influenced by the Scottish social housing regulator model, and that its attention to tenant input and outcomes is stronger than that of the National Regulatory System for Community Housing. That said, the Regulator's approach over time has reflected changing priorities. Regulation initially focused heavily on protecting taxpayer funds, and promoting confidence to encourage private sector investment,<sup>1</sup> and therefore on ensuring agencies were well governed and financially viable. As the sector's maturity increased, the regulator's focus has broadened, and it now

publishes performance data to promote transparency and accountability and encourage continuous improvement.<sup>2</sup>

Going forward the regulator will need to adapt to a more complex governance and financial environment. In addition, there is an opportunity to enhance tenant focus of the regulation (Paper 1) and activities of the Regulator. Submissions have affirmed the need to strengthen tenants’ voices and outcomes,<sup>3</sup> promote growth in social housing stock<sup>4</sup> as well as maintaining providers’ accountability to tenants and taxpayers.<sup>5</sup> There has been strong support for putting tenants at the centre of the regulatory system<sup>6</sup> and for common standards<sup>7</sup> and a single regulator across public and community housing.<sup>8</sup> Further strengthening of tenant focus will require greater resourcing and development of the infrastructure and capacity to embed tenant consultation and input into the regulatory system.

## What is proposed?

- 15.1 Strengthen the tailored approach to regulatory risk assessment and risk management including removal of the current statutory distinction between housing providers and housing associations, and putting in place a program of regular and ad hoc inspections.
- 15.2 Provide additional resources to enable the regulator to perform its expanded role effectively, to deal with the changing nature of risks and embed a greater tenant focus and voice (to be determined by an independent review of the appropriate level of resourcing for the regulator to align resources with final decisions about the scope of the regulator’s powers and functions).
- 15.3 The regulator to raise its profile among tenants and embed direct tenant engagement and co-design of regulatory standards and policies.

The proposed changes to the regulatory framework and their implications for the regulator’s approach, skills and capabilities going forward are summarised below.

Proposed change to regulatory framework	Enhanced regulatory approach	Regulator skills and capabilities
<p>Explicit focus on safeguarding and promoting the interests of tenants and prospective tenants as the key objective of regulation</p> <p>Papers 1 – 7</p>	<p>Raise the profile of the regulator so that social housing tenants understand its role and how it works.</p> <p>Embed regular direct engagement with tenants and their representatives across Victoria (including through site visits) to ensure the regulator hears and understands their priorities and concerns and these inform monitoring and benchmarking of landlords’ performance</p> <p>Ensure a specific focus on active engagement with Aboriginal tenants and their advocates</p> <p>Build capacity for tenant co-design of regulatory standards, guidance materials and other regulatory products and services</p> <p>Enhance capacity to gather and publish data in a form that tenants can use to compare landlords and hold them to account</p>	<p>Best practice community and stakeholder engagement</p> <p>Expertise in engaging with Aboriginal and multi-cultural communities</p> <p>Expertise in developing simple plain language communications and products using various communication channels likely to be accessed by tenants</p> <p>Expertise in presenting data in a user-friendly way for tenants of varying levels of education and proficiency in English</p> <p>Data analytics</p> <p>Evaluation</p>



Proposed change to regulatory framework	Enhanced regulatory approach	Regulator skills and capabilities
	<p>Develop approaches to build capacity for tenant involvement in regulatory reviews (where appropriate), and thematic studies</p> <p>Provide feedback to tenants on how engagement has influenced the regulator's approach and actions and build in regular evaluation of tenant engagement initiatives to identify how they can be improved</p>	
<p>Actively assist organisations that have land that could be developed for social housing to become registered including ACCOs, church groups and providers serving specific CALD communities</p> <p>Paper 12</p>	<p>Continued active outreach to housing providers outside the system to help them understand the regulatory framework, explain what assistance is available and guide them through the steps to become registered will require adequate staffing and resourcing.</p> <p>The Panel understands the Housing Registrar is undertaking the following activities:</p> <ul style="list-style-type: none"> <li>• adopting some of the methods used by the NSW Housing Registrar to provide pathways to registration for ACCOs such as template documents, checklists and other tools to assist small organisations</li> <li>• developing action plans to assist new registrants in their first year and provide guidance on how to approach the annual compliance review</li> <li>• partnering with sector peak bodies on initiatives to build the capacity and confidence of smaller organisations to enter the system.</li> </ul>	<p>Understanding and empathy regarding the challenges facing different kinds of community housing organisations.</p> <p>A practical, problem solving approach to overcoming barriers to registration</p> <p>Expertise in developing plain language regulatory guidance and tools</p>
<p>Focus on cultural safety especially for Aboriginal tenants and housing providers and two-way feedback</p> <p>Paper 7</p>	<p>Ensure all regulatory staff have cultural safety and awareness training</p> <p>Build capacity to monitor and assess mainstream providers' progress towards meeting cultural safety standards and promote continuous improvement</p> <p>Introduce data collection to ascertain how many social housing tenants identify as Aboriginal and publish this data.</p> <p>Engage with Aboriginal tenants and providers in developing performance reporting frameworks to measure meaningful outcomes (e.g. overall financial health and stability rather than a narrower focus on the level of rental arrears)</p>	<p>Aboriginal staff skilled in working closely with Aboriginal communities</p>
<p>More sophisticated approach to risk assessment and risk management and removal of distinction housing association and housing provider</p>	<p>Adopting a more tailored approach to risk assessment and risk management based on the individual risk profile of each provider will involve a hybrid risk and compliance-based model.</p> <p>More active monitoring and an inspection program will require adequate staffing and resourcing.</p>	<p>Regulation</p> <p>Financial analysis</p> <p>Governance and risk management</p> <p>Business acumen</p>

Proposed change to regulatory framework	Enhanced regulatory approach	Regulator skills and capabilities
Regulate all social housing providers including SPVs and emerging vehicles effectively using enhanced regulatory powers as recommended by the Panel in its advice to Ministers  Paper 13	Capacity to view, understand and monitor complex SPV and related party transactions to ensure that they are not being used to shift or conceal decision making control, risks and liabilities, avoid the impact of regulatory measures or involve registered entities in matters that would bring the social housing sector into disrepute (e.g. excessive salaries or benefits, conflicts of interest and the like)  Capacity to detect emerging risks in a more complex business environment	Legal – commercial law and regulation  Audit  Deep business analysis skills - with the capacity to understand and analyse a business from first principles

## Rationale for this approach

The proposals to boost the regulator’s profile and approach to engagement with tenants and providers outside the regulatory system, draw on the valuable information conveyed to the Panel by Michael Cameron, the Scottish Social Housing Regulator,<sup>9</sup> as well as feedback received from Aboriginal tenants and organisations through the Aboriginal consultation strategy<sup>10</sup> and from representatives of culturally and linguistically diverse communities.

There are also important imperatives of promoting growth in social housing stock, ensuring effective risk management in an environment of greater complexity, and promoting confidence for investors. The Panel also examined the English social housing regulatory system which has both economic and consumer protection objectives<sup>11</sup> but believes that the single objective adequately encompasses the need to effective governance and financial (economic) regulation. Ultimately all the regulator’s activities should aim to promote the interests of tenants and prospective tenants; and placing tenants at the centre of the regulator’s work is conducive to the health and viability of the system and of individual providers.

The Housing Act currently distinguishes between registered housing associations (intended to be the main growth vehicles) and housing providers.<sup>12</sup> The Housing Registrar uses this distinction to help assess and manage regulatory risk. However, this distinction can negatively affect perception of the capability of housing providers. It may also create a perception that the housing associations have a higher risk of failure, although smaller providers with less experience and capability may actually present a greater risk, particularly as the sector transitions and providers expand their range of activity. The two-category registration system is a blunt instrument and, in a changing landscape, a more sophisticated approach to risk assessment and risk management is needed. This should allow housing agencies the appropriate level of flexibility and freedom to manage their businesses and their portfolios, in a way that enhances growth and innovation.

The Housing Act currently does not explicitly provide for an inspection-based system. The Panel acknowledges that implementing an inspection program would require additional resourcing. However, such a program would provide the Regulator with the rich information it requires to adequately monitor for and manage risks as the sector grows and becomes more complex.

### Questions for consideration:

- 15.1 Do you agree with the proposals about the need for change in the regulator's approach and the kinds of skills required to perform the regulator's expanded functions and powers?
- 15.2 Aside from practicalities around funding and resourcing, are there any barriers or obstacles that should be taken into account in enacting and/or implementing the changes?
- 15.3 Are there any other relevant considerations that the Panel should take into account?

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<sup>1</sup> *Housing (Housing Agencies) Bill 2004*. Second Reading Speech, The Hon Bronwyn Pike MP, Minister for Health, Victorian Hansard, Legislative Assembly 2004, p.1732.

<sup>2</sup> Victorian Housing Registrar *Regulatory Update Report 2020-2021*, p.20-22.

<sup>3</sup> Community Housing Industry Victoria (submission 4, p. 2); Justice Connect (submission 58, p. 4); Community Housing Victoria Limited Meeting 16/09/2021; Victorian Council of Social Services (submission 13, p. 3).

<sup>4</sup> Affordable Housing Industry Advisory Group (submission 14, p. 24); Victorian Public Tenants' Association (submission 60, pp. 12, 30).

<sup>5</sup> Justice Connect (submission 58, pp. 4-5); Fitzroy Legal Service (submission 53, p. 6); Council to Homeless Persons (submission 35, p. 4).

<sup>6</sup> Community Housing Association Victoria (submission 4, p.1); Victorian Public Tenants' Association (submission 60, pp. 9, 10, 38).

<sup>7</sup> Australian Housing and Urban Research Institute (submission 17, p. 4); Victorian Public Tenants' Association (submission 6, pp. 4, 34).

<sup>8</sup> Community Housing Association Victoria (submission 4, p.1); Council to Homeless Persons (submission 36); Victorian Council of Social Services (submission 39, p. 22).

<sup>9</sup> Meeting between the Social Housing Review Panel and Michael Cameron, Chief Executive, Scottish Housing Regulator, 7/10/2021.

<sup>10</sup> *Aboriginal Victorians and Social Housing Regulation: Findings and Options*, October 2021.

<sup>11</sup> *Housing and Regeneration Act 2008* (UK) s.92K requires the English regulator to perform its functions with a view to achieving so far as possible (a) the economic regulation objective and (b) the consumer regulation objective.

<sup>12</sup> *Housing Act 1983*, s.85 provides that the Housing Registrar may register a rental housing agency as either a registered housing association or a registered housing provider and must have regard to the prescribed registration criteria in determining the category of registration appropriate for the agency.

# 16. Performance reporting for transparency and accountability

## What is the problem

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. Performance reporting can serve two key accountability functions – to ensure funding contracts are executed as agreed, or to provide information to the community and the social housing sector. Contract-linked performance reporting requires only the contracted parties to have the relevant information, whereas reporting for informing the community and sector must be public to ensure accountability. This paper is concerned with reporting for the purpose of public transparency and accountability. It is designed to provide useable information to the community and the social housing sector to support an assessment of the performance of social housing, and to provide for a form of choice.

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 two performance indicators – customer satisfaction rates for urgent and non-urgent repairs – are relatively comparable
- data gaps – the absence of key data, particularly financial information for public housing, limits the use 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. 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.

## What is proposed?

This Review proposes several improvements to performance reporting in both public and community housing:

- 16.1 Apply a uniform performance indicator framework to public and community housing, building on indicators already in use, and with reference to other jurisdictions (such as the Scottish Regulator's framework).

This would mean both public and community housing organisations would provide the same set of performance metrics on a regular basis in the same format, including both financial and non-financial indicators. Where possible, public housing performance indicators would be provided per housing office. Additional information on data gaps is in Appendix D.

16.1. Require uniform presentation of performance reporting across public and community housing sectors. With the introduction of a single social housing regulator (Paper 10) these statistics should be combined in the same published report.

Information provided in the Housing Registrar's agency performance reports to be provided with an online comparison tool modelled on the Scottish Housing Regulator's Landlord Comparison Tool, to allow for direct comparison between social housing providers.

16.2. Require regular review of the performance reporting framework, with a consultation process that includes sector participants and tenants to make improvements on the current performance reporting regime.

In the first instance this might include a wide-ranging consultation process, but thereafter could constitute 3-yearly reviews of the performance monitoring framework.

## Rationale for this approach

The above reforms are designed to increase the level of accountability of public and community housing through greater transparency and comparability. The proposals also operate in tandem with the proposal to align performance standards across public and community housing (Paper 2) and align their oversight by a single social housing regulator (Paper 10).

### Consistency of performance reporting

Benchmarking performance in a heterogeneous sector can be a difficult task. Currently, performance indicators in the community housing sector allow for comparisons among providers. Since indicators are all reported to the one regulator, the form of reporting for each indicator is the same. This means performance indicators reported in the Registrar's organisation-specific performance reports are easily compared.

Comparing public housing to community housing, on the other hand, is much more difficult. Performance indicators are mostly not comparable between sectors (public and community housing). The indicators reported against are generally different, with only two indicators – customer satisfaction rates for urgent and non-urgent repairs – being relatively comparable. Important indicators available on community housing organisations, such as evictions, are either not available or not calculated in the same way, making sector comparisons impossible or meaningless.

Significant differences exist between public and community housing, many of them arising from differences in size and evolution of the sectors. Public housing dominates the sector from a management and assets perspective. These size differences would be expected to give significant economies of scale, which should be visible when comparing cost and financial statistics. Other differences exist with respect to the age and composition of dwellings, services offered, and operating environment.

Several participants to the Review highlighted the lack of comparable performance information for public and community housing. For example, Tenants Victoria<sup>1</sup> states:

*Currently 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.*

Both sectors should be providing the same statistics to allow for sector comparisons. Additional contextual information can be provided to help explain expected difference in statistics that arise from the sectors' heterogeneity, such as tenant cohort, housing stock profile and services provided (Appendix D). Public housing service delivery indicators should be provided per housing office, since it is the individual housing offices that manage maintenance and repairs and provide other services to tenants.

### Presentation of performance reporting

It can be difficult to navigate and understand the performance information provided in 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.<sup>2</sup> Ideally, 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 is attempting to measure can help the reader understand the data and its significance for the sector and users.

The Review's Consultation Paper 3 specifically asked about the use of the Scottish Regulator's landlord comparison tool. Some participants of the Review<sup>3</sup> noted its value, while Tenants Victoria<sup>4</sup> 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.*

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. The tool is also noteworthy for its inclusion of tenants' preferences in the selection of performance measures.

### Review of the performance reporting framework

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 of it. This is because what is desired (quality services delivered efficiently) often cannot be summed up in a few 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.<sup>5</sup>

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, the Community Housing Industry Association Victoria<sup>6</sup> explained that transitional housing programs are short term and supported housing programs target complex clients; if

data from either of these types of services is compared against general long-term housing programs, it can lead to incorrect conclusions about service quality. Additional data on tenant cohorts could help contextualise these variations (Appendix D), or with time new indicator formulations may offer a more accurate indication of performance across a varied sector.

On the other hand, 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.

Hence a regular review of the performance reporting framework, including the validity of certain indicators, would allow for periodic updates. The frequency of these reviews would need to be determined in consultation with the regulator. There should also be a regular consultation process including sector participants, the regulator, frontline workers and tenants to inform improvements to performance indicators.<sup>7</sup>

## Questions for consideration

- 16.1 Are these the key issues in relation to performance reporting?
- 16.2 What barriers might impede alignment of public and community housing data?
- 16.3 Is the proposal for review of performance reporting adequate, and how often should this review take place?

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<sup>1</sup> Tenants Victoria (submission 28, p. 38).

<sup>2</sup> Department of Families, Fairness and Housing. 2021, *Social Housing Allocations*, available at: <https://www.vic.gov.au/social-housing-allocation>.

<sup>3</sup> Mallee Family Care (submission 44, p. 7).

<sup>4</sup> Tenants Victoria (submission 28, p. 38).

<sup>5</sup> Pawson, H., Milligan, V., Phibbs, P. and Rowley, S. 2014, *Assessing management costs and tenant outcomes in social housing: developing a framework*, Australian Housing and Urban Research Institute, p. 13.

<sup>6</sup> Community Housing Industry Association Victoria (submission 4, p. 3).

<sup>7</sup> Tenants Victoria (submission 28, p. 6).

# 17. National regulation and the National Regulatory System for Community Housing (NRSCH)

## What is the problem?

- Victoria is one of two jurisdictions that have not joined the NRSCH.
- There are potential benefits to the sector nationally from a coherent national approach to regulation. There are also potential benefits to Victoria from being part of the national system, including opportunities to attract investment and reduce the regulatory burden on providers operating across jurisdictions.
- National approaches to regulation can be costly to negotiate, and significant changes would be needed to the NRSCH to bring it in line with the changes recommended in this Review.

Victoria is one of two states (along with Western Australia) that have not joined the NRSCH.<sup>1</sup> Victoria decided not to participate in the national system in 2013 because it was not seen to adequately protect Victoria's investment in the community sector. It was considered that many of the benefits could otherwise be captured by aligning performance assessment and reporting requirements.<sup>2</sup> At the time it was introduced, Victoria already had an established regulatory scheme and focused instead on aligning aspects of its scheme with the NRSCH.

## The benefits of national approaches to regulation

In principle, a national approach to regulation can offer significant benefits where:

- there are significant economies of scale arising from central provision or regulation
- a diversity of rules and regulations is likely to give rise to high transaction costs with insufficient offsetting benefits
- there are benefits from harmonisation with other countries and the capacity to learn from and benchmark our performance against overseas practices that are more likely to be realised when a national scheme is in place.<sup>3</sup>

Participants that provide community housing were generally in favour of joining the national scheme, with some stating that there were currently substantial costs involved in operating across jurisdictions, including establishing additional entities.<sup>4</sup>

## The costs of national approaches

National approaches to regulation can be costly to negotiate, and there is often no guarantee that the agreed approach will be implemented consistently and have benefits over existing ones. There can be benefits from diversity, with jurisdictions learning from each other's approaches.<sup>5</sup> Additionally, there are concerns about the NRSCH's effectiveness, particularly as they relate to communication, duplication, tenant empowerment and dispute resolution.<sup>6</sup> A recent review of the NRSCH flagged some reforms in these areas, but noted that more work and consultation was needed before deciding whether to proceed.<sup>7</sup>

Groups representing tenants and the homeless were generally opposed to joining the NRSCH, citing a lack of tenant focus and outcomes from the NRSCH.<sup>8</sup>



In addition, questions remain about the ability of the NRSCH to sufficiently protect Victoria's investment in community housing – a particularly important issue given the magnitude of the Big Housing Build.

## What is proposed?

17.1 Victoria to focus on improving its own regulatory system and explore options for reducing any burden on regulated entities arising from inconsistencies with the NRSCH.

17.2 The Victorian Government to initiate discussions with other jurisdictions to advocate for changes to the NRSCH and identify potential for further harmonisation, with a view to joining the scheme once the systems are considered adequately aligned.

## Rationale for this approach

### The NRSCH is not sufficiently tenant focused

Currently, the Victorian regime and the NRSCH operate relatively similarly in many respects and apply similar performance standards. The key differences relate to the structure of the Housing Registrar, the scope of the regulatory system (for example, Victoria's scheme applies to all housing assets held by the agency and does not include for-profits) and its use of categories rather than tiers.<sup>9</sup> Some of these differences are based on policy positions that do not align with those of the Victorian Government. These include the stance on for-profit providers, as well as the primary regulator approach within the NRSCH. Additionally, as this Review has highlighted, the focus of regulation should be on tenants (and prospective tenants). In its current form, the NRSCH is not sufficiently tenant focused and reform would be needed for the NRSCH to align.

### What other changes to the NRSCH are needed?

From the outset, it is important to note that the NRSCH does allow for differences in implementation across jurisdictions. Many of the differences between the NRSCH and the Victorian scheme could be worked around – for example, registrars within the NRSCH all take different approaches, and the Housing Registrar could likely continue with many of its current approaches to regulating the sector.

A key issue relates to the primary regulator model within the NRSCH. Under the current approach, housing assets located in Victoria could have little to no oversight by the Victorian Government where they are managed by a community housing organisation (CHO) with most of its assets in another jurisdiction.<sup>10</sup> This is of particular concern where the assets are funded by the Victorian Government. In addition, a CHO registered with a regulator in another jurisdiction would need to meet that jurisdiction's regulatory requirements.

Some flexibility in the primary regulator approach could give the Victorian Government greater comfort that its investments would be protected. This could include, for example, giving the local registrar some (limited) powers over local assets regulated by another registrar, including the ability to determine where assets go in the event of a wind up.<sup>11</sup>

The other key differences that would need to be resolved include:

- the Victorian regime excludes for-profit providers. It would need to be considered how this stance would work within the NRSCH, which does allow for-profit providers

- the Victorian regime covers all housing assets of providers, including affordable housing assets. Several participants to the NRSCH review considered that this approach should be adopted<sup>12</sup>
- the NRSCH and the Victorian regime have different approaches to the provider types or ‘tiers’. As noted in Paper 15, the tiered system is outdated, and it is recommended that this be removed from the Victorian system. Similar issues with the tier system were noted in the NRSCH review.<sup>13</sup>

Beyond these, this Review has proposed reforms that would necessitate change in both systems:

- changing performance standards to place a greater focus on tenants, tenant empowerment and sustaining tenancies (Papers 1, 3 and 4)
- formally embedding cultural safety (Paper 7)
- introducing a strengthened dispute resolution process (Paper 6).

The Panel proposes that the Victorian Government implements reforms to its existing system in the first instance and begins discussions with NRSCH jurisdictions, with a view to joining the national system once it can be sufficiently aligned.

### The benefits of joining the NRSCH

The potential costs of not joining the NRSCH for Victoria can be placed into two categories:

- administrative burden - the need for organisations to set up a subsidiary company and comply with multiple registration and reporting regimes imposes costs – money that could otherwise be used to grow their portfolio or improve service delivery.
- barriers to investment – they may deter organisations from entering Victoria in the first place, or financiers from investing in Victorian social housing.

Most providers pointed to the compliance costs involved in registration and ongoing compliance as the key reason to join the NRSCH. Evidence on these costs is largely anecdotal.<sup>14</sup> Nonetheless, YWCA National Housing, which operates in Victoria and under the NRSCH, has noted that it would merge its two subsidiary companies together if allowed, which it noted would lead to substantial cost savings.<sup>15</sup>

The NRSCH is not the only source of regulatory burden and duplication in the system. Many providers highlighted that the burden of multiple community housing funding programs and contracts replicating regulation was perhaps a bigger burden than the NRSCH/Victorian regulatory system divide. This issue is perhaps an easier one to address in the short term (Paper 12).

On the investment side, as yet there is little evidence that Victoria has missed out on investment as a result of not joining the NRSCH. There are about 20 providers within the NRSCH that operate across jurisdictions.<sup>16</sup> 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. It is not clear how many more agencies would be attracted to operate within Victoria if it joined the NRSCH. Further, submissions to the NRSCH review did not indicate substantial increases in investment and growth for jurisdictions that had joined the NRSCH.<sup>17</sup>

Going forward, it is likely that attracting CHOs with greater scale will be needed to achieve substantial growth in the sector. Removing impediments to these CHOs entering Victoria could aid this growth.

On balance, there would be benefits to Victoria joining the NRSCH, if the NRSCH is an effective system of regulation that would meet the needs of Victorian tenants (which is considered not to be the case currently).

### Are there any alternatives?

The Community Housing Industry Association Victoria raised the option of mutual recognition of performance standards.<sup>18</sup> This is worth considering but is likely to be difficult to achieve if changes to the Victorian performance standards mean that they significantly diverge from the national standards. The Panel is seeking further feedback on alternatives to full entry into the NRSCH.

## Questions for consideration

- 17.1 What are the costs of Victoria not joining the NRSCH for providers that operate across borders? Is there evidence that Victoria's non-involvement in the NRSCH has deterred investment?
- 17.2 Are there any alternatives to Victoria's full involvement in the NRSCH that would reduce the regulatory burden for providers that operate across borders, such as mutual recognition? How feasible are these options?

<sup>1</sup> The box on page 17 of consultation paper 3 provides an overview of the NRSCH, and some of the key differences between the NRSCH and Victoria's regulatory regime.

<sup>2</sup> 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 – CHIA Vic 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>.

<sup>3</sup> A discussion of the costs and benefits of national approaches to regulation is included in Productivity Commission. 2009, *Chemicals and Plastics Regulation – Lessons for National Approaches to Regulation*, Supplement to Research Report, available at: <https://www.pc.gov.au/inquiries/completed/chemicals-plastics/supplement/chemicals-plastics-supplement.pdf>.

<sup>4</sup> For example, Launch Housing (submission 12, pp. 3-4). Community Housing Industry Association Victoria (submission 68, p. 15) gave its in principle support for national regulation but noted that this was predicated on improvements to the national regime.

<sup>5</sup> Productivity Commission 2009, *Chemicals and Plastics Regulation – Lessons for National Approaches to Regulation*, Supplement to Research Report, available at: <https://www.pc.gov.au/inquiries/completed/chemicals-plastics/supplement/chemicals-plastics-supplement.pdf>.

<sup>6</sup> NRSCH Review Working Group. 2019, *Discussion Paper Consultation Summary Report: The Review of the National Regulatory System for Community Housing (NRSCH)*, pp. 3-5, available at: [https://facs-web.squiz.cloud/\\_\\_data/assets/pdf\\_file/0009/672867/Discussion-paper-Consultation-summary-report-NRSCH-Review-August-2019.pdf](https://facs-web.squiz.cloud/__data/assets/pdf_file/0009/672867/Discussion-paper-Consultation-summary-report-NRSCH-Review-August-2019.pdf).

<sup>7</sup> NSW Communities and Justice. 2020, *Review of the National Regulatory System for Community Housing (NRSCH) – Potential Future Reform Options Report*, available at: <https://www.facs.nsw.gov.au/download?file=805249>.

<sup>8</sup> 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).

<sup>9</sup> Social Housing Regulation Review. 2021, *Social Housing in Victoria, Consultation paper 3 – The role of regulation in sector accountability, viability and growth*, p. 17, available at: <https://engage.vic.gov.au/social-housing-regulation-review>.

<sup>10</sup> Community Housing Industry Association NSW. 2019, *Review of the National Regulatory System for Community Housing – Comments on the Discussion Paper*, available at: <https://www.facs.nsw.gov.au/about/reforms/NRSCH/review-of-the-national-regulatory-system-for-community-housing/written-submissions?initial=c&q=> noted that all jurisdictions that joined the NRSCH expressed concerns about the leakage of investment, and introduced mechanisms to protect against this.

<sup>11</sup> Community Housing Industry Association Victoria. 2019, *Review of the National Regulatory System for Community Housing – CHIA Vic Submission on the Discussion Paper*, available at:

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<https://www.facs.nsw.gov.au/about/reforms/NRSCH/review-of-the-national-regulatory-system-for-community-housing>, considered that the investment issue could be overcome by adjusting wind up clauses, and ensuring that community housing assets linked to Victorian funding have a Director's Interest on the title.

<sup>12</sup> NRSCH Review Working Group. 2019, *Discussion Paper Consultation Summary Report: The Review of the National Regulatory System for Community Housing (NRSCH)*, pp. 7-8, available at: [https://facs-web.squiz.cloud/\\_data/assets/pdf\\_file/0009/672867/Discussion-paper-Consultation-summary-report-NRSCH-Review-August-2019.pdf](https://facs-web.squiz.cloud/_data/assets/pdf_file/0009/672867/Discussion-paper-Consultation-summary-report-NRSCH-Review-August-2019.pdf).

<sup>13</sup> NRSCH Review Working Group. 2019, *Discussion Paper Consultation Summary Report: The Review of the National Regulatory System for Community Housing (NRSCH)*, pp. 12-13, available at: [https://facs-web.squiz.cloud/\\_data/assets/pdf\\_file/0009/672867/Discussion-paper-Consultation-summary-report-NRSCH-Review-August-2019.pdf](https://facs-web.squiz.cloud/_data/assets/pdf_file/0009/672867/Discussion-paper-Consultation-summary-report-NRSCH-Review-August-2019.pdf).

<sup>14</sup> One exception is Foundation Housing. 2019, *Submission to the review of the National Regulatory System for Community Housing*, available at: <https://www.facs.nsw.gov.au/about/reforms/NRSCH/review-of-the-national-regulatory-system-for-community-housing/written-submissions?initial=f&q=>, which cited costs of about \$200,000 in registration costs for the NRSCH, and about \$100,000 in ongoing costs.

<sup>15</sup> YWCA National Housing. 2019, *YWCA Response: Review of the National Regulatory System for Community Housing*, p. 4, available at: <https://www.facs.nsw.gov.au/about/reforms/NRSCH/review-of-the-national-regulatory-system-for-community-housing/written-submissions?initial=y&q=>

<sup>16</sup> Assessment of the National Provider Register.

<sup>17</sup> YWCA National Housing. 2019, *YWCA Response: Review of the National Regulatory System for Community Housing*, p. 26, available at: <https://www.facs.nsw.gov.au/about/reforms/NRSCH/review-of-the-national-regulatory-system-for-community-housing/written-submissions?initial=y&q=>,

suggested that the NRSCH has increased access to finance, but this is reduced by the burden of compliance; Coast2Bay Housing Group.2019, *Response to the Review of the National Regulatory System for Community Housing (NRSCH)*, available at: <https://www.facs.nsw.gov.au/about/reforms/NRSCH/review-of-the-national-regulatory-system-for-community-housing/written-submissions?initial=c&q=>, suggested that the NRSCH had not significantly impacted sector growth and development; Community Housing Industry Association Queensland. 2019, *Submission: Review of the National Regulatory System for Community Housing*, available at:

<https://www.facs.nsw.gov.au/about/reforms/NRSCH/review-of-the-national-regulatory-system-for-community-housing/written-submissions?initial=c&q=>, stated that it would like to see further evidence of investment effects built into the design of the NRSCH. However, SGCH. 2019, *Submission: The NRSCH Review*, available at: <https://www.facs.nsw.gov.au/about/reforms/NRSCH/review-of-the-national-regulatory-system-for-community-housing/written-submissions?initial=c&q=>, saw the NRSCH as a critical precursor to investment.

<sup>18</sup> Community Housing Industry Association Victoria (submission 68, p. 7).

# 18. Prospective social housing tenants

## What is the problem?

- Many Victorians need social housing but are in private rental accommodation that is inappropriate for them. The number of people on the waiting list is an indication of this, although not an accurate reflection.
- Although housing is an essential service, the private rental sectors do not work well for everyone in the community. Rental housing is mostly provided by small scale investors, who hold properties for a range of purposes including investment. Landlords' incentives do not always align with considerations of tenant wellbeing, particularly for those with additional and complex needs.
- There are barriers to vulnerable and disadvantaged tenants in accessing the full range of consumer protections and rights under the *Residential Tenancies Act 1997* (RTA) (Paper 6).
- There is limited support available to people on the Victorian Housing Register to obtain appropriate accommodation and supports and maintain their existing tenancies.
- The private rental market is indirectly supported by Commonwealth Rent Assistance payments to eligible tenants, however there are no accountability mechanisms in place for private landlords. Due to the design of the scheme, it is difficult to incorporate accountability mechanisms without risking discrimination to recipients.

The RTA applies a minimum level of regulation to long-term rental housing agreements (with some exceptions). The RTA is critical in reducing power imbalances between tenant and landlord (referred to as renters and rental providers under that Act), reducing transaction costs and providing certainty for both tenants and landlords.

However, there are limitations to the protections that residential tenancies legislation can provide for vulnerable and disadvantaged tenants, because:

- it sets out minimum requirements for rental housing and has to be appropriate and proportionate for the over 600,000 households that rent in Victoria
- many vulnerable and disadvantaged tenants are unable to adequately exercise their rights under the RTA
- the scope for monitoring and enforcing compliance with the RTA is limited.

The *Housing Act 1983* provides for an additional layer of regulation for social housing. 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 up with support where available. Social housing eligibility criteria define who should have access to these stronger standards. However due to the shortage of social housing only a minor percentage of this cohort is able

to benefit from them. At June 2021 there were 51,823 applicants (households) on the Victorian Housing Register (not including transfer applicants).<sup>1</sup> Moreover, the numbers on the Victorian Housing Register do not reflect the full extent of housing stress.

Commonwealth Rental Assistance (CRA) is intended to address this lack of supply by providing direct 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, however income support does not address those issues around tenancy management that this cohort faces.

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.<sup>2</sup> 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.<sup>3</sup>*

Although CRA indirectly supports private rental providers, nothing is required of them in exchange for this support.<sup>4</sup>

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 indicating a preference to sleep rough than stay in a rooming house.<sup>5</sup> Rooming houses are subject to regulation under the RTA and the *Public Health and Wellbeing Act 2008*, they must be licenced, and operators must meet a fit and proper person test. Applying more regulation to these providers might deter them from continuing to provide accommodation to this cohort, however, if it is stressful and dangerous it is of diminished value to any prospective residents.

For clarity, this paper does not propose to alter the way market rents are set, or to require rent reductions from certain landlords in the private rental sector.

## What is proposed?

### 18.1 Implement a system of active waiting list management through greater support for applicants on the Victorian Housing Register.

This would include equivalent supports for tenants who are eligible for social housing, for example through access to Tenancy Plus-type programs to assist with obtaining and sustaining appropriate interim accommodation.<sup>6</sup> This would require appropriate funding and resourcing. It could also include, for example, personalised advice on support services (given applicants are asked to provide information about their support requirements) and other accommodation related supports.

### 18.2 Provide dedicated education and guidance to landlords and prospective landlords that emphasises the importance of the role they take on when they make their property available for residential rental.

This should raise awareness particularly of the fact that a large proportion of renters are on low incomes, many of whom face limited choices and challenges securing stable accommodation. It should set out best practice principles for landlords and practical guidance on how to be an ethical landlord and highlight the potential advantages to all parties. Consumer Affairs Victoria could be resourced to undertake this function.

18.3 Develop a Code of Practice for landlords and property managers based on best practice principles developed as part of the education and guidance work. Rather than a statement of legal obligations (which is contained in the RTA), the Code would be a positive statement of ethical conduct in the leasing of residential property beyond the legal requirements.

The objective of this voluntary Code of Conduct would be to provide a framework for ethical decision making and to provide practical guidance. The education material and Code should be co-designed with stakeholders including tenants.

18.4 Design, conduct and evaluate a trial whereby landlords in the private rental sector opt into the Code of Practice and comply with other specific requirements aimed at tenancy sustainment. These could include for example, an undertaking not to issue a notice to vacate to terminate a tenancy, to provide information about financial counselling services, and to engaging in a supported process in cases of a dispute, including in relation to rent arrears.

Participating landlords (and their tenants) would 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 should be invited to participate. The purpose and objective of the trial would be to:

- gather intelligence on pain points for tenants and landlords in vulnerable or precarious tenancies
- explore how support services and other mechanisms can be used most effectively to sustain tenancies in the private rental market
- explore how potential future requirements could be designed in a way that supports and benefits both landlords and tenants.

18.5 Consider establishing a register of all residential landlords (rental providers under the RTA) and properties subject to RTA agreements (excluding social housing providers).

The purpose of the register would be to:

- improve the standard of rental properties and property management by increasing avenues for rental provider accountability
- track compliance with the RTA and assist in more active enforcement of compliance with the RTA
- provide complete information on the rental stock and other market conditions.

The register could be administered by Consumer Affairs Victoria and funded through the Victorian Property Fund. It could be phased in over 2 or 3 years.

Any aspects of the register made public would not disclose names of renters, rental providers, rent paid or any other sensitive information.

## Rationale for this approach

The proposals in this paper aim to better equip tenants, landlords and agents to operate in the private rental market in a way that improves housing outcomes for people in need of social housing.

### Greater support to applicants on the Victorian Housing Register

Participants of the Review have indicated that they received minimal contact or support after applying for social housing through the Victorian Housing Register, and can be waiting for housing for extended periods.<sup>7</sup> This time spent in arguably less appropriate accommodation can cause additional harm and exacerbate existing issues for many people. There is an opportunity, with appropriate funding, to provide practical assistance to applicants on the waiting list to access necessary supports and improve their current accommodation status.

Making support available in this way would incentivize those eligible to apply through the Victorian Housing Register and help to create a centralized support gateway for housing assistance.

### Landlord education and Code of Practice

There is scope to improve the culture of rental housing provision in Victoria by raising awareness amongst landlords and investors of their critical role in the provision of an essential service. Education and awareness raising are potentially effective ways to bring about change, starting from a low base, without placing 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 a property they already own. They may not recognise this as a decision to become an essential service provider, in some cases to low income, and vulnerable and disadvantaged households.<sup>8</sup> They may not appreciate that these households have limited options and their actions and decisions can have a significant impact on their tenants' life outcomes. Although many real estate property managers act professionally, it is on the instructions of property owners, and sometimes knowledge of the RTA can be patchy. A more educated and considered approach to providing rental housing also has benefits for landlords and agents as a greater focus on tenant interests will mean tenancies are likely to last longer and properties be better kept. A Code of Practice would provide a best practice and ethical decision-making framework for landlords and agents, and practical guidance consistent with the RTA. The Code could be promoted as a support to landlords and agents in understanding and adhering to the legislative requirements.

The proposed trial would provide a pathway to implementing the Code, testing its effectiveness with the target cohorts of landlords and tenants, and formalising its use, as is common in the United Kingdom and other jurisdictions.<sup>9</sup>

### Rental provider and property register

Many international jurisdictions use landlord registration and licencing schemes to support the regulation of residential tenancies. In the UK, 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 varies.



The requirement for Victorian rental providers to register and declare that they comply with the RTA would be a non-onerous requirement for landlords and is a reasonable and proportionate measure for what are essential service providers. It would strengthen the intended outcomes of the recent RTA reforms, particularly for the cohort of tenants who are less empowered to play a role in their enforcement.

Certain aspects of the register could be searchable by the public, such as property address and registration status.

A register of all residential rental providers and properties would provide for example:

- an accountability mechanism for rental providers to promote good practice, with the potential for more active enforcement activities under the RTA
- a mechanism for recording compliance against RTA 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 RTA to disclose certain information about properties, including those added under the recent RTA reforms<sup>10</sup>
- complete information of the rental stock, number of rental providers and other market information that is currently lacking.

## Questions for consideration

- 18.1 In what ways could applicants on the Victorian Housing Register be best supported to improve their housing situations while waiting for a social housing property?
- 18.2 Would education and a Code of Practice be effective in raising the standards of rental provision amongst landlords and agents, particularly for the cohort of interest to the Review? How should this be targeted? What content should it include?
- 18.3 Would a register of private rental properties and providers bring about greater compliance with the RTA? What information should be recorded on the register? What monitoring and enforcement effort would be required? How should it be targeted?
- 18.4 Are there any other ways to raise the standard of the provision and management of private rental accommodation that could improve outcomes for vulnerable and disadvantaged households? How can initiatives be appropriately targeted without risking discrimination to this cohort of tenants, and without deterring the provision of accommodation?
- 18.5 How could safety and security in rooming houses be improved? Are further reforms needed? Are current requirements being adequately implemented and enforced?

<sup>1</sup> <https://www.housing.vic.gov.au/victorian-housing-register>.

<sup>2</sup> Consumer Policy Research Centre. 2019, The Renter's Journey, available at: [cprc.org.au/app/uploads/2020/09/The-Renters-Journey\\_Full-Report\\_FINAL\\_13Jun2019.pdf](https://www.cprc.org.au/app/uploads/2020/09/The-Renters-Journey_Full-Report_FINAL_13Jun2019.pdf)

<sup>3</sup> Victorian Council of Social Service (submission 13).

<sup>4</sup> Commonwealth Government real expenditure on Commonwealth Rental Assistance in 2019-20 was \$4,688b Australia-wide and \$1,022b for Victoria. See: Productivity Commission, Report on Government Services 2021 at <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/housing-and-homelessness#downloads>.

<sup>5</sup> One submitter reported, it is "...extremely unsafe and typically of a very poor standard" (Northern and Western Homelessness Networks, submission 69) and similar concerns echoed by other submitters (for example, Council to Homeless Persons, submission 35). Users of such emergency accommodation have reported

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...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).

<sup>6</sup> Social Housing in Victoria, Consultation Paper 2 – Service delivery and the tenant experience, Social Housing Regulation Review.

<sup>7</sup> 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, Annual report 2019–20, p. 52.

<sup>8</sup> As choice in provider has, for a range of reasons, reduced over time, this has resulted in “...some of the worst private accommodation providers continu[ing] to flourish in an environment of high demand and low competition” (Northern and Western Homelessness Networks, submission 69). This was further illustrated by a comment offered by another user of emergency accommodation that

[t]he landlord at the rooming house cause much trouble. She would open tenant's rooms and go through personal belongings, stealing valuables. The landlord played tenants off against each other causing trouble. The house was dirty and unkempt. I have never felt so used and abused in my whole life (Northern and Western Homelessness Networks, submission 69).

Another shared that “[s]ome boarding houses are okay, but landlords were aggressive and threatened violence” (Northern and Western Homelessness Networks).

<sup>9</sup> See for example: National Residential Landlords Association. 2020, Code of practice, available at: <https://www.nrla.org.uk/about-us/code-of-practice>; Scottish Association of Landlords. nd, Landlord member code of practice, available at: <https://scottishlandlords.com/sal-code-of-practice/>.

<sup>10</sup> 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 in the property.

# 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 (VRS)*

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 – Summary of proposals and indicative scheduling

The following table sets out each of the proposals as they appear in the Interim Report. Each proposal has been considered from the perspective of scheduling for implementation. Important to note at the outset is that policy work is underway at the time of writing this Report, in particular, the Government's 10-year strategy for social and affordable housing. Therefore, this high level plan should be read as indicative, and it is expected that the Review's final report will contain a more detailed implementation plan.

There are several proposals, such as those relating to fire safety (5.5 and 5.6) and regulation of special purpose vehicles (13.2 and 13.5), for which the Panel urges immediate attention.

Other proposals that the Panel considers could be actioned immediately either build on existing work undertaken or underway by the Housing Registrar and/or Homes Victoria. Implementation of many of the proposals can occur through administrative actions.

Those proposals whose implementation would require legislative changes would need to be further considered in terms of complexity of drafting and packaging. Consideration needs to be given to whether they are introduced in a phased approach or whether proposed changes should be bound into a single package of legislative amendments, perhaps with staggered commencement.

For several proposals, the Panel suggests that work start immediately in preparation for subsequent legislative changes or to meet proposed timeframes (e.g. proposal 5.2). This group of proposals includes the need for different government agencies to begin to collaborate on implementation of changes, or for planning and implementing tenant participation in decisions on policies, processes and the regulatory framework.

### Key

Red	for immediate or urgent attention
Blue	work should commence immediately
Green	to be undertaken as part of a larger reform package

### Paper 1 – Tenant at the centre

Interim Report Proposal	Timing	Anticipated implementation method
1.1 Include in the <i>Housing Act 1983</i> an explicit objective for the regulatory system. This objective could be: <ul style="list-style-type: none"> <li>to protect and safeguard the interests of current, prospective and future tenants.</li> </ul>	An intention to embed this change in approach could be signalled in supporting documentation such as an annual statement of ministerial priorities and other guidance material produced by the regulator	Legislative changes
1.2 Establish a charter outlining the service standards that tenants can expect from their public or community housing landlord.		Administrative action  Legislative change to enshrine
1.3 Clarify that the <i>Charter of Human Rights and Responsibilities Act 2006</i> applies to registered community housing agencies insofar as their functions are of a public nature for the purposes of that Act.	Consult with DJCS about the most appropriate approach	To be advised



## Paper 2 – Common service delivery standards and regulation across public and community housing

Interim Report Proposal	Timing	Anticipated implementation method
<p>2.1 Apply a uniform set of service delivery and asset management standards to public and community housing, combining best practice elements from both sectors. Existing arrangements for the oversight of public housing governance and financial management would remain. However, greater transparency, coupled with the ability of the regulator to comment on areas for improvement or best practice, would benefit the system as a whole</p>	<p>Work could commence immediately given this task is likely to require considerable time</p>	<p>Administratively in the first instance.  Legislative changes subsequently</p>

## Paper 3 – Tenant empowerment

Interim Report Proposal	Timing	Anticipated implementation method
<p>3.1 Embed tenant involvement in policy and regulatory development and decision-making. This could include:</p> <ul style="list-style-type: none"> <li>formally requiring tenant involvement in the policies and processes of the regulator, such as through tenant advisory panels</li> <li>strengthening guidance on best practices</li> <li>requiring plain English approaches to regulation, reporting and policy documents.</li> </ul>	<p>Work would be needed on the establishment of principles for tenant engagement ahead of any legislative changes to embed tenant involvement</p>	<p>Administrative action ahead of legislative changes</p>
<p>3.2 Adjust the tenant involvement standard to place a higher requirement on providers to involve tenants in decision-making processes affecting tenancy management. This could include a requirement to:</p> <ul style="list-style-type: none"> <li>support tenants to be involved in the decisions of their housing organisation</li> <li>have a publicly available tenant involvement strategy and to demonstrate the effects that tenant involvement has had on organisational decision-making. This would affect both public and community housing through a common standard.</li> </ul>		<p>Administrative action</p>
<p>3.3 Investigate learning and development approaches to improve tenants' capacity to engage with providers, and providers' capacity to engage with tenants.</p>	<p>This work could commence immediately with industry peak bodies</p>	<p>Administrative action</p>
<p>3.4 Create a dedicated representation and advocacy function for community housing tenants:</p> <ul style="list-style-type: none"> <li>this function should cover both public and community housing</li> <li>this could involve rebranding the existing public housing advocacy agency (VPTA), adapting its constitution and Board membership, and resourcing it appropriately</li> <li>alternatively, a new body could be resourced to advocate for public and community housing tenants</li> <li>the Panel is not inclined to support two separate bodies.</li> </ul>	<p>This work should commence without delay</p>	<p>Administrative action</p>

## Paper 4 – Tenancy sustainment

Interim Report Proposal	Timing	Anticipated implementation method
<p>4.1. Develop a stronger standard on sustaining tenancies.</p> <ul style="list-style-type: none"> <li>The Review is undertaking further work on how such a standard could be designed.</li> <li>The Panel wishes to explore the feasibility of a 'no evictions into homelessness' policy, where a tenant would be transferred with conditions, or alternative accommodation found with appropriate supports provided (akin to the supported transition approach in the education system). Such a policy would be best paired with a whole-of-system approach, and may require the power for providers to move tenants.</li> </ul>		Legislative changes
<p>4.2 Provide greater guidance to registered housing organisations on best practice approaches to sustain tenancies by the Housing Registrar in conjunction with tenants and the sector, including on:</p> <ul style="list-style-type: none"> <li>alternatives to eviction and ways to detect and manage actions and behaviours that put a tenancy at risk</li> <li>what support should be offered by housing providers and what the role of tenancy managers and housing providers is in sustaining tenancies.</li> </ul>	Work on guidance material should commence immediately.	Administrative action

## Paper 5 – Dwelling standards

Interim Report Proposal	Timing	Anticipated implementation method
5.1 Amend the <i>Residential Tenancies Act 1997</i> to require all properties to be compliant with minimum standards introduced in the Residential Tenancies Regulations 2021 by January 2024.	Engage with DJCS immediately given 2024 deadline	Legislative changes
5.2 Identify obstacles to meeting minimum standards by January 2024.	Work to identify obstacles should commence well ahead of the 2024 deadline by social housing providers	Administrative action
5.3 Review public housing maintenance contracts, service delivery standards and processes. Consideration should be given to maintenance being provided in-house.	This review could be commence immediately given high priority given to maintenance concerns by tenants.	Administrative action
5.4 Amend the performance standard requiring social housing providers to keep information 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.	While this work could be part of the new service delivery standard, specific work could commence immediately and then be adopted by the regulator.	Administrative action
5.5 Establish the extent of heightened fire safety risks in social housing, identify specific drivers, and agree on any necessary actions.	For immediate urgent action by the Housing Registrar, Homes Victoria and the sector	Administrative action
5.6 Conduct an immediate assessment of the costs and benefits of mandating for new social housing: <ul style="list-style-type: none"> <li>provisions for the installation of sprinkler systems (on class 1 buildings) and auto cut-off switches on cooking appliances.</li> <li>prohibiting the use of combustible cladding on any building type.</li> </ul>	Immediate work to commence with DELWP and Victorian Building Authority.	Administrative action (i.e. via BHB contracts)
5.7 Require all social housing providers to undertake disability modifications, to be accompanied by funding from the Victorian Government where otherwise not funded.		Legislative changes

## Paper 6 – Dispute resolution

Interim Report Proposal	Timing	Anticipated implementation method
6.1 Task a single body with resolving complaints across public and community housing. This could include: <ul style="list-style-type: none"> <li>a new independent body, such as a Social Housing Commissioner</li> <li>an existing body, such as Consumer Affairs Victoria with oversight by the Commissioner for Residential Tenancies</li> </ul>		Legislative changes
6.2 Apply generally available principles of dispute resolution, such as the Australian Government's Key Practices for Industry-based Consumer Dispute Resolution.		Legislative changes
6.3 Establish robust information sharing arrangements between the complaints body and the regulator to allow the regulator to continue to identify and address systemic issues.		Legislative changes
6.4 Establish a single-entry point to help tenants to navigate the complaints and disputes pathways and link them with available support. This function could be performed within the body established in 6.1.		Possible legislative changes
6.5 Investigate options to resolve intra-tenant disputes in a non-confrontational and cost-effective way through a tenant-driven process. This could include a restorative justice type approach.		Possible legislative changes - if restorative justice requires legislative support

## Paper 7 – Aboriginal housing

Interim Report Proposal	Timing	Anticipated implementation method
7.1 Embed cultural safety in performance standards that apply to social housing providers, and encourage the regulator to continue to build on the commitment demonstrated by the Housing Registrar to embedding cultural safety awareness and practices within its Office.		Possible legislative changes to signal for cultural safety as part of the tenants' charter and possibly performance standard for housing agencies
7.2 Provide for the establishment of culturally safe service charters by each social housing provider.	This can occur through standards	Administrative action
7.3 Provide for culturally sensitive, plain English information about the regulator, including its roles, services and complaints mechanisms, and for each social housing provider to provide necessary information to support tenants and housing applicants.	Work could commence immediately	Administrative action
7.4 Require all social housing providers to ask and record whether housing applicants identify as Aboriginal and/or Torres Strait Islander, to report the number of Aboriginal and Torres Strait Islander tenants they house and the services that they receive to the regulator; and require that the regulator collate and report those data.	This can occur through changes to reporting	Administrative action
7.5 Ensure that data reports on system-wide performance indicators are made available to the Aboriginal community and relevant Aboriginal governance and community forums, and that the data reports include metrics such as Aboriginal tenant demographics, Victorian Housing Register waiting list and allocations, and social housing exists (including evictions).		Administrative action
7.6 Establish an independent tenant advocacy function that assists Aboriginal people to navigate their way through the social housing system and guides people on complaints and disputes processes. This function would be staffed by Aboriginal identified people		Administrative action VPTA has commenced a recruitment process.
7.7 Ensure navigable and culturally safe complaints and disputes processes that provide a clear pathway from the social housing provider to the regulator and to the Victorian Civil and Administrative Tribunal.		Administrative action

Interim Report Proposal	Timing	Anticipated implementation method
7.8 Establish an alternative dispute resolution mechanism that is culturally safe and includes informal and community-based complaints processes. Respected Aboriginal community members would form part of the dispute resolution process.		Possible legislative changes if membership structure warrants
7.9 Provide appropriate resourcing to establish and maintain a culturally safe pre-registration team within the regulator to undertake active outreach with Aboriginal Community Controlled Organisations (ACCOs) and require the regulator to develop model policies and templates to facilitate ACCO registration. This would include a 'Board information pack' to assist ACCO Boards consider the pros and cons of registration for their community and their strategic goals, thereby building on the initiatives implemented to date by the Housing Registrar. As part of the registration process, the regulator will be required to support ACCOs to develop action plans that map out the first year of registration and the actions needed to meet the first annual compliance review.	This work can build on that already underway by the Housing Registrar	Administrative action
7.10 Require that information on the broader social housing system and social housing regulation is actively provided to ACCOs and the Aboriginal community.	This work can build on initiatives of the Housing Registrar	Administrative action
7.11 Ensure information on landlord responsibilities and the <i>Residential Tenancies Act 1997</i> is provided in an accessible and readable format to ACCOs and community by the Commissioner for Residential Tenancies.	Consultation can commence with the Commissioner for Residential Tenancies	Administrative action
7.12 Investigate mechanisms to enable recognition of the multiple accreditation and regulatory requirements that ACCOs already meet.	This work can be undertaken to support ACCO registration in light of Big Housing Build requirements	Administrative action
7.13 Wind up provisions should ensure that Aboriginal resources remain in Aboriginal hands.		Legislative changes
7.14 Ensure regulatory performance standards are flexible and recognise the strengths of ACCOs and their delivery of housing, knowledge of family and community circumstances, and approaches to managing arrears and evictions.	Work already underway by the Housing Registrar	Administrative action
7.15 Establish 'Indigenous Governance Principles' that value, respect and inform how ACCOs may meet housing regulatory governance standards that are developed and agreed in partnership with the Aboriginal Housing and Homelessness Forum, and that those standards are integrated into the performance framework and provide a strength based, culturally appropriate alternative to mainstream governance standards.		Administrative actions
7.16 Consider the Australian Indigenous Governance Institute toolkit as a model to be adapted to housing regulation.		Legislative changes
7.17 Ensure the regulatory framework incorporates Aboriginal housing perspectives into operational processes and service delivery, and that regulation is proportionate and suited the scale of the organisation.		Administrative action

## Paper 8 – Professionalisation of the frontline social housing workforce

Interim Report Proposal	Timing	Anticipated implementation method
8.1 Undertake a workforce development strategy for the social housing sector. This should be done by a group constituting public and community housing sectors, the regulator, government (Homes Victoria, Department of Families, Fairness and Housing (DFFH) and others as appropriate) union/s and any other expertise as required. The strategy should include but not be limited to: <ul style="list-style-type: none"> <li>• a review of the workforce capability framework</li> <li>• an induction program</li> <li>• a program for ongoing professional development</li> <li>• appropriate accreditation mechanisms</li> <li>• consideration of a minimum qualification (such as a Certificate IV in Community Services or Social Housing).</li> </ul>	Relevant bodies should be approached to participate and commence work	Administrative action
8.2 Require all social housing providers to embed a culture of ongoing professional development for frontline housing staff and managers that supports them to access and participate in formal training opportunities, as well as informal, workplace-based professional development.		Administrative action

Interim Report Proposal	Timing	Anticipated implementation method
8.3 Develop a framework for a sector wide code of conduct observable by all social housing providers. Providers' individual codes of conduct should be consistent with the framework.		Administrative action
8.4 The Department of Families, Fairness and Housing's (DFFH) senior leadership group to demonstrate its commitment to providing ongoing support and recognition of the vital role played by its frontline housing officers by, in the first instance, creating a centre of excellence that engages central office and operational divisions' housing officers with central office and operational divisions' senior leadership to share knowledge and experience and promote development.	Work should commence given needs for staff support and considerable time investment needed for workforce development	Administrative action
8.5 DFFH to engage with Worksafe Victoria and the group formed in 8.1, to develop tools to support and equip frontline housing staff across the social housing sector who are at risk of, or have been subjected to, occupational violence and aggression.	Work should commence without delay	Administrative action

## Paper 9 – Affordable housing

Interim Report Proposal	Timing	Anticipated implementation method
9.1 Where affordable housing receives a government subsidy, an accountability mechanism must be in place to ensure that the investment partner delivers on the agreement.		
9.2 Consider establishing an allocation mechanism for affordable housing within the Victorian Housing Register.		Legislative changes

## Paper 10 – A social housing regulator: structure and governance

Interim Report Proposal	Timing	Anticipated implementation method
10.1 Establish the regulator as an independent statutory body governed by a board, with a Chief Executive Officer (CEO) whose responsibilities are outlined in the legislation. The board should comprise between 5 and 7 individuals who collectively possess skills and expertise that are relevant to the regulator's functions including lived experience as a social housing tenant, social and affordable housing, finance, law, regulation, Aboriginal housing, community engagement or other relevant skills and experience.  Board members to be appointed for up to 5 years and be eligible for re-appointment. Other conditions of appointment would be in accordance with relevant Government guidelines applicable to boards of public entities.		Legislative changes
10.2 Strengthen the regulator's independence by: <ul style="list-style-type: none"> <li>• confining grounds for removal of the CEO for misconduct, incapacity, failure to perform duties, proven incompetence, insolvency and like matters</li> <li>• confining the Minister's power to give directions to broad matters of regulatory policy, and requiring any Ministerial directions to be given in writing and published</li> <li>• providing for regulatory staff to be employed by the organisation's CEO (staff with appropriate skills would continue to be seconded from public sector agencies).</li> </ul>		Legislative changes
10.3 Include as responsibilities of the board: <ul style="list-style-type: none"> <li>• appointing the CEO and approving the strategic plan,</li> <li>• developing organisational structure and key policy documents.</li> </ul> Regulatory functions and decision-making would ordinarily be delegated to the CEO and appropriate management positions within regulator's office. The CEO would report to the board.		Legislative changes

Interim Report Proposal	Timing	Anticipated implementation method
10.4 Require that minutes of board meetings be published along with the regulator's planning documents, policies, standards processes for decision-making, regulatory decisions and reasons for decisions.		Legislative changes
10.5 Align the regulator with the Essential Services Commission to maximise opportunities for synergies, cross learning and sharing of support services. The governance implications of possible approaches to alignment to be explored further. Consideration could also be given to cross member board appointments, to enhance co-ordination between these bodies.	Consultation could begin with the ESC to facilitate alignment once legislative changes come into effect	Administrative action

## Paper 11 – Regulation of public housing and Homes Victoria

Interim Report Proposal	Timing	Anticipated implementation method
11.1 Transfer responsibility to the regulator for monitoring compliance by all social housing providers with the applicable regulatory standards.		Legislative changes
11.2 Transfer additional statutory powers to the regulator to monitor and enforce compliance with the standards applying to both public and non-public sector social housing providers. For example, the regulator could be given powers to issue improvement notices requiring corrective actions to be taken within a specified time and to issue fines and public censure statements where there has been repeated or flagrant breaches of standards.		Legislative changes
11.3 Require that the regulator has full visibility of all DFFH contracts (including for public housing management transfers). Require information sharing between funder and regulator.		Legislative changes
11.4 Give the powers to make regulations governing policy issues such as criteria for access to social housing, categories of priority access, principles for rent setting and frequency of rent reviews exclusively to the responsible Minister and require that any regulations be made following a detailed public engagement process, including with tenants and prospective tenants.  This would separate the policy responsibilities of the Minister from the operational responsibilities of the Director of Housing, or Homes Victoria.		Legislative changes
11.5 Homes Victoria to communicate to tenants and other stakeholders their respective roles and responsibilities.	For immediate action in order for Review to make assessment prior to final report in May 2022	Administrative action
11.6 The Review Panel to consider the merits of the current Homes Victoria structure in its next phase of deliberations.	See 11.5	To be undertaken by the Review

## Paper 12 – Growth and innovation I: Reducing unnecessary regulatory burden and barriers

Interim Report Proposal	Timing	Anticipated implementation method
12.1 Review the circumstances in which a registered agency whose mission is to serve a particular community can target applicants from their community from the applicants on the Victorian Housing Register.	This work would facilitate registration of some currently unregistered housing providers with land and assets to invest in the system.	Administrative action
12.2 Amend the <i>Housing Act 1983</i> wind up provisions to provide certainty that, as far as possible, the assets of a specialist housing agency being wound up will transfer to another registered housing agency that exists to serve the same cohort of tenants.		Legislative change
12.3 Require the regulator to perform its functions in a way that is proportionate and targeted only to where action is needed, and to work with other regulators to minimise duplication and administrative burden for registered agencies wherever possible.		Legislative changes may be needed
12.4 Prevent funding contracts from duplicating regulatory requirements and enable regulator reports to be provided to the funder.	Analysis of current duplication and overlaps should commence	Legislative changes
12.5 Enable the regulator to share information with other regulators of registered agencies and, where feasible, to recognise their approval or be delegated as the primary approver of a regulated agency's generic governance and management arrangements.	Analysis of current duplication and overlaps should commence	Legislative changes
12.6 Replace the requirement for Director of Housing approval for all individual land transactions with a requirement to notify the regulator under certain circumstances, modelled on the relevant provisions of the <i>Housing (Scotland) Act 2010</i> .		Legislative changes
12.7 Explore enabling organisations to designate assets for the purposes of the regulatory scheme so that they can avoid establishing and operating a specific legal entity for their social housing operations.		Legislative changes

## Paper 13 – Growth and innovation II: Emerging models

Interim Report Proposal	Timing	Anticipated implementation method
13.1 Require registration of any organisation that receives government funding or support for housing.  It is not recommended that any non-registered entity be funded.	Any decision to register and fund for-profit organisations should be based on evidence following a considered process.  As the approach to regulation has been designed with the not-for-profit sector in mind, specific consideration should also be given to what regulatory controls would be required to ensure effective regulation if a decision were made to allow registration of for-profits.	Change to legislation is required to allow registration of for profit entities (if a policy decision is made to do this)
13.2 Augment the regulator's powers to enable effective regulation of special purpose vehicles and any other novel forms of partnerships or joint ventures involving registered agencies and/or Homes Victoria including by: <ul style="list-style-type: none"> <li>giving the regulator full visibility of all legal arrangements involving registered social housing providers and joint venture partners (however structured)</li> <li>providing for the publication of minutes of meetings of boards of all registered entities</li> <li>introducing specific requirements for reporting and disclosures of any related entity transactions, multiple entity directorships and senior management appointments and disclosures of conflicts of interest.</li> </ul>	Analysis to begin without delay to determine risks and nature of changes required	Legislative changes

Interim Report Proposal	Timing	Anticipated implementation method
13.3 Introduce requirements for disclosure of board and executive salaries and other forms of remuneration for all registered social housing providers.	This could be achieved through standards.	Administrative action
13.4 Give the regulator clear monitoring and inspection powers including to conduct regular scheduled and random inspections, audits and to demand a wide range of documents.	Housing Registrar can do inspections with existing powers, therefore the intended change could be signalled prior to a legislative process	Legislative changes
13.5 Review the regulator's step-in powers and whether the regulatory system should require ringfencing through the lens of SPVs and corporate groups.	For immediate action in preparation for any required legislative change	Administrative action

#### Paper 14 – The role of regulation in sector growth

Interim Report Proposal	Timing	Anticipated implementation method
14.1 Encourage registered social housing providers to do all they reasonably can to address social housing need, to fully realise their objects as charitable or community housing providers.		Administrative action
14.2 Impose a statutory obligation on all registered agencies to develop short, medium and long-term strategic plans that articulate their plans for growth in social housing stock, and regularly measure and report to the regulator. The regulator to publish progress reports.		Legislative changes
14.3 Homes Victoria to undertake system wide policy and planning with a long-term horizon in mind, including publishing data regularly on housing need across the state and actively commissioning social housing to ensure that state funded growth is steered towards identified areas of social or affordable housing need.	In light of the Big Housing Build and rapid funding round grants, work on a long-term vision ought to commence without further delay	Administrative action
14.4 The Community Housing Industry Association Victoria to take the lead in sector development focussed on supporting CHOs to grow their stock and enter into strategic partnerships for this purpose, with the support and active engagement of Homes Victoria.		Administrative action

#### Paper15: Regulatory Approach

Interim Report Proposal	Timing	Anticipated implementation method
15.1 Strengthen the tailored approach to regulatory risk assessment and risk management including removal of the current statutory distinction between housing providers and housing associations, and putting in place a program of regular and ad hoc inspections.		Legislative changes
15.2 Provide additional resources to enable the regulator to perform its expanded role effectively, to deal with the changing nature of risks and embed a greater tenant focus and voice (to be determined by an independent review of the appropriate level of resourcing for the regulator to align resources with final decisions about the scope of the regulator's powers and functions).		Administrative action
15.3 The regulator to raise its profile among tenants and embed direct tenant engagement and co-design of regulatory standards and policies.		Legislative changes may be required depending upon the design of the legislation and



Interim Report Proposal	Timing	Anticipated implementation method obligations of the regulator

## Paper 16 – Performance reporting for transparency and accountability

Interim Report Proposal	Timing	Anticipated implementation method
16.1 Apply a uniform performance indicator framework to public and community housing, building on indicators already in use, and with reference to other jurisdictions (such as the Scottish Regulator's framework).		Administrative action in the first instance.
16.2 Require uniform presentation of performance reporting across public and community housing sectors. With the introduction of a single social housing regulator (Paper 10) these statistics should be combined in the same published report.		Legislative changes Administrative action
16.3 Require regular review of the performance reporting framework, with a consultation process that includes sector participants and tenants to make improvements on the current performance reporting regime. In the first instance this might include a wide-ranging consultation process, but thereafter could constitute 3-yearly reviews of the performance monitoring framework.	Planning could begin on a tenant engagement strategy for this initial work and for ongoing tenant participation	Legislative changes

## Paper 17 – National regulation and the National Regulatory System for Community Housing (NRSCH)

Interim Report Proposal	Timing	Anticipated implementation method
17.1 Victoria to focus on improving its own regulatory system and explore options for reducing any burden on regulated entities arising from inconsistencies with the NRSCH.		Administrative action
17.2 The Victorian Government to initiate discussions with other jurisdictions to advocate for changes to the NRSCH and identify potential for further harmonisation, with a view to joining the scheme once the systems are considered adequately aligned.		Administrative action

## Paper 18: Prospective social housing tenants

Interim Report Proposal	Timing	Anticipated implementation method
18.1 Implement a system of active waiting list management through greater support for applicants on the Victorian Housing Register.		Administrative action
18.2 Provide dedicated education and guidance to landlords and prospective landlords that emphasises the importance of the role they take on when they make their property available for residential rental.		Administrative action
18.3 Develop a Code of Practice for landlords and property managers based on best practice principles developed as part of the education and guidance work. Rather than a statement of legal obligations (which is contained in the RTA), the Code would be a positive statement of ethical conduct in the leasing of residential property beyond the legal requirements.		Administrative action
18.4 Design, conduct and evaluate a trial whereby landlords in the private rental sector opt into the Code of Practice and comply with other specific requirements aimed at tenancy sustainment. These could include for example, an		Administrative action

Interim Report Proposal	Timing	Anticipated implementation method
undertaking not to issue a notice to vacate to terminate a tenancy, to provide information about financial counselling services, and to engaging in a supported process in cases of a dispute, including in relation to rent arrears.		
18.5 Consider establishing a register of all residential landlords (rental providers under the RTA) and properties subject to RTA agreements (excluding social housing providers).		Legislative changes

## Appendix C – Consultation

### Contributors

Written submissions in response to Consultation Papers 1, 2 and 3 and the Aboriginal Housing Findings and Options Paper were received from:

Aboriginal Housing Victoria

Action for More Independence & Dignity in Accommodation

Action for More Independence & Dignity in Accommodation – second submission

Affordable Housing Industry Advisory Group

Anonymous Tenant, 17 August 2021

Anonymous Tenant, 7 October 2021

Anonymous Tenant, 29 October 2021

Australian Association of Social Workers

Australian Charities and Not For Profits Commission

Australian Housing and Urban Research Institute

Australian Housing and Urban Research Institute – Consultation Paper2

Australian Housing and Urban Research Institute – Consultation Paper 3

Australian Institute of Health & Welfare

Australian Manufacturing Workers' Union, 3PE Build, Health and Community Services Union

Banyule Community Health

City of Port Phillip

Community Housing Industry Association

Community Housing Industry Association Victoria

Community Housing Industry Association Victoria - Consultation Papers 2 and 3

Community Information and Support Victoria

Community Legal Centres – Joint Response

Council of Single Mothers and their Children Incorporated

Council to Homeless Persons

Council to Homeless Persons – Consultation Paper 2

Council to Homeless Persons – Consultation Paper 3

Defend and Extend Public Housing Australia

Domestic Violence Victoria & Domestic Violence Resource Centre Victoria

Domestic Violence Victoria & Domestic Violence Resource Centre Victoria – Consultation Papers 2 & 3

Eastern Homelessness Service System Alliance

Fitzroy Legal Service

Friends of Public Housing Victoria

Friends of Public Housing Victoria – Consultation Papers 2 and 3

Geelong Housing Action Group

Housing for the Aged Action Group Incorporated

Housing for the Aged Action Group Incorporated - Consultation Paper 2

Housing for the Aged Action Group Incorporated - Consultation Paper 3

Housing Quality Network (HQN) Consultancy, United Kingdom

Hume Riverina Community Legal Service

Inner Melbourne Community Legal - Consultation Paper 2

Inner Melbourne Community Legal - Consultation Paper 3

Jesuit Social Services

Justice Connect

Kids Under Cover

Launch Housing

Mallee Family Care

Mental Health Legal Centre Incorporated

National Disability Services

North & West Homelessness Networks

Peninsula Community Legal Centre

Peninsula Parks and Villages Group

Quit Victoria and Vic Health

Residents of Retirement Villages Victoria

Salvation Army Tenancy Plus Program

Save Public Housing Collective

South Port Community Housing Group

Suicide Prevention Australia

Tenants Victoria

Tenants Victoria – Consultation Papers 2 & 3

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 Council of Social Service – Consultation Papers 2 & 3  
Victorian Healthcare Association  
Victorian Health Promotion Foundation  
Victorian Public Tenants' Association  
Victorian Public Tenants' Association - Consultation Papers 2 and 3  
Western Homelessness Network  
West Heidelberg Community Legal - Consultation Papers 2 and 3  
Women's Housing Alliance  
Young People's Legal Rights Centre (Youthlaw)  
Youth Affairs Council Victoria

A total of 82 contributions were received in response to the following four questions posed on the Engage Victoria website (<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?

## 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

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

Commissioner for Better Regulation, Red Tape Commissioner

Homes Victoria – including the Aboriginal Outcomes Branch

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

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

Victorian Government Department of Education and Training – Higher Education and Skills; Quality Assessment and Regulation

Victorian Government Department of Families, Fairness and Housing – Social Services Regulator

Victorian Government Department of Families, Fairness and Housing – 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

Victorian Government Department of Treasury and Finance – Service Delivery and Reform; Land and Shareholder Advice

Victorian Building Authority

Victorian Housing Registrar and the Office of the Housing Registrar

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

Ethnic Communities' Council of Victoria



Housing All Australians  
Housing for the Aged Action Group  
IndianCare  
Loddon Campaspe Multicultural Services  
Pacific Women's Indigenous Network  
PowerHousing Australia  
Pronia  
Settlement Services International  
Somali Community Incorporated  
Somali Women Development Association Incorporated  
Sunraysia Mallee Ethnic Communities' Council  
Tenants Victoria  
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  
Eastern Homelessness Service System  
Gippsland Homelessness Network  
Homelessness Services Network Coordinators  
Inner Melbourne Community Legal  
Junction Support Services  
Mallee Family Care  
Mind Australia  
Southern Homelessness Network  
The Bridge Youth Service  
Victorian Aboriginal Legal Service  
Western Homelessness Network  
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

## Research 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, 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 Aboriginal Community Controlled Organisations were guided by two sets of questions – one for Aboriginal Community Controlled Organisations 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/ 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 Aboriginal Community Controlled Organisation (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/ 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?
  - Is there 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 over 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. Additionally, 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 state-wide to media outlets.

Feedback was sought through an online questionnaire which was translated in 14 community languages and hardcopy version of the questionnaire 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?

Additionally, the following online questionnaires 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 non-profit homelessness service

Yes, I work (or have worked) for a non-profit housing provider

Yes, I work (or have worked) for another kind of non-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?

## Appendix D – Data gaps

There are key data gaps in both public housing and community housing. Submitters to this Review 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 (Paper 16).

This appendix details data gaps commonly highlighted by submitters to this Review, as well as the key rationale for their collection.

### Tenant demographics

Participants to this Review at times remarked on the lack of information on the profile of tenants. Some community housing providers in particular remarked 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 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:

- age
- gender
- income
- indigenous status
- Culturally and Linguistically Diverse information (e.g. language, country of origin)
- rental rebate status
- tenure length
- arising issues
- referrals to support.

### Wait list and allocations

Many participants to this Review stated a desire for public information on the central wait list and allocations to dwellings. The information desired included the following:

- age
- gender
- income
- indigenous status
- Culturally and Linguistically Diverse information (e.g. 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, the household makeup and needs (as defined by priority access subcategory). The key reason 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 wait list 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 as a last resort, as is required by the Housing Registrar's 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, such that they are able to move out of social housing altogether. Such 'pull' exits represent a success in the system. The following data were of interest to participants:

- Push exits:
  - unsuitable housing
  - eviction reasons (e.g. 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<sup>1</sup>. 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 (e.g. 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, 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 wait 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 housing transfer later on.

The information available at this time still lacks the data many participants noted, 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 outlined data needs relating to the dispute resolution process. This data also functions as an important public accountability mechanism for tenants wanting to compare the performance of their provider with other providers, giving greater utility to public availability:

- 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 was minimal, but included the following:

- labour market indicators
  - obtaining employment
  - losing employment
- education
  - staying in education
  - obtaining new qualifications.

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<sup>1</sup> 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>.