

Social Housing Regulation Review - Submission to Consultation Papers 2 & 3 September 2021

About West Heidelberg Community Legal – a community-based health-justice partnership

West Heidelberg Community Legal is a community legal centre that provides free legal services to vulnerable and disadvantaged people in the City of Banyule. Our services are targeted to those least able to access legal assistance, including those experiencing poverty, chronic illness, mental health issues, disability and those who are from a refugee background.

For almost 40 years, WHCL has operated a unique integrated legal service delivery model through its co-location with Banyule Community Health. On 1 July 2014, WHCL formally merged with and became a program of Banyule Community Health (BCH).

WHCL and BCH were established in 1975 as a result of community led activism demanding health and welfare services in the Olympic Village, West Heidelberg. Constructed for the 1956 Olympic Games, the Olympic Village was converted to public housing at the conclusion of the Games. Within a few years, the Olympic Village and its immediate surrounds was Victoria's largest housing estate.

In the early 1970s, as part of the impetus for social reform surrounding the Commission of Inquiry into Poverty (the Henderson Inquiry), a local social worker Mary Morgan compiled a research report identifying West Heidelberg, in particular the Olympic Village, as a "District of Special Need" due to the high levels of poverty experienced by many residents and their limited access to critical social services.

Much has changed in the West Heidelberg area since the Henderson Inquiry, however, according to the SEIFA Index of Disadvantage, West Heidelberg, Bellfield and Heidelberg Heights remain

among the most disadvantaged areas in Australia.¹ Around 30 percent of households in West Heidelberg, Bellfield and Heidelberg Heights are renting their premises from the Director of Housing, a figure that has remained fairly steady over the years and is roughly ten times the state-wide average.²

By virtue of locating their genesis within a community founded around public housing, both WHCL and BCH are founded on an acute understanding of the inseparable link between good health, social inclusion and secure, affordable and appropriate housing. This underpinning is evident across BCH's programs, and in particular WHCL, which has considerable experience in the provision of tenancy and housing-related services.

Housing and health

"It's like they can take over. It's your life, your house." A WHCL client describes finding out her landlord was taking her to VCAT.

It is universally accepted that housing is a social determinant of health. Adequate housing is protective of physical and mental health. Poor housing arrangements are linked to poor health outcomes. Social arrangements that provide widespread access to safe, secure and appropriate housing are a key element of effective health promotion.

There is a significant body of evidence, in both Australian and international contexts, that details a range of links between housing and health. It has been shown that:

- People in poor health are more likely to be in precarious housing than those in good health.
- Self-reported health status declines for individuals who experience more indicators of precarious housing, and who experienced these indicators for a longer period of time.
- There is a clear association between mental health status and the experience of insecure housing, particularly "forced moves".³

These researchers⁴ concluded:

"It is not simply that good housing and good health are merely associated or go together. For people to attain and maintain sustainable housing they need adequate, coordinated

¹ Australian Bureau of Statistics (2011), [SEIFA by Local Government Area](#), Australian Government, Canberra

² Australian Bureau of Statistics (2011), [Census of Population and Housing](#), compiled and presented by .id the population experts

³ Shelley Mallett, Rebecca Bentley, Emma Baker, Kate Mason, Deborah Keys, Violet Kolar, Lauren Krnjac, [Precarious housing and health inequalities: what are the links?](#) (2011), Australian Housing and Urban Research Institute, Hanover Welfare Services, University of Melbourne, University of Adelaide and Melbourne City Mission

⁴ Ibid, p. 16

and timely support for their health. Equally, to maintain good health people need to be in affordable, adequate, secure dwellings.”

As well as being associated with worse health status, an analysis of legal needs consistently shows that people living in precarious housing are more likely to experience legal problems, and often more than one problem concurrently. The tendency for poor health, multiple legal problems and precarious housing to co-exist is now widely recognised; as is the compounded detriment caused by the simultaneous experience of multiple social and legal problems.

This is why, along with our community, WHCL advocate for more public housing and investment in improvement to existing stock, stronger regulation of community housing and better protections and support for all Victorians who do not own the accommodation in which they reside, whether that be a house, rooming house, supported disability facility or caravan park.

A changing landscape

Our experience assisting public, community, and low-income private tenants and those experiencing homelessness provides our service with particular insight into the social, legal and health impacts associated with the lack of secure, affordable, and appropriate housing in Victoria.

Drawing on this, we have contributed to numerous inquiries and other forums about the problems associated with the decades long under-investment in public housing. The diminishing role of public housing in the provision of stable and secure housing in Victoria is evident across the state. As a proportion of all housing stock, public housing has retracted year on year for more than two decades.⁵

In Banyule, and particularly West Heidelberg, Heidelberg Heights and Bellfield, the retreat of public housing manifests as:

- unsafe housing – many people living in aged housing stock often requiring (but rarely receiving) significant structural repair;
- overcrowding – with large families sometimes living 3 or more to a bedroom while waiting more than 8-10 years for a transfer to one of the vanishingly small number of larger properties in the region;
- homelessness – extended periods living in transitional accommodation, squalid rooming houses, on couches and sheds and bungalows.

For a number of years, it has been evident that growth within the community housing sector rather than investment in public housing has been positioned as the preferred model of social housing delivery in Victoria.

In our community, various iterations of plans to “regenerate” West Heidelberg illustrate the shift.

In 2012, DHS (as it was then known) announced a 10-year plan to revitalise West Heidelberg, Heidelberg Heights and Bellfield with a goal of redeveloping 600 unsuitable or outdated public housing dwellings, using funds received from the sale of some public housing stock in the area.

Known as the Olympia Housing Initiative, initially the plan proceeded, slowly, but well with 224 redeveloped public housing dwellings delivered by June 2017. While these houses do not

⁵ Australian Bureau of Statistics (2011), [Housing assistance for renters](#), Australian Government, Canberra

comprise additional public housing stock – coming at a cost of the sale of other public housing – they are newly constructed homes, replacing stock that had passed its nominal date of structural obsolescence. In many cases the houses are appropriate to accommodate large families, a pressing need in our community. Importantly, the new stock remains owned and managed by the Department.

In around 2017, it appears that the Olympia Housing Initiative was wound down in favour of the Public Housing Renewal Program (PHRP) in West Heidelberg – a plan to redevelop the two largest public housing walk-up estates in West Heidelberg. Many families living in inappropriate and overcrowded housing conditions outside these estates – who had been advised that their properties would be redeveloped as part of the Olympia Housing Initiative – were told at the time that there are “no immediate plans” to redevelop their dwellings.

Instead, the focus shifted to another group of public housing tenants whose homes were identified for a different type of “regeneration”. The two sites nominated for inclusion in the PHRP in West Heidelberg – the Bell-Bardia estate and the Tarakan estate – have now been demolished, tenants relocated and plans under way for their transformation into higher density mixed developments, comprising private rental and community housing stock. The Tarakan estate has now been “fast-tracked” for completion as part of the Big Housing Build. The scale and composition of the development plans for both sites have changed numerous times since the proposal was first slated in 2017. However, it has been clear from early stages, that the public housing on these estates will be replaced by community housing.

Along with many others from the community legal sector whose communities are also affected by similar proposals – in numerous forums – we have shared our concerns about the impact of this shift on tenant outcomes. Our practice experience and the available evidence shows that the regulation of community housing – particularly as it relates to tenant outcomes - has not kept pace with its growth. Nor has it matched the community housing sector’s increasingly central role housing Victoria’s poorest, most marginalised and those experiencing urgent and complex needs.

The trend that had been apparent over the last decade, is now expressly stated as the direction for social housing in Victoria.

“The future is one where community housing providers will play a central role in delivering growth, improving diversity and choice to the social housing system. The public housing system will remain a central part of the system, maintaining its stock levels and benefiting from increased investment in renewal, upgrades and maintenance”.⁶

The rapid implementation of the shift described above is evident in the Big Housing Build, announced in November 2020, which will result in substantial additional public funding becoming available to rapidly grow the community housing sector.

In this context, the Social Housing Regulation Review (SHRR) is crucial. We welcome the acknowledgement that such a substantial public investment in community housing must be underpinned by appropriately robust regulation. We suggest that the central pillar informing any

⁶ Establishing a 10-Year Strategy for Social and Affordable Housing: A discussion paper prepared for the Victorian community by the Victorian Government, February 2020, p.14

assessment of existing regulation and any contemplated approach to reform must be tenants' rights, protections and housing security outcomes.

Principles for the social housing regulatory system

As a number of community legal centres jointly submitted to SHRR Consultation Paper 1, we consider that the key principles underpinning the Review should be:

- A fair regulatory system will deliver positive renter outcomes for all people living in social housing, with key measures of success being the provision of safe, secure, appropriate, and affordable homes.
- Quality data is essential to a transparent and accountable housing system. The Review should be informed by robust data analysis and future regulation should be underpinned by open and accessible data that demonstrates positive renter outcomes are being achieved and where there are areas of concern.
- There should be a clear and consistent standard of rights for everyone who lives in social housing.
- The human rights of social housing renters must be enforceable through the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
- The Review is an opportunity to improve protections for social housing renters.

We also wish to underscore the critical importance of one of the principles agreed between community legal centres and CHIA Victoria in a joint submission to SHRR Consultation Paper 1:

- No renter should be worse off as a consequence of the Review or the implementation of any of its recommendations.

“Who’s the landlord?” – terminology and scope

At WHCL, the first and most important question we ask of any tenant, or referring health worker, contacting us about a tenancy issue is – “Who’s the landlord?”. Our practice experience shows that, even absent any other information, the answer to this question is the best indicator of the urgency of legal need and the likelihood of the tenant experiencing a negative outcome – particularly where a tenant is responding to landlord-initiated action.

If a tenant identifies that they live in public housing, we know that with timely and effective support, even if they are in dispute with DFFH, the likelihood of a negative housing outcome is small, and the risk to their housing security is so marginal as to be almost non-existent. The same is certainly not true of private tenants or rooming house residents. Unfortunately, neither is it reliably so for community housing tenants.

For this reason, we infrequently use the term “social housing” in our practice, instead preferring to use the more meaningful language of public or community housing – particularly when describing tenant outcomes and experiences. We note that Consultation Paper 2 reports that Review participants have highlighted “that the system can be unclear and complex for tenants”.⁷

⁷ SHRR Consultation Paper 2, 9

We agree that this is the case. In our view, it can be difficult for stakeholders and the public also to understand the operation of the system – which is changing at an accelerating rate.

The problem is compounded by the growing use of imprecise language like “social housing”. There is a risk that such terminology obscures what we, and others in our sector, identify as the key inequity in the social housing system – the disparity between the rights, protections, and tenure security provided to public tenants and that provided to community tenants. Related to this is the gulf between the robust accountability and multiple oversight measures applied to the provision of public housing – as a function of government and those applied to community housing – as a service delivered by independent not-for-profit entities.

In our view the key opportunity presented by this important Review is to address this inequity through the recommendation of improvements to the rights and protections afforded to community housing tenants; and the development of regulatory approach that improves transparency and accountability in the community housing sector.

Of course, it is always possible to identify scope for improvement to the operation of the public housing system. We actively undertake advocacy and engage in law reform processes to bring about such change. However, we are concerned with the framing of question 31 in Consultation Paper 2: “What are the potential benefits of including public housing providers under similar regulatory arrangements as community housing?”. In our view, implicit in this framing is the mis-assessment that the regulation of community housing is more effective than that applicable to public housing. This is not borne out by our experience or the available evidence. If there is to be any harmonisation or alignment between the two key components of the social housing system – it must not be reached through any diminution of standards in public housing. In other words, a weakening of tenants’ rights and protections cannot be the cost of the growth of community housing.

We also agree with others in our sector that have queried the usefulness of the “social tenant” concept in the specific context of this Review. The best outcome for people experiencing poverty and other vulnerabilities, who are currently unable to access social housing, would be the growth of a strong social housing system which places tenant outcomes and housing security at its core. If social housing comprised a larger proportion of all Victorian housing stock, the benefits would also extend beyond those within that system. In West Heidelberg, for example, it would be much more difficult for an unregistered rooming house operator to charge upwards of \$300 for a single room in a dilapidated rooming house if there was not such a scarcity of alternative housing options.

Regulatory approach and improvements

Strictly speaking, the relationship between landlord and tenant is contractual in nature. But the object of the exchange – housing – is unlike most commodities. Access to shelter, to a home, is an inescapable human need. In recognition of this, protective and rights-based residential tenancies legislation is a key measure by which the fundamental economic disparity between landlord and tenant has been remediated to a degree.⁸ Secured as a social reform nearly 50 years ago, these laws implicitly recognise that the operation of market forces alone will not ensure

⁸ Anthony Moore (Ed.) (2008), *Commercial and Residential Tenancies*, Sydney: Thomson Law Book Co., 339.

access to stable and secure rental housing, particularly for those experiencing poverty, marginalisation or social dislocation.

The adequacy of the residential tenancy legislative framework – particularly as a means of protecting housing rights for tenants – has long been the subject of debate. The recent passage of a substantial suite of amendments to Victorian tenancy law has been characterised as reflecting the “need to rebalance the market through additional protections for a diverse population of renters”.⁹

However, while the exact balance may shift, residential tenancies legislation acts to regulate, not displace the market. Fundamentally, relationships in the private rental market are driven by economic imperatives. The quality, size and location of the homes that tenants live in will generally be commensurate with how much rent they can pay. If they lose income and can no longer pay, or if the market dictates that the rental values increase, and they cannot pay, they will leave or be evicted. If the landlord wants to change the use of their asset by selling a vacant property, the tenant will leave or be evicted.

The same is not true of public housing tenants. Public housing provision – as a function of government – operates largely outside of the market. This is in fact its purpose. As described recently by government, it is housing that “sits outside the wider housing market and is specifically targeted towards people who need it”.¹⁰ Like other public services provided by government – health and education, for instance – capacity to pay is not determinative of entitlement to access.

Given that the agreement between DFFH and public tenants, like all other residential tenancies in Victoria, is governed by the *Residential Tenancies Act (Vic) 1997*, it is instructive to detail what it is in practice that displaces the market in this relationship. Essentially, as the Panel has identified, it is the “layer of protection” provided to public tenants over and above the *Residential Tenancies Act (Vic) 1997*. This layer is comprised of a comprehensive suite of accessible and protective tenancy policies; application of the *Charter of Human Rights and Responsibilities Act (the Charter)* and the *Freedom of Information Act (Vic) 1982*; access to robust internal appeals; judicial oversight; external oversight by Victorian Ombudsman and Auditor-General.

Of course, the community housing sector also offers an additional layer of protection to tenants. However, as highlighted throughout this submission, and detailed elsewhere, policy protections are not as expansive or consistently applied, options for review of decisions are limited, and transparency and accountability measures are less rigorous. For community housing tenants this means that the “the layer of protection” setting their housing outside the market is much thinner than applying to public tenants.

In this past, this disparity has not always been openly acknowledged by stakeholders within the sector. However, we note that in Consultation Paper 2 the Panel has identified an inequity in the standards and policies applying across public and community housing.¹¹

⁹ Victorian Government, Outcomes of the Review, [Fairer Safer Housing Review of the Residential Tenancies Act 1997](#).

¹⁰ Establishing a 10-Year Strategy for Social and Affordable Housing: A discussion paper prepared for the Victorian community by the Victorian Government, February 2020, p.14

¹¹ Social Housing Regulation Review, Consultation Paper 2, p.9

In our view, the shape and impact of this inequity can be best understood by considering three related key issues¹²:

Policies: rights and protections

- *Content*: policy-based rights and protections applicable to community housing tenants are weaker than those applicable to public housing tenants.
- *Consistency*: there is no consistent standard of rights and protections within the community housing sector, and it is more difficult for community housing tenants, and their advocates, to understand how policies will be interpreted and in what circumstances and within what parameters discretion may be exercised in their application.
- *Transparency*: it is often difficult for community housing tenants to identify the policy-based rights and protections applicable to their tenancies.
- *Enforceability*: public housing tenancies are governed by a strong regulatory framework with clear avenues of internal review and options for judicial review and external complaint whereas the community housing regulator has adopted a narrow view of its scope to receive and investigate complaints.

Case study – temporary absence

Public housing

In June of 2021, WHCL received a secondary consultation query via email from an alcohol and other drug counsellor at Banyule Community Health. The counsellor said that she was working with a client who “wants to go to resi’ rehab but is worried about losing their OoH [Office of Housing] property”. The counsellor asked if this person’s “housing is protected should they go to rehab for 6 months or more”.

In their reply to the counsellor, after quickly consulting the DFFH tenancy management manual (available online), the lawyer was able to advise that DFFH have a temporary absence policy. And that under the policy, attendance at a residential rehabilitation facility is a recognised reasons to apply for a temporary absence. The lawyer explained that the client could request an approved absence of 6 months initially and might be able to request an extension in some circumstances. The lawyer also let the counsellor know that if the client was required to pay to attend the rehabilitation facility and provided evidence about that to DFFH then it should apply an additional rental subsidy to the premises.

The Department’s policy is available online via a simple internet search.¹³

A review of the DFFH policy shows that it provides tenants, other stakeholders and housing officers with a clear indication as to what interests DFFH is balancing in managing

¹² For more detailed discussion of these issues, see the Discussion Paper (Appendix 2) to the Joint CLC Submission to SHRR Consultation Paper 1

¹³ <https://providers.dffh.vic.gov.au/tenancy-management-manual-temporary-absence-operational-guidelines-word>.

temporary absence applications and how this will occur. It incorporates *Charter* based decision making, cites the need for “early intervention”, “support for complex tenancy issues”, a “focus on problem solving and negotiation” and “consistent and transparent decision making with clearly documented evidence” which “balances the need of the individual with effective and equitable utilisation of public housing stock”.

Community housing organisation 1

On 27 June 2021, a lawyer at WHCL checked the website of a community housing provider, operating in our catchment area, to ascertain whether it has a ‘temporary absence policy’. While no such policy was listed or cited on the provider’s website, a ‘welfare checking policy’, which was available online, referenced an ‘abandoned property policy’. The ‘abandoned property policy’ was not available online. But, guessing that this policy might outline the provider’s approach to temporary absences, the lawyer called the provider to request a copy of the ‘abandoned property policy’. The lawyer was asked to email that request and did so the same day.

With no response forthcoming, the lawyer sent another email on 5 August. A further follow up email on 18 August, cited the provider’s obligation under the relevant performance standards to make policies available. On 24 August – approximately two months after contact was first initiated – the lawyer received a reply email which did not contain any information about the ‘abandoned property policy’, but instead attached a copy of a ‘temporary absence policy’.

Until this time, our lawyer had no way of knowing that such a policy existed. It was not available online and was not referenced in any of the available policies that the lawyer had reviewed. Because it was not known to exist, it was not in fact the policy requested. The ‘temporary absence policy’ provided by the agency remains unavailable online. Thus, any subsequent changes made to the policy would be unknown. The ‘welfare checking policy’, which contained the initial reference to the ‘abandoned property policy’, has since been removed from the provider’s list of available online policies. The ‘abandoned property policy’ is also referenced in the ‘temporary absence policy’, and despite a further request, this policy is yet to be provided, as of September 2021.

Once provided, a review of the provider’s temporary absence policy – the operative part of which is approximately 4 paragraphs long - shows that it does not provide this CHO tenants with rights of similar standard to public tenants. It allows no scope for rent reduction instead emphasising in its first line that “tenants are required to maintain their tenancy obligations while absent including paying rent” and that failure to do so “will” result in VCAT action. It provides for a maximum period of absence of three months but indicates that “special consideration will be given to tenants in certain circumstances such as to tenants who are in respite or rehabilitation”. It does not indicate on what basis “special consideration” requests will be assessed. It does not mention the *Charter*.

Community housing organisation 2

In March 2021, our client, with the support of a specialist family violence support worker, applied to her community housing provider for an approved temporary absence and rent reduction. Her support worker advised the landlord by email that she was unsafe in her area because of family violence, that an intervention order had been sought and that she would be taking her children to stay with friends and family interstate for a period of weeks. The application form that was submitted also marked the provided tick box indicating that the reason for absence was 'family violence'.

Over a period of months, there were various exchanges between the support worker and the provider about what evidence may be required to establish that our client was paying accommodation costs elsewhere for the period she was absent. Eventually, after provision of some accommodation receipts, the provider refused our client's application on the grounds that family violence was not a recognised reason to be absent under its temporary absence policy. The provider also indicated that "while not specifically stated in the policy", it can sometimes apply discretion to approve temporary absence and rent reduction in the case of family violence, but to do so it would require "documentation from a shelter or refuge".

In the case of this CHO, its 'temporary absence policy' is available online – though it is not clearly described as such. Instead, it is subsumed in a larger document covering a range of tenancy practice management areas. However, the decision in relation to our client's temporary absence application was not made in accordance with this policy. Instead, the decision to refuse the applicant was a decision not to exercise a discretion that was not mentioned in the policy and that the tenant and her support worker did not know existed. Further, the CHO declined to exercise this discretion because of a failure to provide a type of evidence that it had known for many months did not exist because the tenant did not stay in a "shelter or refuge".

Inconsistent application of the *Charter of Human Rights and Responsibilities Act*.

As outlined, in the community legal sector Discussion Paper¹⁴, for public tenants, "the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Vic) plays a critical role in protecting human rights, particularly around eviction. DFFH takes seriously its obligation to consider the Charter and requires all staff to use tools and policies to enable consistent, fair and accountable decision-making to ensure it is acting lawfully under the Charter. For tenants of CHPs, the landscape is fundamentally different, with lack of clarity about whether the Charter applies and an inconsistent approach to applying the Charter in decision-making. Given CHPs are performing a function arguably identical to DFFH, it is crucial that CHPs have in place procedures and processes to ensure they are acting lawfully under the Charter and that human rights are protected."

We endorse the further detailed submissions of others in the legal assistance sector, including Tenants Victoria, Justice Connect, Inner Melbourne Community Legal and Victoria Legal Aid about

¹⁴ Ibid, 12

the importance of improved Charter application and enforceability across the community housing sector.

Community housing tenants are more likely to experience eviction.

In July 2017, WHCL concluded a two-year action research project – funded by the Victorian Legal Services Board + Commissioner Grants Program - examining barriers to tenant attendance at the Victorian Civil and Administrative Tribunal. Through direct client assistance, demographic data collection and analysis and the observation of 500 residential tenancies hearings at one VCAT venue, the project investigated the relationship between tenant attendance rates at VCAT and housing and health outcomes.

Overwhelmingly, our project data showed that while there was a correlation between VCAT attendance and positive housing outcome, the strongest predictor of a tenant’s likelihood of preserving their tenancy was in fact their housing tenure. While the health and social profile of tenants assisted by the project was similar across private, public and community housing tenures, outcomes were not. Specifically, at the conclusion of our assistance, no public housing tenancies had been terminated – all public tenants remained housed. The same was not true of private and community housing tenants.

The following client stories demonstrate the impact that tenure type can have on health and housing outcomes:

Jim’s story – public housing

Jim is a public housing tenant who was referred to WHCL by the Banyule Community Health medical clinic after he received a VCAT Notice of Hearing. Jim’s landlord was applying for possession of his rented premises because he had accrued substantial rental arrears over a significant period.

He had also missed multiple VCAT hearings regarding his rental arrears and had broken a number of ‘payment plans’ to repay the money owed. Jim had been a long-term client of BCH. He had been diagnosed with multiple physical and mental health problems and identified as a current ice user (dual diagnosis). He also had a long history of other substance use and had disengaged from addiction treatment.

Jim initially engaged with the lawyer and his social worker about his tenancy problems. Immediately prior to his VCAT hearing, however, he ceased responding to calls and did not attend his hearing. His landlord obtained a possession order but the legal service was unable to contact Jim after his hearing.

Subsequently, Jim re-presented to the health service and approached the social worker in the foyer asking for help to avoid eviction.

By this stage Jim’s landlord had purchased a warrant of possession and had set a date to change the locks at his house. The lawyer, social worker and general practitioner helped Jim apply to VCAT for a review and rehearing of the possession order. They also helped Jim re-engage with his AOD counsellor.

Jim continued to be difficult to contact and frequently missed appointments arranged with the legal service. However, he attended his review hearing and entered into another 'payment plan' to repay the outstanding arrears.

By the end of Jim's involvement with the project, he remained in his housing. He continued to struggle with many complex health and social issues but was re-connected with addiction treatment.

Robin's story – public housing

Robin had lived in her public housing property for 20 years. She lives with and cares for her adult son who has a disability. Robin attended the legal service after receiving two Notices to Vacate – alleging 'illegal use' and 'rental arrears'.

Robin was also dealing with other legal issues, had a history of substance use and disclosed that she had recently experienced family violence.

When the lawyer and social worker first met with Robin she was highly agitated and distressed about the possibility that she may lose her house. She said that she was living with her "boxes packed" ready for the police to turn up at her door and that she felt "powerless, scared and confused."

Over the 12 months that the legal service was engaged, Robin and the lawyer attended a number of hearings at VCAT and engaged in protracted negotiations with the local housing office about her matter.

Robin was supported by the social worker to access health and mental health supports, financial counselling and emergency relief, assistance with Utility Relief Grants, safety planning for family violence risk, and at times immediate support for suicidal ideation related to mental and emotional despair at her complex tenancy situation.

After her legal case was successfully resolved and the threat of eviction, was no longer present, Robin spoke to the social worker about her experience being helped by the project. Looking back, she said: "I was terrified, I was suicidal and had lost weight ... I felt there was no way out". She described feeling more settled and less anxious once her tenancy problem was resolved.

Tina's story – community housing

Tina attended WHCL after her community housing landlord served her with a Notice to Vacate. The Notice to Vacate was based on an allegation that she had failed to comply with a compliance order related to allegations of a minor nature (no violence was alleged) about the behaviour of one of her visitors. Tina had a serious mental health condition. She had missed the compliance order hearing at VCAT because she often went for long periods without checking her mail.

Tina's lawyer contacted her landlord to discuss its application for possession with the aim of avoiding an eviction because of allegations about another person's behaviour. In particular, the lawyer asked for a 3-month adjournment of the landlord's application to allow Tina an opportunity to demonstrate an understanding of and compliance with her tenancy obligations including as they related to visitors' behaviour. Tina's community housing officer would not agree to adjourn the proceedings on this basis and instead elected to seek to evict Tina.

At Tina's eviction hearing, the landlord was represented by a different staff member – a team leader – because Tina's housing officer was on leave. Before the hearing started, the team leader approach Tina and her lawyer and said that they had re-considered their position and would agree to adjourn the application for 3 months on the basis that Tina signed a "behavioural agreement". If no further issues were reported to the landlord in the 3 month period, the landlord agreed it would withdraw its application to evict Tina.

Tina and her lawyer attended the landlord's offices a few days later where Tina had a lengthy and productive discussion with the team leader before signing an agreement prepared by the landlord in which she promised to comply with her general tenancy obligations. The agreement acknowledged that the landlord would renew its application for possession if she did not comply.

Around three weeks later Tina returned to WHCL having received notice that the landlord had renewed its application for possession. Tina's lawyer immediately contacted the landlord to ascertain if they have received new allegations about Tina's conduct. The lawyer spoke with Tina's original housing officer who had returned from leave. The housing officer was unable to identify any complaints made *after* the date that Tina signed the agreement. However, she said that "additional information" about earlier complaints had come to light and that she now had an Affidavit to support one of the earlier allegations.

Tina's lawyer attempted to explain to the housing officer that the parties' intention in adjourning the eviction proceeding was to give Tina a chance to demonstrate compliance with her tenancy obligations and avoid eviction, not to allow time for the landlord to gather better evidence about previous allegations. However, the housing officer insisted on proceeding. Despite the lawyer asking to speak with the team leader involved in making the agreement with Tina, the team leader did not ever return her call. Tina was evicted into homelessness less than a week before Christmas.

We also refer the Panel to the findings of our research report – *The Social Cost of Community Housing Growth (Appendix 1)* – which provides further detailed analysis of the available evidence on evictions in community and public housing.

Recommendations

1. For profit housing providers should not be able to be registered as social housing providers.
2. "Affordable housing" should not be included within the social housing regulatory framework.

3. The development of Model Rules for the community housing sector that are of a standard equivalent to the tenancy management policies of DFFH including but not limited to the key areas of temporary absence, disability modification, tenant breaches, rent setting, family violence (as relevant to transfer, breaches, damage etc.), creation of tenancy and eviction.
4. These Model Rules should be the deemed policies of all community housing organisations (with applications to opt-out or modify particular provisions allowed only on narrow grounds and approved only where a CHO can demonstrate a genuine local need which will be better met by an alternative policy provision).
5. All tenancy management policies of CHOs (whether the Model Rule approach is adopted or not) be required to be consistently described across the sector, be publicly and readily available in a variety of formats.
6. That the Victorian Government make legislative amendments to clarify that CHOs are functional public authorities under the *Charter*, either by amending the *Charter* or introducing regulations prescribing CHOs as public authorities.
7. That the Victorian Government amend the *Housing Act* to:
 - a. Require CHOs registered under the *Housing Act* to have a constitution and rules which include an acknowledgement of being bound by the *Charter* and have a stated object and purpose to act compatibly with and promote human rights in their management of housing stock;
 - b. Require that CHOs applying for registration under the Act should include a report on how its policies provide for *Charter*-compatible decision making;
 - c. Create a new performance standard that requires registered CHOs to have public facing statements about the obligation under the *Charter* (website, email signature, tenancy agreements) and have policies equivalent to DFFH that embed *Charter*-compatible decision making in all areas of tenancy management.
 - d. Give the community housing regulator the power to revoke or suspend an agency's registration for repeated breaches of the *Charter*.
 - e. Enable tenants to make complaints to the community housing regulator about breaches of the *Charter*.
 - f. Enable a complainant to refer a direction or refusal to make a direction of the community housing regulator to Review and Regulation List of VCAT for merits review.
8. That the community housing regulator prepare and publish guidance on how the *Charter* should be considered and applied in decision-making.
9. That the community housing regulator determine new performance standards that frame registration under the *Housing Act* as requiring eviction to be treated as a mechanism of last resort, rather than an "indicator" of compliance.
10. That the Victorian Government amend the definition of 'agency' in the *Freedom of Information Act 1982* (Vic) to include any agency registered under s 84 of the *Housing Act*.

Allocations – a system based on need, fairness, and transparency

Allocation practices in community housing and public housing differ considerably, despite both managing allocations through a single list – the Victorian Housing Register. For community housing providers, participation in the Victorian Housing Register is commonly understood to be conditional on the adoption of a target to allocate 75% of vacancies to applicants with the greatest need – those on the “Priority Access” list. The remaining 25% of allocations can be drawn from the “Register of Interest” category of the VHR which has much higher income and asset limits, comparable to applicable limits in Affordable Housing categories.

In contrast, public housing vacancies – other than in exceptional circumstances detailed in the relevant operational guidelines – are allocated by housing need and wait list order:

“Subject to which Priority Access category the household sits in, the household on top of the list by effective date and category will be offered the next available property that is appropriate to that household's needs.”¹⁵

Prior to the creation of the VHR in 2016, approximately 85% of allocations from the waitlist were to applicants assessed as having “Priority Access” needs.

Community housing providers retain a substantial degree of flexibility in managing allocations – even with the VHR framework. Discretion can be exercised in a range of ways. To start with, when selecting applicants from the VHR, CHOs are not required to allocate housing in accordance with VHR order – generally described as being “by effective date” of application approval. Instead, CHOs can review the VHR and select the most “suitable” applicant irrespective of the length of time since their application was approved.

A proportion of a provider’s properties are usually exempted from VHR requirements altogether. In these instances, only an “agreed” or “targeted” portfolio of a provider’s properties are subject to the 75% target. It is not readily apparent on what basis the “targeted” portfolio category is set apart from other non-VHR housing stock within each CHO and whether the determination of which properties are subject to VHR targets is made exclusively by participating CHOs. If this categorisation is made internally by CHOs, it is not clear if it is subject to active regulatory oversight. If there is regulatory oversight of this critical categorisation, it would be appropriate that it be publicly available.

Within the VHR framework, individual CHOs are also permitted to create and apply additional eligibility criteria to allow for targeted offers of housing to particular groups. Examples of such cohorts include people with particular needs (e.g. older Australians or people with a disability), or people with a connection to a particular area, but can also include, for instance, “people who are in paid employment”.

The allocation policies of many CHOs also describe a process whereby applicants can be selected from outside the VHR but required to “complete a VHR application before or shortly after being

¹⁵ Public housing allocations operational guidelines: 1. Legislative framework and decision making principles, p.8, <https://providers.dffh.vic.gov.au/public-housing-allocations-operational-guidelines>

offered housing for the purposes of reporting against the VHR allocations target". Possible sources of such applicants can include referrals from support providers, other community housing organisations and real estate listings. This means that some housing allocations categorised as being made from the VHR are made to applicants who were not existing VHR applicants. Of course, because it is known that housing stress is experienced by many more people than are applicants on the VHR, there is every likelihood that these allocations are made to people in need of housing support. However, for those Victorians that are approved applicants on the VHR, there remain important equity and accountability considerations which are undermined by a process that allow CHOs to effectively operate parallel waitlists – with allocations from these lists categorised as VHR allocations.

Likely because of a combination of the factors described above, there is evidence that in practice, allocations by CHOs from the VHR "Priority Access" list fall well below the 75% target. For example, one large CHO (managing more than 2000 properties) reported in its 2019-20 annual report that in the past year 41% of vacancies were allocated to "Priority Access" applicants. Across the sector, Housing Registrar data shows that the percentage of new long-term tenancies allocated by CHOs from either category of the VHR was 43% in 2018-19 (Varrasso 2021).

It may be the case that the proportion of allocations from the VHR will move closer to VHR targets over time. However, if compliance with VHR targets is not actually yet required of CHOs, this is not well known. Neither is it widely known how great the distance is between current allocation practices and compliance with nominated VHR "Priority Access" targets. If there is progress towards VHR targets, this cannot be assessed on information currently publicly available. The lack of clarity and transparency about CHO allocation practices within the VHR framework means that it is very difficult, if not impossible, to assess the impact that the participation of CHOs in the VHR framework has had the fair and appropriate allocation of scarce social housing resources.

Without evidence demonstrating otherwise, it's reasonable to suggest that permitting CHOs to maintain flexible and individualised allocation practices, runs directly contrary to a key stated objective of the single waitlist. Specifically:

"The use of a single register to both manage applications on the basis of consistent eligibility and assessment of relative housing need will provide the basis for better understanding of overall need, and outcomes achieved through the current social housing system."¹⁶

If CHOs are permitted to retain flexible allocation practices, concerns about equity and accountability in the allocation of social housing resources will only become more acute as this sector grows. Unchanged, over time, proportionately fewer allocations from the VHR will be made under the more transparent and fair allocation processes of DFFH.

One of the key rationales generally offered for CHOs being permitted to retain flexible allocation practices relates to the "diversity" of the community housing sector. As described in Consultation Paper 2, flexible allocation policies mean CHOs "can choose tenants that align with their organisation's mission and focus".¹⁷ Given the expansion of this sector, its receipt of significant

¹⁶ Regulatory Impact Statement, [Director of Housing Determinations 2018](#), p.51

¹⁷ Consultation Paper 2, p.12

public investment and its increasingly central role in housing Victoria's most vulnerable – it is no longer appropriate that CHOs retain such discretion.

Equally, it is less and less the case that the CHOs – certainly the largest among them – share any resemblance to the localised, community-based organisations with distinct missions that may have populated the sector in decades past. The 5 largest CHOs (by number of properties managed) registered with the Housing Registrar now each manage in the vicinity of 2000 properties. When ranked by assets held, the largest 5 CHOs each control an average of around \$630 million in assets – more than \$3 billion in total.¹⁸

A comparison of the stated mission of each of the largest CHOs demonstrates that the only one on either list, that could be described as having a purpose at all distinct from any other – is Aboriginal Housing Victoria (AHV). AHV, of course, targets its housing to Aboriginal or Torres Strait Islander People living in Victoria but otherwise has a mission which aligns with other large providers. Of the remaining large providers, all operate across multiple regions of metropolitan Melbourne, some also within regional Victoria and others still in a number of states. Indeed, since the announcement of the Big Housing Big, the Housing Registrar has reported an increase in inquiries from interstate providers as “new entities look for opportunities to gain access to funding and deliver community housing services”.¹⁹ Over the next five years, the community housing sector in Victoria will be the recipient of the overwhelming bulk, if not all, public funding directed towards social housing growth. It is not appropriate that this sector be allowed to eschew the additional accountability measures which must follow.

Finally, the evidence shows that in 2018-19, 29% of new rooming house residencies allocated by CHOS were allocated through the VHR. Rooming house residencies are a distinctly less secure form of housing than a tenancy. The ABS counts residents of rooming/boarded houses as part of population experiencing homelessness on census night. Yet it appears that allocations to rooming houses are generally categorised as allocations to “long-term” housing.

Recommendations:

11. The following should be reported annually and made publicly available, in disaggregated form:
 - a. the proportion of a CHOs stock list that is subject to VHR targets;
 - b. the detail of any agreement between DFFH and a CHO to exempt some properties from VHR targets, including detail about the reason that a CHO seeks to exempt some properties from VHR targets;
 - c. the detail of any additional eligibility criteria listed by CHOs in their VHR agreements, including the type of property to which they apply (e.g rooming housing, NRAS or other long-term housing);
 - d. the total number of VHR allocations made by each CHO, including the number that were not selected from the VHR but were required to submit a VHR application at or around the time of allocation;
 - e. the proportion of VHR allocations from each broad VHR category “Priority Access” and “ROI” – for each CHO and DFFH - along with the number of allocations made from each priority access category listed in DoH determinations;

¹⁸ Housing Registrar, Public Register, <https://chimes.force.com/publicregistrar>

¹⁹ Housing Registrar, Regulatory Update Report 2020-21

- f. the total number of rooming house allocations for each CHO from the VHR;
 - g. the income source and level of each applicant allocated housing under the VHR
12. An independent review of the operation of the VHR should be commissioned, including to assess the impact that the integration of CHOs within the VHR framework has on the fair and transparent allocation of housing and what changes could address any detrimental impacts identified.

Data, reporting and performance measures – meaningful and accessible information essential for accountability

There is a paucity of publicly available data about the activities of social housing landlords, particularly as they relate to renter outcomes. The data that is available does not readily allow for comparative analysis – be it within the community housing sector, which is populated by dozens of agencies, or between public and community housing. In a context where social housing provision in Victoria is characterised by a clear shift towards community housing growth, it is impossible for renters, the public or government to understand and assess the impact of that dynamic without open, accessible, and meaningful data – particularly about tenant outcomes. It is important to emphasise that genuine accountability demands that any person – be they involved in the housing, legal or community sector or not – be able to access meaningful information that enables them to undertake this assessment. Some examples illustrate the inadequacy of currently available data and performance measure reporting.

Evictions

At present, public housing eviction numbers are not publicly available except through scattered journalistic and academic sources. Aggregated community housing eviction rates (expressed as a proportion of exits) are published by the Housing Registrar in its annual Sector Performance Report, but the actual number of evictions is not. Prior to 2021, more detailed Housing Registrar data (disaggregated but de-identified) about CHOs (including exits and evictions) was published on DataVic.¹ This dataset was unlisted in early 2021 and replaced with published Performance Report for each registered CHO. The Key Performance Measures contained within the Performance Reports were developed in consultation with a working group comprising CHOs and CHIA Vic. Evictions and exits are not a reported Key Performance Measure in the newly implemented Performance Report model.²⁰

Differences in allocation practices between public and community housing (described above) likely lead to a higher intake of moderate-income tenants in community housing. To properly compare the likelihood of eviction in public and community housing, meaningful analysis must control for likely demographic differences between public and community housing tenant cohorts. In other words, comparative eviction rates must be measured in proportion to tenancies with similar levels of income and other indicators of disadvantage.

²⁰ Housing Registrar, Regulatory Update Report 2020-21, p.19

Housing Registrar exit data does not list exit reason. It is not clear if this is recorded at a sector level, although some CHOs reference this information in some sources. Until 2013-14 Housing Registrar data listed sector eviction data by reason. This information is no longer available. The absence of this data makes it difficult to understand how many community housing tenancies are terminated prior to the execution of a Warrant of Possession under the *Residential Tenancies Act 1997* (Vic) but after some other “push” action by a CHO (e.g. service of Notice to Vacate or Application to VCAT). Further, other reasons for exit, if recorded and reported, could provide important insights into the experiences, and needs of social housing tenants and their housing outcomes.

Performance standards

The problems caused by a lack of data are compounded by an absence of accompanying data definitions. For example, the Housing Registrar monitors CHO compliance with sector performance standards established under the *Housing Act 1983* (Vic). The full criteria, evidence and data definitions used to assess compliance with performance standards are not made publicly available.

Performance standards are broadly defined, allowing “... measures of performance [to be] assessed with reference to the individual registered agency’s scale and complexity of operation”.²¹ The criteria by which a registered CHO is deemed compliant with performance standards are not transparent. The 2019-20 Housing Registrar Sector Performance Report assigned a “satisfactory benchmark range” of 5-10% for the key performance measure of evictions, with evictions being expressed as a percentage of exits from community housing. No explanation is provided as to why evictions are measured as a proportion to exits rather than tenancies, or why “5-10% of exits” being evictions is deemed to fall within a “satisfactory” range.

Of note, the Housing Registrar evictions “benchmark range” defines an eviction rate of less than 5% as the “preferred” benchmark. This is despite the 2019-20 Sector Performance Report indicating that this “preferred” benchmark had not been met by the sector in any of the previous 5 years reported. The Report, however, offers no discussion about what this consistent failure to meet the preferred “benchmark” reflects or whether regulatory intervention might be appropriate. Further, the absence of easily accessible disaggregated eviction data makes it impossible to “benchmark” individual CHOs against sector standards.

This means that on arguably the key tenant outcomes measure – evictions and exits – public scrutiny cannot easily be applied to the performance of individual CHOs under the current data and reporting frameworks. If improved “diversity” is to be held out as one of the virtues of the expanded community housing sector, it is reasonable that stakeholders, government, and the public be able to access data that enables assessment of CHO performance at the level of the individual provider. This is particularly the case, if as the Panel has identified, “regulation provides a tool to address poor performing providers”.²²

The precise definition of ‘long term housing’ used by the Housing Registrar is also not readily available. The Housing Registrar does not distinguish tenancies managed under National Rental Affordability Scheme or tenancies which are exempt from the VHR in its counts of long-term

²¹ [Performance standards for registered agencies](#), *Housing Registrar 2015*, p.15

²² SHRR Consultation Paper 2, p.5

community housing tenancies. This creates ambiguity about the meaning of social housing when applied to the community housing sector and makes comparison with public housing difficult.

Recommendations:

13. That community housing performance standards are phrased as “mandatory requirements” rather than “indicators”.
14. The following should be reported at reasonable intervals and made publicly available – or provided upon request – in disaggregated and identified form:
 - Data that the Housing Registrar collects in relation to community housing reporting against performance standards
 - Comparable eviction and exit data across the social housing system (public housing, community housing – disaggregated by provider (for CHOs) and by tenure type (transitional, rooming housing etc), including, where possible:
 - o Notices to Vacate served
 - Rent arrears
 - Other reasons
 - o Applications to VCAT for an Order of Possession (or Termination Order during COVID-19 temporary laws)
 - o Applications to VCAT for, and executions of a Warrant of Possession
 - o Number of and reason for tenant exit
 - o Number of Breach of Duty Notices issued to tenants
 - o Number of applications for Compliance or Compensation order made to VCAT
 - Tenancy and eviction data should also be able to be disaggregated by tenant demographics, including, where possible:
 - o By allocation basis (Register of Interest, Priority Access or non-VHR)
 - o Income source
 - o Family type
 - o Aboriginal and Torres Strait Islander identity
 - Number of disability-related housing modification requests made (including the number of successful applications, the average spend and median spend)
 - Number of temporary absences granted
 - Number of repair request applications made at VCAT
 - Rent arrears –
 - o average number of days in arrears
 - o average days of rent arrears before application to VCAT
 - Rent calculation –
 - o proportion of tenants paying more than 25% of income
 - o proportion paying more than 30% of income
 - o proportion paying market rent
 - o proportion paying a ‘service charge’ in addition to rent.

ⁱ See Appendix 1, Dino Varrasso, *The Social Cost of Community Housing Growth*, West Heidelberg Community Legal (2021), p. 14 for re-identified eviction data.

The Social Cost of Community Housing Growth

Evictions and allocations in Victorian social housing

Dino Varrasso

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ABOUT THIS REPORT

The purpose of this report is to describe the impacts of Victorian social housing arrangements upon outcomes for social housing tenants. It is the result of a research project conducted by West Heidelberg Community Legal, a program of Banyule Community Health. The project has been funded by the Victoria Law Foundation. The findings presented below are a summary of key findings to date, compiled from a final report.¹

Dino Varrasso

Researcher / Author

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INTRODUCTION

Over the past two decades community housing appears to have replaced public housing as the preferred form of social housing management. This has caused the share of social housing managed by the community housing sector to increase significantly.

However, the growth of community housing has not arrested the decline of social housing stock in Victoria and nationally. Community housing growth has been accelerated by the practice of community housing organisations assuming management over existing public housing properties.

The Victorian community housing sector has received criticism for its tenancy management practices, inadequate protection of tenants' rights and more selective allocation practices (See: Justice Connect 2017; Hurren 2020).

This report assesses these claims in light of empirical evidence. It compares exit and eviction rates, along with allocation practices, in Victorian public housing with those in social housing managed by not-for-profit community housing organisations. The findings of this report only refer to social housing in Victoria unless otherwise stated.

a. Summary of key findings

The community housing sector is able to allocate a greater proportion of moderate income tenants than public housing

- The social housing waiting list (known as the Victorian Housing Register) allows community housing organisations to allocate upwards of 25% of vacancies to tenants with moderate incomes, whereas public housing tenancies are allocated in order of priority and level of need.

Rooming houses are counted as long term community housing, despite offering a less secure form of housing

- Roughly 1 in 10 community housing tenants defined as 'long term' reside in rooming houses.
- Community rooming house tenants exit at 3 times the rate, and are evicted at between 3 and 5 times the rate, of other long term community housing.
- Despite providing less secure accommodation, a significant proportion of rooming house tenancies are allocated from the same list as mainstream social housing.

A higher proportion of community housing tenants face eviction than public housing tenants

- The community housing sector managed 17% of all long term social housing tenancies yet accounted for 44% of all social housing evictions over a 7 year period.
- Long term community housing tenants were 3 to 5 times more likely to face eviction than public housing tenants, or 2 to 3 times more likely when rooming houses were excluded.

A subset of the largest community housing organisations are responsible for a disproportionate share of evictions

- From 2012-13 to 2018-19 the 3 biggest community housing evictors managed 34% of long term community housing (excluding rooming house) tenancies, yet accounted for 53% of long term (excluding rooming house) evictions.

Community housing organisations are more likely to initiate VCAT proceedings

- CHOs managing long term housing were 3 times as likely to initiate VCAT proceedings than the Director of Housing (the Victorian public housing landlord).²

b. Data sources

This research uses data from two key sources to examine tenancy trends and allocations practices within the community housing sector.

Housing Registrar Registered Agencies Key Performance Measures data (Housing Registrar 2020)

- This dataset contains de-identified information about the community housing (CH) sector including the number of tenancies, exits and evictions of individual community housing organisations (CHOs). It was published on DataVic by the Department of Treasury and Finance until early 2021, when it was unlisted. A number of large CHOs were identified in this dataset and eviction trends were identified across several years.

VCAT Residential Tenancies List daily hearing lists dataset

- Since May 2020 data has been collected from published daily hearings lists as part of this research. This information is published on the 'Upcoming Hearings' section of the VCAT website. The data presented in Chapter 5 is a snapshot of residential tenancies hearings in the 12 months from May 1 2020 to April 30 2021. It shows the number of VCAT hearings in which a social housing landlord was the applicant and identifies each social housing landlord applicant.

Analysis of these datasets was combined with a comprehensive literature review including community housing 'grey literature' (e.g annual reports, internal policies, position papers and website material). A full description of the sources, research methodology and data specifications that inform the findings of this report will be included in a final research report or can be obtained on request.

c. Background

“Social housing” is an umbrella term describing two different types of government subsidised housing: public housing and community housing.

Public housing is owned and managed by state and territory governments. Nationally, the agencies responsible for public housing administration are referred to as state housing authorities (SHAs). In Victoria, the agency is now called Homes Victoria (a trading name of the Director of Housing). Homes Victoria sits within the Department of Families, Fairness and Housing.

Community housing is owned and/or managed by not-for-profit organisations known as community housing organisations (or providers) (CHOs). The community housing sector is reliant on government subsidy, rents and market funds. It is regulated by the Victorian Housing Registrar.

In Victoria, as in most of Australia, investment in social housing has not kept pace with population growth and is insufficient to meet demand for secure low-cost housing. Commonwealth government contributions to Commonwealth - State Housing Agreements more than halved between 1981 and 2008 (Groenhart & Burke 2014 p. 12).

Nationally, social housing stock has declined as a proportion of all housing stock. Households renting from a social housing landlord dropped from 7.1 percent of all dwellings in 1991 to 4.2% in 2016 (AHURI 2017). In Victoria, the decline has been the most precipitous - the proportion of social housing dwellings in Victoria sits below the national average at 3.2% of dwellings.

In the context of growing scarcity, public housing allocations have increasingly been targeted to groups experiencing the highest level of disadvantage (Hall & Berry 2004; Troy 2012). This has led to a loss of rental revenue, compounding the effect of Commonwealth funding cuts (Pawson, Milligan & Yates 2020 pp. 100-107).

By the 2000s, most state housing authorities were in deficit, leading to diminished outlays on maintenance and refurbishment, and ageing public housing stock (Lawson et al. 2018 p. 34).

As social housing has shrunk relative to all housing types, the proportion of social housing delivered by the community housing sector has increased.

In the early 2000s, a consensus emerged amongst state and territory governments that community housing growth was the way forward for social housing. By 2009 an ambitious intergovernmental agreement pledged to expand community housing to 35% of social housing stock by 2014 (Housing Ministers' Conference 2009).

Community housing has been characterised as the more cost effective form of social housing provision. This is because the community housing sector is less dependent than public housing on state government funding, and its debts do not accrue on the public ledger (Lawson et al. 2018 p. 35; Pawson, Milligan & Yates 2020 pp 114-15).

In Victoria, community housing organisations can charge higher rents and claim commonwealth payments to which public housing is not entitled. The CH sector is able to charge tenants up to 30% of income on rent at the commencement of a tenancy and additionally claim the full amount of Commonwealth Rental Assistance (CRA) received by its residents. Public housing tenants are charged up to 25% of income on rent and are not eligible for CRA.

In Victoria, community housing is now the sole category of social housing to have experienced growth in over a decade. The proportion of all Victorian social housing dwellings managed by CHOs increased from 11.5% in 2009-10 to 20.5% in 2019-2020 (AIHW 2010; AIHW 2021). Meanwhile the "... total stock of public housing [in Victoria] decreased by 581 dwellings between 2006 and 2016" (VAGO 2017).

Discussion of the growth of the community housing sector is often centred around its cost effectiveness as a form of social housing provision. In this view, the success of the community housing model is measured by its ability to generate government savings, rather than achieve social outcomes.

However, while investment into community housing can reduce the cost to government of social housing, it may also lead to diminished social outcomes.

For example, Johnson et al. (2019) found that "*public housing [appears] to be a very strong protective factor reducing risks of homelessness [...] community housing on the other hand appears to not offer the same level of protection.*"

Chapter 1

Social housing allocations

Key finding: The community housing sector is able to allocate a greater proportion of residents with higher incomes than public housing

Social housing tenancies are allocated through the Victorian Housing Register (VHR), a joint waiting list for public and community housing established in 2016.

The VHR is separated into lists of "Priority Access" and "Register of Interest" applicants.

- **Priority Access** ("Priority") applicants are low income tenants categorised according to their level of need (e.g. priority transfer, homelessness, family violence, special housing needs).
- **Register of Interest** (ROI) applicants are subject to higher income and asset limits than Priority Access applicants.

Eligibility criteria for both categories are set out in determinations issued by the Director of Housing.

Table 1: Victorian Housing Register income limits as of April 2021

Priority access applicants		Register of Interest applicants	
Household	Weekly income	Household	Weekly income
Single person	\$593	Single person	\$1059
Couple, no dependents	\$1025	Couple, no dependents	\$1621
Family (one or two dependent)	\$1062	Family (one or two dependent)	\$2186
Each additional dependent child	\$37	Each additional dependent child	\$355

Source: DFFH (2021)

However, allocation rules in community housing and public housing differ considerably, despite managing allocations through the same waiting list. In practice, the community housing sector seeks to maintain a flexible approach to allocations:

"... obligations to house the poorest tenants from [public housing] waiting lists creates tensions with CHP viability and leverage capacity, [and are] a source of industry conflict in Victoria" (Lawson et al. 2018 p. 36)

Public housing offers of housing are made in accordance with the Victorian Housing Register's order of prioritisation:

“Subject to which Priority Access category the household sits in, the household on top of the list by effective date and category will be offered the next available property that is appropriate to that household's needs.” (DFFH 2019)

Community housing organisations allocate 75% of vacancies from the Priority list, while the remaining 25% can be allocated from the ROI list. Priority allocations do not follow the order of the waitlist (Hurren 2020). Moreover, CHOs can make fewer allocations from the Priority list than the mandated 75% of vacancies, or otherwise be more selective about who is allocated housing.

Director of Housing (2018) determinations allow CHOs to:

- deem properties exempted from VHR agreements
- establish additional eligibility criteria to target properties to specific demographic groups, for example on the basis of income source (*see footnote for example*)³
- make allocations made through nominated support agencies (e.g homelessness services)
- categorise allocations made from the higher ROI income and asset thresholds as Priority list allocations in particular instances - for example where social housing tenants are residing in properties which are to be “sold, redeveloped or better utilised” (p. 23)

CHOs may also seek applicants from outside of the waiting list and require them to complete a VHR application prior to being allocated, in order to meet VHR priority targets (Baptcare 2021 p. 3).

VHR targets only apply to so called 'targeted' social housing dwellings, driving the actual proportion of social housing dwellings that are subject to VHR requirements below targets. For example, CHIA Vic (2018) indicated that properties funded under the National Rental Affordability Scheme and the Nation Building Economic Stimulus Plan were excluded from the VHR at the time of publication in April 2018. Housing Registrar (2020) data shows that only 43% of new long term community housing tenancies were allocated from the VHR in 2018-19 (*see Chapter 2, Table 4*).

As such, the VHR framework affords CHOs flexibility to allocate properties to moderate income tenants exceeding the 25% ROI threshold. This practice may be reflected in the larger proportion of the higher income social housing tenants residing in community housing (AIHW 2020, *see footnote*)⁴.

Chapter 2

Rooming houses as social housing

Key finding: Rooming houses managed by community housing organisations are counted as long term social housing, despite offering less secure housing

According to Housing Registrar (2020) data, the community housing sector was managing 14,949 long term social housing tenancies⁵ on June 30 2019.

The category of “long term” community housing included 1679 tenants residing in rooming houses (RH), or 11% of total long term community housing.

Rooming houses (RH) are dwellings in which multiple people reside and share common areas, access points and some facilities.

In practice, high rooming house resident exit and eviction numbers call into question the appropriateness of its categorisation as a form of long term housing.

Table 2: Social housing exits⁶ by program and housing type 2014-15 to 2018-19.

	Public Housing	Long Term excl. RH	Rooming Housing	Transitional housing
2014 - 2015	5.8%	12.4%	34.8%	102.2%
2015 - 2016	5.7%	11.2%	38.3%	96.6%
2016 - 2017	5.8%	10.7%	35.0%	91.6%
2017 - 2018	4.8%	11.3%	36.6%	76.5%
2018 - 2019	4.6%	10.2%	34.7%	74.2%

Source: Housing Registrar 2020

An average of 36% of residents residing in community housing managed rooming housing ended their tenancies each year from 2014-2015 to 2018-2019. The average RH exit rate was about 3 times higher than the exit rate applicable to long term community housing (excluding rooming houses), and 6 times higher than exits from public housing (*Table 2*).

A recent study analysed administrative data from 1900 tenancies at Unison housing (a Victorian CHO) which had commenced on or after 2014. It found that 52% of rooming house residents exited within 12 months, compared to 17% of long term residents (excluding rooming house residents) (Taylor & Johnson 2021).

From 2010-11 to 2018-19, the proportion of CH tenants experiencing eviction from rooming houses was between 3 and 5 times greater than in other forms of long term housing managed by community housing organisations (*Table 3*).

Table 3: Community housing evictions by housing type, 2010-11 to 2018-19.

	Long Term excl. RH	Rooming Housing	Transitional housing
2010 - 2011	1.1%	3.7%	3.5%
2011 - 2012	1.4%	5.2%	3.8%
2012 - 2013	1.3%	3.6%	3.6%
2013 - 2014	1.4%	3.5%	4.8%
2014 - 2015	1.2%	4.0%	4.6%
2015 - 2016	1.1%	4.8%	4.8%
2016 - 2017	1.0%	4.2%	5.1%
2017 - 2018	0.9%	4.5%	4.6%
2018 - 2019	0.8%	4.2%	4.4%

Source: Housing Registrar 2020

The rate of eviction from rooming houses was roughly equal to that of transitional housing (THM). THM is short-term accommodation intended to act as a stepping stone to more stable housing. Transitional housing is a separate housing support program with particular funding arrangements and a distinct allocations framework.

Conversely, rooming housing is dissolved into the broader category of long term community housing in multiple sources (see footnote)⁷. Unlike THM, rooming house residencies are allocated through the VHR along with other long term community housing tenancies and public housing tenancies.

Table 4: % of new CH tenancies allocated through the social housing waiting list^{8 9 10}, 2015-16 to 2018-19

	% of new LT excl. RH tenancies from waiting list	% of new RH tenancies from waiting list	% of new LT incl. RH tenancies from waiting list
2015-2016	26%	18%	23%
2016-2017	64%	23%	53%
2017-2018	48%	12%	38%
2018-2019	48%	29%	43%

Source: Housing Registrar 2020

Table 4 shows that a not insignificant proportion of new rooming housing residencies - 29% in 2018-19 - are allocated through the VHR.

This shows that social housing applicants being allocated from the VHR to community housing are allocated to rooming houses. In other words, VHR targets (and CHO reporting against these targets) likely over-represent the number of Priority list applicants being allocated to social housing that is genuinely long term and secure.

Chapter 3

Comparing social housing evictions

Key finding: A higher proportion of community housing tenants face eviction than tenants in public housing

The community housing sector terminated a **total of 1974 tenancies** by eviction in the decade from 2009-10 to 2018-19, or 1189 when rooming house residencies were excluded.

Table 5: Evictions % of tenancies in social housing, 2010-11 to 2018-19

	Public Housing		Long Term incl. RH		Long Term excl. RH	
	evictions % of tenancies	# of evictions	evictions % of tenancies	# of evictions	evictions % of tenancies	# of evictions
2010 - 2011	0.3%	200	1.5%	138	1.1%	87
2011 - 2012	0.4%	243	2.1%	227	1.4%	122
2012 - 2013	0.5%	304	1.7%	220	1.3%	141
2013 - 2014	0.6%	363	1.7%	242	1.4%	165
2014 - 2015	0.5%	314	1.6%	241	1.2%	154
2015 - 2016	-	-	1.6%	235	1.1%	141
2016 - 2017	0.4%	275	1.4%	202	1.0%	121
2017 - 2018	-	-	1.4%	205	0.9%	115
2018 - 2019	0.3%	166	1.2%	173	0.8%	102

Source: AIHW, Cook 2013, Hore 2019, Housing Registrar 2020, Millar 2018, Zaretsky & Flatau 2015

Table 5 shows yearly evictions as a proportion of tenancies in community and public housing. Public housing eviction numbers were obtained¹¹ for 7 of 9 financial years from 2009-2010 to 2018-2019.

When measured as a proportion of tenancies, community housing evictions were between 3 and 5 times more frequent than evictions from public housing. Even when rooming house tenancies were excluded, evictions from community housing were between 2 and 3 times more common than from public housing.

Table 6: community and public housing share of all social housing (SH) tenancies and evictions, FYE 2011-2015, 2017, 2019

	Community Housing	Public Housing
% SH tenancies	17%	83%
Number of evictions	1443	1865
% of SH evictions	44%	56%
% SH tenancies (excl. RH)	15%	85%
Number of evictions (excl. RH)	892	1865
% of SH evictions (excl. RH)	32%	68%

Source: AIHW 2020, Cook 2013, Hore 2019, Housing Registrar 2020, Millar 2018, Zaretsky & Flatau 2015

Table 6 compares the PH and CH share of all social housing evictions and tenancies¹² across the 7 years where public housing eviction numbers were available.

Across the sample years, the community housing sector accounted for almost half of all evictions from social housing, despite managing only 17% of social housing tenancies.

When rooming house residencies and related evictions were excluded, the community housing sector managed 15% of tenancies and was responsible for 32% of social housing evictions across the seven years in question.

Table 7: Reasons for eviction in Community Housing 2010-11 to 2013-2014

	2010-2011	2011-12	2012-13	2013-14
Arrears % of LT excl. RH evictions	79%	84%	80%	86%
Anti-Social % of LT excl. RH evictions	15%	10%	8%	7%
Both % of LT excl. RH evictions	1%	2%	7%	4%
Arrears % of RH evictions	49%	66%	58%	60%
Anti-Social % of RH evictions	41%	32%	33%	36%
Both % of RH evictions	6%	10%	8%	1%

Source: Housing Registrar 2020

Table 7 suggests that the majority of community housing evictions occur for financial reasons. On average, 82% of long term (excluding rooming house) evictions from 2010-11 to 2013-14 occurred due to rental arrears. In 2013-14, 60% of rooming house evictions were attributed to rental arrears (and 36% to 'anti-social behaviour'). This mirrors other research showing rental arrears to be a major cause of eviction in social housing (see footnote)¹³.

This may be because CHOs are more acutely dependent on rental revenue for operational costs and portfolio growth than public housing and are therefore incentivised to terminate tenancies where rental arrears have accrued (VAGO 2010).

Other relevant factors may be that CHOs are able to charge their tenants higher rents than Homes Victoria can charge public tenants under current rules, potentially increasing the likelihood of community housing tenants accruing rental arrears.

According to the Productivity Commission (2020), 34% of community housing households paid more than 25% of income on rent. Likewise, ABS *Housing and Population* data (2016) shows that households in 'not-for-profit' housing pay higher rents across most income brackets than those residing in public housing.

As VHR conditions allow community housing organisations to accommodate a higher proportion of moderate income tenants, the proportion of financially vulnerable tenancies in community housing is likely lower than in public housing.

Despite this, the proportion of tenants evicted from community housing was higher than in public housing. This suggests that the risk of eviction in community housing could *rise further* when measured in proportion to a comparatively smaller cohort of financially vulnerable tenancies.

Chapter 4

Comparing community housing evictions

Key finding: A subset of the largest community housing organisations are responsible for a disproportionate share of CH sector evictions

This study was able to identify eviction data for 9 of the largest registered CHOs from 2012-13 to 2018-19.

These are:

- Aboriginal Housing Victoria (Aboriginal Housing)
- Beyond Housing (formerly Rural Housing Network)
- Common Equity Housing Limited (Common Equity)
- Community Housing Victoria Ltd (Community Housing Ltd)
- Haven Home Safe
- Housing Choices Ltd (Housing Choices)
- HousingFirst
- Unison
- Wintringham Housing (Wintringham)

Table 8: Evictions by CHO, 2012-13 to 2018-19

	Number of LT excl. RH evictions	% of total CH sector LT excl. RH evictions	% of CH sector LT excl. RH tenancies	Average LT excl. RH eviction rate
Unison	227	24%	10%	3%
Community Housing	143	15%	12%	1.4%
Aboriginal Housing	133	14%	12%	1.3%
Housing Choices	98	10%	13%	0.9%
Haven Home Safe	95	10%	7%	1.5%
Common Equity	60	6%	16%	0.4%
HousingFirst	32	3%	6%	0.6%
Beyond Housing	6	1%	4%	0.2%
Wintringham	1	0%	3%	0%
CH Sector	939	100%	100%	1.1%

Source: Housing Registrar 2020

Table 8 lists the total number of long term (excluding rooming house) tenants evicted by each CHO from 2012-13 to 2018-19. It compares the share of CH tenants evicted by each CHO with the share of CH tenancies they managed across the 7 year period.

A small number of CHOs are responsible for a disproportionate share of long term (excluding rooming house) evictions. Across a 7 year period, the 3 biggest evictors managed around 34% of long term community housing (excluding rooming house) tenancies, yet accounted for 53% of evictions (*Table 8*). The proportion of long term (excluding rooming house) tenants evicted by the top evictor was 3 times the CH sector average (*Table 8*).

Considering both community housing *and* public housing tenancies, the 3 CHOs with the highest eviction rates in 2018-19 managed only 6% of *all* social housing tenancies yet were responsible for 19% of evictions¹⁴.

Chapter 5

Social housing VCAT applications

Key finding: community housing organisations are more likely to initiate VCAT proceedings than the Director of Housing

Table 9: Number of VCAT Residential Tenancies applications per social housing landlord, May 2020 - April 2021

Social housing landlord	VCAT applications	% total SH VCAT applications
Grand Total	1235	100.0%
CH sector total	763	61.8%
Director of Housing	472	38.2%
Unison	129	10.4%
Haven Home Safe	94	7.6%
Salvation Army Housing	77	6.2%
Community Housing (Vic) Ltd	74	6.0%
Housing Choices	55	4.5%
Aboriginal Housing Victoria	49	4.0%
YWCA Housing	48	3.9%
Housing First	32	2.6%
Launch Housing	31	2.5%
Women's Housing	29	2.3%
Vincentcare	23	1.9%
Beyond Housing	21	1.7%
St Kilda Community Housing	19	1.5%
Common Equity Housing	15	1.2%
Eastcoast Housing Association	15	1.2%
Uniting	13	1.1%
Baptcare	11	0.9%
Servants Community Housing	7	0.6%
Southport Community Housing	7	0.6%
Wayss Ltd	6	0.5%
United Housing Co-Operative	3	0.2%
Each Housing	2	0.2%
Centacare	1	0.1%
Prahran/Malvern Community Housing	1	0.1%
Wintringham Housing	1	0.1%

Source: VCAT 2020, 2021

Table 9 lists the number of VCAT residential tenancies hearings in which a CHO or the Director of Housing was listed as the applicant from May 1 2020 - April 30 2021¹⁵. Over this period, 1235 applications by social housing landlords appeared in VCAT listings¹⁶. 26 of 40 currently registered CHOs were listed as applicants.

Community housing organisations were listed as the applicant in 62% of hearings involving a social housing landlord, while the Director of Housing was listed as applicant in 38%.

Given that 15 of 26 listed VCAT applicants manage transitional housing, it is likely that the above figures include a significant non-social housing component.

Table 10: Social housing rate of application to VCAT by housing type(s) managed

	Director of Housing	CHOs managing no THM	CHOs managing only long term CH excluding RH
VCAT applications	472	178	85
Tenancy units	61635	6126	4080
VCAT application rate	0.8%	2.9%	2.1%

Source: VCAT 2020, 2021, AIHW 2021, Housing Registrar 2021,

To remedy this, *Table 10* shows the rate of application to VCAT of community housing organisations managing no THM. The "VCAT application rate" expresses the number of VCAT applications as a percentage of rental tenancy units managed by each CHO¹⁷.

The VCAT application rate of all 11 CHOs managing no THM was still 3 times greater than the Director of Housing. The 6 CHOs managing long term tenancies excluding rooming housing applied to VCAT at twice the rate of the Director of Housing.

Conclusion

The evidence in this report indicates that there are differences in the social outcomes for public and community housing tenants and for applicants on the VHR who may be allocated to public or community housing.

In the period under review, Victorian community housing tenants were more likely to experience eviction than public tenants. Moreover, a significant proportion of community housing tenants categorised as housed in 'long term' housing are residing in rooming houses. Many of these tenants have been allocated to rooming houses through the VHR.

The conditions of participation in the Victorian Housing Register allow CHOs to allocate a higher proportion of vacancies to moderate income tenants. In addition, CHOs are able to restrict eligibility for certain community housing properties. This may reflect the concern expressed by the Victorian Auditor-General's Office (2010) that there is

"[...] a tension in the [community housing] model between financial viability and growth objectives and social goals of fairly allocating social housing to those on low incomes." (p. vii)

A good deal of discussion and commentary about the community housing sector fails to adequately acknowledge the difference between community and public housing, or otherwise emphasises the cost-effectiveness of social housing delivered by the community housing sector.

The real value of social housing is its capacity to provide high quality, secure and affordable housing to those who need it, for as long as they need it. Social housing that achieves these aims helps to address housing insecurity and homelessness. A truly cost-effective approach should invest in social housing that is best able to maximise these social goals.

Footnotes

¹ Unpublished at the time of writing.

² This figure does not include any agencies managing transitional housing.

³ e.g. the allocations policy of HousingFirst (2021) creates additional eligibility criteria. targeted at “people who are in paid employment and meet the income & asset eligibility set by the DHHS”, as well as NRAS allocations and tenancies allocated through support agencies with nomination rights.

⁴ According to AIHW (2020) data, in each year between 2010-11 and 2018-19, between 1 in 10 and 1 in 20 CH households reported earning more than 40% of gross household income, compared to between 1 in 50 and 1 in 100 (5-10%) PH households (1-2%). In 2018 the Community Housing sector managed 2800 dwellings established under the National Rental Affordability Scheme (NRAS 2018a). Roughly 50% of NRAS dwellings earned over \$40,000 annually (NRAS 2018b). NRAS properties are considered social housing in Victoria.

⁵ Or “residencies” if using the language employed in the Residential Tenancies Act 1997 (Vic)

⁶ Transfers to other social housing are excluded from figures on exits.

⁷ For example, Australian Institute of Health and Welfare data includes rooming housing but not transitional housing in its data specifications for Victoria community housing dwellings. AIHW statistics are relayed by the Productivity Commission in its annual *Report on Government Services*.

⁸ Housing Registrar data includes allocations from both VHR categories.

⁹ The VHR was established in 2016. As such data from 2015-2016 involves allocations from what was then known as the public housing waiting list, and not from the VHR.

¹⁰ Allocations from 2016-17 onwards occurred when CHOs were still in the process of merging their own waiting lists with the public housing waiting list, and not all CHOs had signed on to the VHR. As such this data should not automatically be interpreted as a measure of the effectiveness of the VHR or of CHOs ability to meet VHR targets.

¹¹ Eviction numbers in public housing were drawn from varied academic and journalistic sources as DHHS data for PH evictions could not be obtained. Eviction numbers for each financial year were divided by household counts listed in Productivity Commission data.

¹² The number of social housing tenancies was calculated by adding tenancy numbers reported in Productivity Commission (PC) statistics with those in Housing Registrar reports

¹³ e.g. AHURI research shows that the majority of termination applications in social housing in NSW and Victoria from 2015-16 to 2017-18 were made due to rental arrears (Martin et al. 2019).

¹⁴ Data not shown in tables.

¹⁵ Excepting missing dates. Data was collected on 234 of 249 possible days.

¹⁶ Scheduled hearings with duplicate reference numbers were only counted once.

¹⁷ The measure of 'rental tenancy units' was used instead of 'tenancies', as up-to-date statistics for individual CHOs could only be obtained for residential tenancy units rather than households.

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