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Social Housing Regulation Review Secretariat  
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**RE: Social Housing Regulation Review *Consultation Paper 3 – The role of regulation in sector accountability, viability and growth***

AHURI welcomes this opportunity to comment on *Consultation Paper 3 – The role of regulation in sector accountability, viability and growth* for the Social Housing Regulation Review prepared by the Independent Panel.

This submission supplements information provided by AHURI in other submissions responding to the background and scoping paper and Consultation paper 2 on service delivery and the tenant experience.

This submission addresses aspects relevant to the third consultation paper, around the role of regulation processes, from legislation to institutional arrangements, considering the diverse stakeholder interests, including providers to increase supply.

Yours sincerely

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# AHURI Submission to SHRR Consultation Paper 3

## The role of regulation

### What are the objectives and roles of regulation?

Consultation Paper 3 puts the interests of current and prospective tenants as the ‘focus’ for the objectives of regulation, following the Scottish model of regulation. The paper also references other key stakeholders including housing providers and taxpayers. AHURI broadly supports this articulation of interests of diverse players, and a prioritisation of the needs of tenants; AHURI research acknowledges the importance of a stakeholder model in the design of a regulatory system, given inherent tensions between the interests of various parties (Travers et al. 2011).

One stakeholder not given much emphasis in the consultation paper are investors or financiers in social housing. This might include equity investors (including government, institutions, or philanthropic organisations) or providers of debt finance (such as banks or bond aggregators like NHFIC). Distinctions might also be made between the interests of governments and state housing authorities, who might have different priorities within a multi-provider system (Travers et al. 2011).

### How can regulation achieve these objectives?

Consultation Paper 3 identifies some of the mechanisms of regulation that regulators can undertake to balance stakeholder interests and achieve good outcomes for each. These seem to particularly relate to the regulatory oversight of providers done by the Victorian Housing Registrar. However, regulation of affordable housing might be understood more broadly and include other spheres of government intervention, such as the planning system, residential building codes, allocation policy or tenancy management.

AHURI research suggests that a regulated accountability framework is an important prerequisite for instilling confidence in provision by non-government providers (Travers et al. 2011; Milligan et al. 2004). However, governments also need to address potential regulatory impediments in planning and local government to overcome barriers to affordable housing supply (Wiesel et al, 2012).

AHURI research identifies some potential issues with regulatory systems, including high regulatory burden on providers, or ‘overreach’ into areas properly the realm of management or the board (Travers et al. 2011). Ensuring regulation is outcomes-based may be helpful in this regard.

The issue of co-design is raised in the consultation paper. AHURI research is supportive of processes that involve consumer voices, and has found that the experiences of tenants in social housing is influenced by the care shown to them by housing provider staff and integration of other services (Muir, Powell et al. 2020). AHURI research has trialled approaches involving consultation of tenants and front-line staff as part of developing new metrics of provider performance (Pawson et al 2015). Involvement of consumers might be especially relevant in relation to evaluating and co-designing processes affecting a prospective tenant’s entry to social housing (e.g. eligibility and allocation) and the tenant’s ongoing experience of it (e.g. tenancy management and provider performance in providing care and support).

### The role of policy and contract

Consultation Paper 3 rightly argues that regulation is necessary but not sufficient to support the growth of social and affordable housing supply. There is a need to consider the role of other variables subject to government control such as: public funding and subsidy levels for both providers and tenants, regulation over rent levels, allocations policies, and policies for affordable housing through the planning system. Taxation and monetary policy also influence investment decisions.

The consultation paper argues that community housing providers are subject to rules from Homes Victoria, and other funding providers via contracts and other policies, leading to potential duplication of reporting requirements and excessive regulatory burden. The advent of management transfers of housing to CHPs involving contractual responsibilities arguably increases that burden.

As some providers are also subject to national regulatory requirements under the National Regulatory System for Community Housing (NRSCH), there is also a need to understand how the regulatory systems in Victoria compares with NRSCH and with other regulators (see Fotheringham 2019).

## **Regulatory architecture and objectives**

The consultation paper describes the objectives of existing Victorian legislation (relating to accountability, viability and growth of affordable housing). These are described in two pieces of legislation – the *Housing Act 1983* and the *Planning and Environment act 1987*.

### **Public and Community Housing (Housing Act 1983)**

The *Housing Act 1983* has the objective to promote access to adequate and appropriate housing for every Victorian at a price within their means. Primarily this is focused on the provision of public housing but also regulating rental housing in the non-profit sector. It also has a role in distributing housing financial assistance and promoting planning and development of land. The Victorian Regulatory System, including Housing Registrar, but also other powers associated with Homes Victoria relating to contractual arrangements with Community Housing are governed under this Act.

While the Big Build will upgrade and add to Victoria's social housing stock, social housing stock as a proportion of all stock has for some time been one of the lowest in the country; growth in public housing is dependent upon political and funding support at a state and federal level, which has progressively declined over the years (Groenhart and Burke 2014). While there may be scope to make changes to the regulatory apparatus under the Act, it is not clear whether the changes made would necessarily result in a large increase in supply without other forms of government support.

### **Affordable Housing – Planning and Environment Act 1987**

The *Planning and Environment Act 1987* has the objective of facilitating affordable housing in Victoria, with affordable housing defined to be housing appropriate for very low, low and moderate income households. Section 173 allows local governments to enter into voluntary agreements with landowners and others for provision of affordable housing. The agreement can be enforced and recorded on the title to bind future owners or occupiers to retain it as affordable housing.

While some local councils such as Port Phillip have been active in seeking to support affordable housing for some time, legislative change and affordable housing development activity has been slower in Victoria than other jurisdictions.

## **System issues**

### **Roles and objectives of Homes Victoria –**

Consultation Paper 3 raises questions about the role and objectives of Homes Victoria as an agency within the Department of Families, Fairness and Housing. In particular, it raises concerns about:

- Inconsistency between the way public housing is regulated compared with community housing, a lack of transparency around public sector performance relative to community housing and concerns around public housing financial sustainability.
- its potential to over-regulate community housing providers by imposing standards through contracts and policies (e.g. requirements to access clients from VHR priority list) which can affect their performance and capacity for growth.

- Potential conflicts of interest and impediments to the innovative uses of property (with Homes Victoria having power to limit community housing providers dealing in land)

Is there a case for a single independent regulator?

The paper raises the potential for a significant reform to address these issues. It considers the creation of a single, independent regulator (regulator) which would have responsibility for regulating the performance of all social housing including public housing. This might involve moving public housing and its management to a separate entity (landlord function).

- Both entities would be placed at arms-length from government departments. This entails the separation of the management of public housing homes from broader housing policy and stewardship roles.
- These actions might have some advantages including introducing a degree of ‘contestability’ between public and community sector assets by enabling comparison between their performance. The new housing management body would need to adopt corporate style governance and reporting arrangements similar to the community housing sector.
- Current AHURI research is examining the role of public housing as a social landlord (Flanagan, Jacobs et al. forthcoming).

Transfer of housing assets to the community housing sector has been seen as a key mechanism to leverage growth in that sector. The Victorian government has already been less likely to transfer assets to community housing providers than governments in other jurisdictions. Transfers have tended to be management transfers (whereby the government retains ownership over the assets) rather than ownership transfers (Pawson et al. 2013). Moving public assets to an arms-length organisation might further complicate transfer of assets to the community housing sector.

### **The housing registrar and regulation of community housing sector**

The consultation paper outlines some objectives of Part 8 the Housing Act with respect to the role of the registrar in regulating community housing providers (CHPs).

#### **Risk assessment**

As the consultation paper notes, the Housing Registrar uses categories to assess the level of regulatory risk which are linked to size and scale of the portfolio and the extent to which it is involved in growth. The registrar requires more information and gives greater attention to larger organisations.

The greatest stimulus for growth in affordable housing in Australia in recent times occurred after the global financial crisis with economic stimulus funding (Travers et al. 2011). More recently, affordable housing providers have had to be more opportunistic and source multiple forms of subsidy to achieve affordable housing outcomes in different housing market context. This has made for some uncertainty for providers around the viability of projects, and developments have often been geared around availability of subsidy source rather than suitability for client need (Randolph et al. 2018).

#### **Performance reporting monitoring and compliance**

The issue of reporting burden has been raised in AHURI research (Travers 2011) and in a recent review of the NRSCH (Fotheringham 2019). One way that regulatory burden is presently reduced is by segmenting providers by tier – with larger providers needing to respond to a wider range of regulatory criteria. A different ‘modular’ approach may help to further tailor the regulation to be appropriate to the organisation involved (similar to the approach taken for NDIS providers). The Scottish model, which has a modular approach, may also be worth considering for Victoria, including its emphasis on using tailored engagement plans with each provider (Fotheringham 2019).

Another consideration is that CHPs also have responsibilities to report to other organisations including the Australian Securities and Investment Commission (ASIC), Australian Charities and Not-for-Profits Commission

(ACNC) and Office of the Registrar for Indigenous Corporations (ORIC). There is scope for greater coordination or harmonisation between these agencies in relation to reporting requirements in terms of reporting periods, data points, and cross-certification (Fotheringham 2019).

### **For profit operators**

Consultations across the country as part of a review of the NRSCH suggested some support for for-profit operators provided they were subject to the same regulatory system as not-for-profit providers (Fotheringham 2019).

The imperative to deliver projects quickly such as part of the Big Build may mean using private sector organisations, and in many cases public and not-for profit organisations can successfully partner with private organisations including to leverage investment (Rowley et al, 2017). There is also a potential for governments to use investments and asset transfer to strategically build longer term capacity in the not-for-profit area. This has been the experience in places like NSW with the Asset Vesting Program (AVP) and with the Social Housing Initiative (Rowley et al. 2017).

### **Regulatory governance**

The consultation paper raises the question about the present governance arrangements in which the Housing Registrar is located within The Department of Treasury and Finance. While this provides separation from Homes Victoria and the Minister for Housing, there could still be greater separation from the machinations of Government, such as the model in England, where the regulator is a stand-alone entity, still accountable to parliament and a board. Evidence suggests that the 2008 adoption of this model did not lead to substantive changes in regulatory approach (Travers et al. 2011). At present, the Victorian registrar remains at some distance from consumers and providers and it does not have a role either in seeking to actively involve consumers in the regulatory process or in supporting the capacity of the sector to grow.

### **Regulation of affordable housing**

The consultation paper outlines a number of ways that governments regulate for affordable housing (as distinct from social housing) including through:

- Provisions under the Planning and Environment Act 1987 for local governments to provide for Affordable Housing under the s.173 agreements
- The big housing build (2,900 new affordable and market homes)
- NRAS subsidies
- Tax incentives (e.g. around additional Capital Gains Tax discounts for affordable housing).

As the consultation paper concedes, affordable housing leveraged using these mechanisms is relatively rare in Victoria, with most generated from NRAS related investments. Voluntary provisions for affordable housing has tended to be taken up only by some local councils such as Port Phillip and Moreland (Gurran 2003) and affordable housing faces considerable opposition by local government (Davison et al. 2013).

- The use of voluntary agreements in Victoria has in some ways mirrored the approach in NSW where voluntary and negotiated approaches have dominated (compared to places like South Australia where mandatory mechanisms have occurred). There is scope to consider inclusionary zoning, density bonuses and negotiated developer contributions (Gurran et al. 2018; Gurran et al. 2008).

There may be scope to consider new models from overseas that combine both mandatory and negotiated elements. For example, in the UK, affordable housing is obtained through negotiated mandatory planning obligation agreements (s.106). A 'mandatory' feature of this system is that developments beyond a certain size are required to contribute to the cost of meeting housing need, either in terms of in-kind contributions such as land or financial payment. The negotiated character of the agreement also allows for a fit with the local context (Gurran et al. 2018).

Alternatively, the use of inclusionary planning, inclusionary zoning, density bonus and impact fee mechanisms (used in places like the United States) have also been effective in generating more affordable housing in built up areas with underutilised high value land (Gurran et al. 2018). In both cases, affordable housing planning processes take some time to embed but can deliver high amounts of affordable housing.

AHURI research suggests that affordable housing endeavours are best facilitated through a combination of measures, including a wider whole of government strategy to address a continuum of needs and certainty in the planning system (Gurran et al. 2018).

Build to rent approaches are developing a footprint in Victoria, supported by the Victorian Government through land tax incentives. Key features of this form of housing are leveraging institutional investment, encouraging creation of larger corporate landlords, and providing long term rental options (AHURI 2019). Without significant subsidy it is not an ideal vehicle to obtain affordable or social housing for very low income renters, but may generate more rental housing at moderate and higher rents, and through this reduce pressure for available lower income rental stock.

### **National Regulatory Frameworks**

National consultations held for a recent review of the NRSCH identified support for a consistent and unified national approach to regulation (Fotheringham 2019). There are costs for Victorian housing providers also operating in other jurisdictions in reporting to two different regulatory regimes. However, aligning the current Victorian system to the NRSCH would generate transition costs in the short term, which may be problematic, particularly for smaller providers.

## **Growth**

### **Ensuring growth supports good tenant outcomes**

The consultation paper rightly articulates that new (and existing) social housing will need to be appropriate to the needs of tenants across a long time span. AHURI research has found that sustainable affordable housing should consider environmental, social and financial sustainability dimensions (Wiesel et al. 2012).

In addressing tenant outcomes, it is important that housing meet the needs of diverse groups. People with disabilities need independent housing in the community, but private rental is often not a practical option. Inaccessible design, unaffordability and discrimination limit access while there are impediments to making modifications (Wiesel et al. 2015; Tually et al. 2011).

An important principle is to improve choice for people with disabilities and to consult people with disabilities around issues of design (Wiesel et al, 2015). Regulating building codes around accessible and adaptable design is an important way to improve access across tenures. AHURI research suggests that diverse housing options have been used in social housing, from purpose-built housing, purchase of private housing, or obtaining priority social housing (Wiesel et al. 2015). The NDIS (and its associated funding stream for Specialist Disability Accommodation) and programs like Exits Project have opened up possibilities for people to access suitable social housing (Wiesel et al. 2015).

### **Ensuring regulation does not unduly inhibit growth**

AHURI research finds that an independent regulator like a registrar has been an important ingredient for growth because of its role in delivering accountability and rigour to financial management and governance, but it has also been part of trying to focus resources on a smaller subset of growth providers that could be better placed to deliver new supply' (Rowley et al. 2017).

There is evidence that some smaller providers are not as able to access private finance. Because funders, including the National Housing Finance and Investment Commission (NHFIC), favour or restrict funding to larger

'tier one' providers, there is a concern that smaller providers may miss out, even though they may be lower risk. Consultations as part of a review of the NRSCCH found that larger CHPs expressed confidence about the capacity for future growth. However, this was not the case for smaller (e.g. Tier 3) providers including Aboriginal Community Housing Organisations (ACHOs) who express concern about their sustainability. This may pose an issue for viability of smaller providers who nevertheless are well equipped to meet the needs of particular groups (Fotheringham 2019).

### **Growth and risk**

Consultation paper 3 considers financial, human and reputational risks around growth in the social housing sector. The paper highlighted the examples of financial failure of the Dutch social housing provider Vestia, and examples of risks to consumers such as poor quality care and serious abuse in Australian residential aged care settings. These examples are used to reinforce the importance of appropriate regulation and institutions that can monitor and enforce outcomes before major problems emerge. In the context of increased growth of the not-for-profit sector, the paper argues that regulatory institutions need to be sufficiently resourced and notes the presently small size of the Victorian Housing Registrar.

AHURI research finds that government decisions – especially around funding certainty – can impact on risk. Many community housing organisations have corporate structures to protect their organisation from financial risks, such as special purpose vehicles, and they seek to balance risks associated with private finance with other sources such as philanthropic or government partnerships (Milligan et al. 2013).

Another risk that is often overlooked is the risk of *not* supplying sufficient affordable and appropriate housing. An overly restrictive or conservative policy and regulatory approach might result in fewer social houses being supplied than needed. There is evidence that this is the case at present (Rowley et al. 2017). The consequences are nevertheless borne by society: higher homelessness, housing stress or insecurity, and the manifold social problems (and government expenses) that can ensue (Zaretzky and Flatau 2013).

### **Accountability and transparency**

Public policy makers need to ensure that public resources are used in ways that result in value for money. The consultation paper argues in favour of improving performance measurement in social housing to improve its transparency and accountability, and supports public reporting of such outcomes.

AHURI is supportive of approaches which improve the quality of performance measurement in social housing, including ways to compare performance between community and public housing. AHURI research has found that the existing suite of performance measures for social housing lags behind the other service areas (Pawson et al. 2015).

## References

- AHURI (2019) *NHFIC issues first bond to community housing providers \$315 million bond made available as 10-year, interest-only loans* AHURI News 22 March 2019 <https://www.ahuri.edu.au/research/news/national-housing-finance-and-investment-corporation-issues-first-bond-to-community-housing-providers>
- AHURI (2019) *Understanding Build to Rent and Large Corporate Landlords: What is the difference between these multi-unit rental models?* AHURI Brief 4 April 2019 <https://www.ahuri.edu.au/research/ahuri-briefs/understanding-build-to-rent-and-large-corporate-landlords>
- Davison, G., Legacy, C., Liu, E., Han, H., Phibbs, P., Nouwelant, R., Darcy, M. and Piracha, A. (2013) *Understanding and addressing community opposition to affordable housing development*, AHURI Final Report No. 211, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/211>
- Flanagan K, Jacobs K, et al. (forthcoming) *Public housing as a social landlord: challenges and solutions*, AHURI Final Report, Australian Housing and Urban Research Institute Limited, Melbourne.
- Flanagan K, Levin I, et al. (2020) *Understanding the experience of social housing pathways*, AHURI Final Report No. 324, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/324>, doi:10.18408/ahuri-4118301.
- Fotheringham, M. (2019) *National Stage One consultations for the National Regulatory System for Community Housing Review Discussion Paper*, National Regulatory System for Community Housing Review Working Group, Australian Housing and Urban Research Institute Limited, Melbourne.
- Groenhart, L. and Burke, T. (2014) *Thirty years of public housing supply and consumption: 1981–2011*, AHURI Final Report No. 231, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/231>.
- Gurran, N. (2003) *Housing policy and sustainable urban development: evaluating the use of local housing strategies in Queensland, New South Wales and Victoria*, AHURI Final Report No. 39, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/39>.
- Gurran, N., Milligan, V., Baker, D., Beth Bugg, L., Christensen, S. (2008) *New directions in planning for affordable housing: Australian and international evidence and implications*, AHURI Final Report No. 120, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/120>.
- Gurran, N., Gilbert, C., Gibb, K., van den Nouwelant, R., James, A. and Phibbs, P. (2018) *Supporting affordable housing supply: inclusionary planning in new and renewing communities*, AHURI Final Report No. 297, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/297>, doi:10.18408/ahuri-7313201.
- Lawson J, Pawson H, et al. (2018) *Social housing as infrastructure: an investment pathway*, AHURI Final Report 306, Australian Housing and Urban Research Institute Limited, Melbourne, <http://www.ahuri.edu.au/research/final-reports/306>, doi:10.18408/ahuri-5314301
- Milligan, V., Phibbs, P., Fagan, K., Gurran, N. (2004) *A practical framework for expanding affordable housing services in Australia: Learning from experience*, AHURI Final Report No. 65, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/65>.
- Milligan, V., Hulse, K., Pawson, H., Flatau, P. and Liu, E. (2015) *Strategies of Australia's leading not-for-profit housing providers: a national study and international comparison*, AHURI Final Report No. 237, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/237>.
- Milligan, V., Hulse, K. and Davison, G. (2013) *Understanding leadership, strategy and organisational dynamics in the not-for-profit housing sector*, AHURI Final Report No. 204, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/204>.
- Muir K, Powell A, et al. (2020) *'A pathway to where?' Inquiry into understanding and reimagining social housing pathways*, AHURI Final Report No. 332, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/332>, doi:10.18408/ahuri-7118001.



- Pawson, H., Milligan, V., Wiesel, I. and Hulse, K. (2013) *Public housing transfers: past, present and prospective*, AHURI Final Report No. 215, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/215>.
- Pawson, H., Milligan, V., Liu, E., Phibbs, P., Rowley, S. (2015) *Assessing management costs and tenant outcomes in social housing: recommended methods and future directions*, AHURI Final Report No. 257, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/257>
- Travers, M., Gilmour, T., Jacobs, K., Milligan, V. and Phillips, R. (2011) *Stakeholder views of the regulation of affordable housing providers in Australia*, AHURI Final Report No. 161, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/161>
- Randolph, B., Troy, L., Milligan, V. and van den Nouweland, R. (2018) *Paying for affordable housing in different market contexts*, AHURI Final Report No. 293, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/293> , doi:10.18408/ahuri-7113301.
- Rowley, S., James, A., Phibbs, P., Nouweland, R. and Troy, L. (2017) *Government led innovations in affordable housing delivery*, AHURI Final Report No. 289, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/289> , doi:10.18408/ahuri-8113101.
- Rowley, S., Costello, G., Higgins, D. and Phibbs, P. (2014) *The financing of residential development in Australia*, AHURI Final Report No. 219, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/219>.
- Spinney, A., Beer, A., MacKenzie, D., McNelis, S., Meltzer, A., Muir, K., Peters, A. and valentine, k. (2020) *Ending homelessness in Australia: A redesigned homelessness service system*, AHURI Final Report No. 347, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/347> , doi:10.18408/ahuri5119001.
- Wiesel, I., Laragy, C., Gendera, S., Fisher, K., Jenkinson, S., Hill, T., Finch, K., Shaw, W. and Bridge, C. (2015) *Moving to my home: housing aspirations, transitions and outcomes of people with disability*, AHURI Final Report No. 246, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/246>.
- Wiesel, I., Habibis, D. (2015) *NDIS, housing assistance and choice and control for people with disability*, AHURI Final Report No. 258, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/258> .
- Wiesel, I., Davison, G., Milligan, V., Phibbs, P., Judd, B. and Zanardo, M. (2012) *Developing sustainable affordable housing: a project level analysis*, AHURI Final Report No. 183, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/183>.
- Zaretsky, K. and Flatau, P. (2013) *The cost of homelessness and the net benefit of homelessness programs: a national study*, AHURI Final Report No. 218, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/218> .