



Our reference: Review Panel

Date 20 September 2021

Social Housing Regulatory Review
PO Box 55
East Melbourne 3002

By email only: info@shrr.vic.gov.au

Dear Review Panel

Submission in response to Consultation Paper 2 of the Review of Social Housing Regulation (the Review) – service delivery and the tenants experience

Thank you for the opportunity to respond to this important Review.

MHLC has spent the past 30 years working with tenants across Victoria across all our services. As a specialist community legal centre supporting vulnerable Victorians with co-occurring mental health issues we often experience clients and workers within complex circumstances.

Our work on our Health Justice Partnership with Bolton Clarke works across the homeless and those threatened with homelessness and as such it is clear that the developments in the coming weeks and months will have a substantial impact on the Victorian Community.

Background

We applaud the Victorian Government's commitment to building more social housing through the Big Housing Build, and other projects. However, we note that the Victorian Government has indicated this growth in housing is likely to be comprised predominantly of community housing. This is a concern for our service, given our experience working with both public and community housing renters. Through this work, as set out in our submission, we see the relative difficulties community housing renters have in sustaining their tenancies (as compared to public housing renters).

MHLC • POSTAL ADDRESS: PO Box 495, 72-82 ERROL STREET NORTH MELBOURNE 8006

TEL: (03) 9629 4422 • FAX: (03) 7037 5001 • COUNTRY CALLERS: 1800 555 887 • A.B.N. 30 996 171 084

WEB: <https://mhlc.org.au/>



We are concerned about the implications of this in respect of tenants who are not supported by their housing provider. We are facing an increasingly complex landscape as the economy, and clients recover from COVID. Our experience is that community renters do not listen or understand but rather look to the level of arrears and how this works with the courts. This does not support those who are often experiencing complex challenges like the tenant whose funds ceased due to glitches with Centrepay or who is from New Zealand and cannot get home.

People reliant on Victorian Housing Register for housing are often experiencing significant vulnerability or disadvantage including mental health issues, disabilities, and/or family violence. They deserve to live in safe, secure, suitable and affordable housing, regardless of whether they live in public or community housing. However, the legal protections for community housing renters fall short of those available to public housing renters in several critical areas.

The Social Housing Regulatory Review provides a valuable opportunity to ensure that the future growth of community housing through the Big Housing Build and other government investment is matched by appropriate support and protections for renters who depend on social housing and ensure positive tenant outcomes are achieved. Without these protections, our housing system will entrench a problematic two-tier approach to social housing.

Community housing policies should be consistent, transparent, and meet the standard afforded to public housing renters in key areas (*response to consultation question 31*)

Not all community housing policies and procedures are consistent, or easily available. Some do not meet the standard equivalent to policies that apply in public housing in some key areas. This means that vulnerable renters receive different treatment based on who their community housing provider is, or because they are living in community, rather than public housing.

We therefore recommend the following:

1. The development of model rules of a standard equivalent to tenancy management policies of public housing. Policies should include, but not be limited to: temporary absence, disability modification, internal appeals, rent setting, arrears policy, eviction policy (including appropriate use of fixed term leases and notice to leave in rooming houses).
2. That the Model Rules be deemed to apply to all community housing organisations (with organisations able to apply to opt-out of particular provisions on reasonable grounds).
3. That the Victorian Government provide funding to the community housing sector to ensure that these policies can be implemented, i.e. temporary absence policy, disability modification policy.

Community housing providers should be required to comply with the Victorian *Charter of Human Rights and Responsibilities Act* (*response to consultation questions 31, 4, 43*)

MHLC • POSTAL ADDRESS: PO Box 495, 72-82 ERROL STREET NORTH MELBOURNE 8006

TEL: (03) 9629 4422 • FAX: (03) 7037 5001 • COUNTRY CALLERS: 1800 555 887 • A.B.N. 30 996 171 084

WEB: <https://mhlc.org.au/>



For public housing renters, the Victorian *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**) plays a critical role in protecting human rights, particularly around eviction. The Victorian Department of Housing 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.

By housing Victoria's most vulnerable renters, those on the Register, CHPs play a role near-identical to that of the Victorian Department of Housing. However, the law is not clear on whether the Charter applies to CHPs. It is crucial that CHPs have in place procedures and processes to ensure they are acting lawfully under the Charter and that the human rights of vulnerable renters are protected equally.

We are aware that this is often not the case when we are dealing with Women who have been held on remand through our Inside Access program and where we are seeking to maintain housing in often complex family violence scenarios.

We therefore recommend the following:

4. That the Victorian Government make legislative amendments to clarify that the Charter applies to CHPs.
5. That the Victorian Government amend the Housing Act to:
 - i. Require that CHPs 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.
 - ii. Require that CHPs applying for registration under that Act should include a report on how the its policies provide for Charter-compatible decision making.
 - iii. Create a new performance standard that require all registered agencies to have public facing statements about their obligations under the Charter on their websites and tenancy agreements and have policies equivalent to the Department of Housing that specifically embed Charter-compatible decision-making in all areas of tenancy management. These performance standards should be phrased as "mandatory requirements" rather than "indicators".
 - iv. Give the Housing Registrar power to revoke or suspend an agency's registration under that Act for repeated breaches of the Charter.
6. That the Housing Registrar prepare and publish guidance to agencies on how the Charter should be considered and applied in decision-making.

There should be a robust accountability mechanism for community housing (*response to consultation questions 45, 46*).



Effective complaints handling is an essential part of any accountability mechanism. It fosters confidence in a system, encourages rectification of short-comings, and fair compensation for loss caused by non-compliance. Community housing is regulated by the Housing Registrar, and this role includes a complaints handling function. However, due to a relatively narrow reading of its own jurisdiction, and other limits on its function, including limited resources, many tenancy-related complaints are not currently considered by the Registrar. This significantly reduces the efficacy of the Registrar as a regulator of the community housing sector, reduces confidence of renters and advocates in its function, and ultimately impacts on the Registrar's ability to achieve its purpose. This sits in sharp contrast to the rigorous accountability mechanisms supporting public housing, including the Housing Appeals Office.

We therefore recommend the following:

7. That the Victorian Government amend legislation in order to:
 - i. Create a central Housing Appeals Office to oversee complaints of both public and community housing renters, that maintains and builds upon the standard of complaints handling of the current Housing Appeals Office.
 - ii. Require that the central Housing Appeals Office must provide a remedy to the renter if a complaint is upheld.
 - iii. Enable both landlords and renters to apply to the Review and Regulation List of VCAT for merits review of decisions of a central Housing Appeals Office.
8. That the Victorian Government amend the definition of 'agency' in the Freedom of Information Act 1982 to include CHPs registered under the Housing Act.

Eviction of community housing renters should be a genuine avenue of last resort.

Supporting long-term, safe and affordable tenancies is not only good for individual renters – it has also been clearly linked to better wellbeing and health outcomes, and to reduced cost for the state. The relevant CHP Performance Standard recognises that community housing is intended to provide long-term, stable and affordable accommodation for disadvantaged Victorians.

This is particularly important because eviction carries more serious consequences for social housing renters than other renters – they are more likely to end up homeless as a result of an eviction. However, our experience is that community housing renters do not always have the benefit of long-term and stable accommodation, and this is sometimes due to eviction being used by CHPs where other avenues of action may be available.

We therefore recommend the following:

9. That the Housing Registrar draft model policies and procedures for CHPs, including internal complaints processes, which set out best practice for how eviction may be treated as an option of last resort.
10. That the Housing Registrar 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 within the performance standards.
11. That the Housing Registrar develop model policies and training on the use of notices to leave for CHPs that operate rooming houses and monitor the use of these notices.

'Social tenant' undermines focus on public and community housing renter experience

Social housing is defined as public and community housing (Consultation Paper One: page 6-7). Consultation Paper Two problematically shifts the frame from social housing, to a third entity, the 'social tenant': a person who is eligible for social housing who is renting outside the system. This means the focus is not on the services and experiences of people in public and community housing, but instead makes a false comparison between their experience to those outside the social housing system. This misses an important opportunity to improve the social housing sector and ensure it is well-positioned for the significant growth that the Big Housing Build will deliver.

Renter voice and choice should not come at the expense of rights

For those locked out of the private rental market due to financial hardship, until the dire shortage of affordable homes is fixed issues of renter choice cannot be meaningfully addressed. If renters do not have key legal protections the benefit of tenant representation on a community housing board or resident consultation committee will be limited. All renters in public and community housing need to know that regardless of the type of housing they are in they are entitled to a uniform standard of legally enforceable rights.

Clarification of some differences between public and community housing

Firstly, we note that at page 24 of Consultation Paper 2, it is stated that 'while community housing providers are required to submit performance data to the regulator, Homes Victoria is largely responsible for regulating itself.' We note firstly that submission of performance data is not equivalent to regulation. Further, we note that public housing is subject to what we see as a more consistent and rigorous regulatory and accountability framework, including requirements under the *Freedom of Information Act* and the *Charter of Human Rights and Responsibilities*, as well as being subject to the complaints jurisdiction of the Housing Appeals Office and the Victorian Ombudsman.

As set out below we believe a uniform accountability and regulation framework for community and public housing is a fair and prudent approach going forward.

We then wish to clarify two additional points:

- Consultation Paper 2 suggests, 'Homes Victoria policies, procedures, funding and contracts' apply to both public and community housing (Diagram in 3.1, page 12). While some community housing providers (**CHPs**) adopt Homes Victoria policies and procedures, many do not, creating inequality in the system.
- The Complaints and dispute resolution agencies table in Consultation Paper 2, page 23, could be read as suggesting that community housing tenants have access to the Housing Appeals Office in relation to community housing issues. However, we confirm that scope to access this is limited to issues that relate to Victorian Housing Register, such as their eligibility for social housing or priority access. Community housing residents do not have access to the Housing Appeals Office if they have any complaints or concerns about their providers.

Rent setting should be part of this review

We agree with the Review Terms of Reference 'Context' (Terms of Reference, p 4-5) that '[r]enewed regulation can support an integrated social and affordable housing system that... provides a supply of dwellings with rents that are affordable...according to acceptable asset and service standards'. However, we note that Consultation Paper 2 states that rent setting is a policy decision for government and outside the scope of the Review (page 24).

Affordable rents are key reason for government intervention in the housing market, and key factor for renters in social housing. Public housing residents rent is set at 25 per cent of income, however community housing providers can charge up to 30 per cent in addition to the whole of Commonwealth Rental Allowance (which public housing residents do not receive). The difference in how rents are calculated can result in community housing renters being over \$1680 per year worse off compared to if they lived in public housing.

The fair setting of rent and rental arrears policies is critically important to ensuring that social housing delivers on its commitment to be affordable for the renters it houses. We therefore call on the Review to consider within its scope community housing rent setting policies which often relate to but how household income is calculated and how rents are recalculated when the household income changes. For many tenants, it is this calculation of rent that has substantial impact on the affordability of their home.



Contact point for enquiries

We thank you again for the opportunity to make this submission, and for your consideration.

Yours sincerely,

Charlotte Jones
CEO
Mental Health Legal Centre Inc.