

# Submission to Social Housing Regulation Review: Response to Consultation Paper Two and Three

October 2021

## Introduction

Community Housing Industry Association Victoria (CHIA Vic) welcomes the Social Housing Regulation Review. This is a once in a decade opportunity to reflect on what is required from a regulatory system. We strongly support the Panel's commitment in going back to first principles and examining the purpose, type and scope of regulation. We particularly welcome that renters have been put at the heart of this review.

The submission has been informed by workshops with members, discussion with the CHIA Vic board and draws on national and international expertise.

The consultation papers raised many issues and have prompted considerable thought and discussion and we look forward to continuing to contribute as you work towards your final paper, and beyond its completion.

Rather than respond to individual questions in the discussion papers we have structured the submission around three critical elements: what a good system of regulation should aim to achieve; necessary improvements to the current social housing regulation; and opportunities to expand upon the existing regulatory settings.

## Key Recommendations

- Consider the Inter-Government Agreement for a National Regulatory System for Community Housing Providers objectives and principles for social housing regulation in the recommendations for changes to the social housing regulation system.
- If adopting the draft principles for effective social housing regulation outlined in the second discussion paper, amend these to: 1) Ensure the value of sector diversity in delivering a range of appropriate housing services for individuals and cohorts is acknowledged and protected; and 2) Prioritise the importance of maintaining trust and confidence amongst investors in an efficient and professional social housing system.
- Establish a single regulator for public and community housing, independent from the government agencies that fund and operate social housing, to create a more holistic approach to regulation, based on protecting the interests of all public investment into social housing and the interests of all social housing renters.
- Review the Performance Standards to ensure they are up to date and reflect the information key stakeholders need to sustain confidence in the sector.
- Improve the current dispute resolution framework for social housing renters by establishing a common avenue of redress. This function should be separate to that of the regulator or DFFH and should negate the need for the more legalistic and time-consuming option of

applying to VCAT in most cases, while allowing parties to retain rights to access VCAT if required.

- Support the provision of culturally appropriate and safe housing by including cultural safety in the performance standards and working with ACCOs to support their inclusion in the regulated system.
- Remove the housing association and provider classifications for registered CHOs and consider how to better reflect the diversity in size and activity levels across the sector.
- Improve efficiency of data collection systems and drive standardisation of data to support better analysis and aggregation.
- Review public reporting to ensure it drives service improvements and meets the needs of key stakeholders.
- We are sympathetic to the intent behind extending regulatory protections to renters in the private sector. However, while believing all renters should be afforded protections through residential tenancy law, we are sceptical about whether a regulatory system for social or affordable housing providers can be extended to private landlords, even those whose renters are receiving Commonwealth Rental Assistance
- The social housing regulator should not regulate for-profit organisations, however, if they are brought within its jurisdiction, they should not be considered community housing organisations or social housing providers.
- Pending any decision to join the National Regulatory System for Community Housing, explore a form of mutual recognition in functions where standards are common between the Victorian system, the NRSCH and the Western Australian Community Housing Regulatory Framework. This could involve simplifying registration where CHOs are already registered in another jurisdiction and sharing of compliance activity.
- Adopt the inclusion of the renter voice in the measurement of the progress of growth, impact, regulation and improvement of social housing services through the co-design of a renter voice framework for social housing. The implementation, use and continual review of a renter voice framework is work that could be monitored and supported by the regulator. The desire by some renters to be left alone by their rental provider should be recognised and accommodated in any framework and other initiatives to assess the renter experience.
- Complete further study to identify where there is scope to minimise regulatory burden to Government and CHOs without compromising the integrity of these schemes. This may include negotiating MOUs between key regulatory bodies and establishing single sources of data collection wherever possible.

## About CHIA Vic

The Community Housing Industry Association Victoria (CHIA Vic) is the peak body that represents the not-for-profit community housing sector in Victoria. CHIA Vic supports the growth of community housing as the most effective and efficient means of ensuring more disadvantaged Victorians can enjoy the dignity of safe, secure and appropriate housing.

CHIA Vic's member community housing organisations include all the organisations registered as housing associations or housing providers under the Victorian regulatory framework. These registered CHOs make up an integral part of Victoria's social housing system, managing more than 20,000 units of rental property, over 9,700 of which are owned by CHOs.

## Vision for Victoria's Social Housing Regulatory System

Our members are independent not-for-profit organisations that exist to support renters with affordable and secure homes where they can build their lives. While they represent a very diverse sector, all are driven by social purpose, and their mission is to ensure everyone has a good quality, safe place to live that they can afford. In CHIA Vic's view, the role of regulation is to create a framework within which providers can deliver on this purpose as effectively as possible. This is the test against which any regulatory proposals should be judged.

The 2012 Inter-Government Agreement for a National Regulatory System for Community Housing Providers (IGA)<sup>1</sup> (which the Victorian Government signed) sets out clear objectives for regulation which remain relevant and which inform our response to the discussion paper.

These objectives are:

1. Improve tenant outcomes and protects vulnerable tenants;
2. Protect present and future government funding and equity in social and affordable housing; and
3. Enhance confidence for persons (including investors and financiers) having dealings with registered Community Housing Providers.

We agree that the overriding principle is that regulation should focus on best outcomes for current and prospective renters in the short and long term, and note that this emphasis is reflected in the discussion papers published to date.

The performance standards should also be framed with this aim in mind, and set overarching expectations that allow individual CHOs to design services and build homes to meet different needs.

Regulatory principles, which guide the registrar's practice, were also set out well in the 2012 IGA and continue to reflect best practice in regulation. These principles are:

- i. Proportionate – reflecting the scale and scope of related activities;
- ii. Accountable – able to justify regulatory assessments and be subject to scrutiny;
- iii. Consistent – based on standardised information and methods;
- iv. Transparent – clear and open processes and decisions;
- v. Flexible – avoiding unnecessary prescriptions and impositions on how housing providers organise their business and demonstrate compliance with performance requirements; and
- vi. Targeted – focused on the core purposes of improving tenant outcomes and protecting vulnerable tenants; protecting government funding and equity and ensuring investor and partner confidence.

In our [submission](#) to the first consultation paper, CHIA Vic highlighted the importance of developing high-level principles that will ensure the review delivers recommendations that are appropriate,

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<sup>1</sup> Inter-Government Agreement for a National Regulatory System for Community Housing Providers, 2012, National Regulatory System for Community Housing Providers – COAG Decision Regulation Impact Statement – Select Council on Housing and Homelessness, Appendix 4. Available at <https://obpr.pmc.gov.au/published-impact-analyses-and-reports/national-regulatory-system-community-housing-providers-coag>

achievable, and will create a regulatory system that supports the growth of stable and secure housing for Victorians.

We are pleased to note the inclusion of clear principles in the subsequent consultation papers and are broadly supportive of the draft principles outlined within them. However, we believe some amendments are needed to these draft principles to:

- Ensure the value of sector diversity in delivering a range of appropriate housing services for individuals and cohorts is acknowledged and protected; and
- Prioritise the importance of maintaining trust and confidence amongst investors in an efficient and professional social housing system.

In relation to the proposed principle outlined in the discussion paper of creating an equitable system which is consistent, it is worth noting that this will often conflict with the overriding principle of promoting best outcomes for renters.

The need for consistency in service provision needs to be balanced against the benefits of sector diversity and service specialisation. Each community housing organisation designs and adapts strategies, service approaches and policies in line with their own unique charitable mission and the needs and feedback of their renters. This has led to a diverse community housing sector that adapts to the needs of a variety of communities and cohorts.

Regulation should support continual quality improvement at both an organisation and sector level and that may result in areas where there is increased consistency of approach, but regulation should equally protect diversity and innovation where there are benefits from a range of service and policy approaches to meet the needs of a variety of communities and renters.

We support the inclusion of the renter voice in the measurement of the progress of growth, impact, regulation and improvement of social housing services and believe that this would be well supported through the co-design of a renter voice framework for social housing. The implementation, use and continual review of a renter voice framework is work that could be monitored and supported by the regulator.

We view the Victorian registrar as part of the overall regulatory system which includes contractual compliance, other regulatory bodies such as the ACNC and self- regulation. We believe this current system forms a sound basis and that as this system is reviewed and improved, the panel should ensure the redesigned system possesses the following core elements:

- Allows regulated entities flexibility in how they achieve the aims of regulation, so that they can grow their businesses in line with the unique needs and aspirations of their renters.
- Makes best use of the wider system including contractual compliance, other regulatory bodies such as the ACNC and self- regulation.
- A regulator independent from the government agencies that funds community housing organisations, including governance arrangements that reflect and reinforce that independence and provide transparency and accountability in its operations.
- Provides assurance to government, private lenders, local councils, the public and most importantly to renters about the good governance and financial strength of the sector, and provides a clear mechanism and justification for where regulatory intervention is required.
- The regulatory scheme needs the capacity to act on new and emerging risks and be sufficiently adaptable to respond to changing circumstances, new initiatives and different organisational arrangements.

- Clear oversight of the regulatory function and a mechanism for regulated organisations and others to have their concerns addressed.

As outlined in our previous submission, we support the establishment of a single regulator for all social housing as a means to create a more holistic approach to regulation, based on protecting the interests of all public investment into social housing and the interests of all social housing renters, rather than separating oversight responsibility by landlord type.

If the social housing regulatory system is expanded to include public housing, then it must ensure that regulation of each group is built upon a recognition of the value and operational considerations of the different types of entities. We also believe it is essential that the regulatory system recognises the status of CHOs as independent social organisations pursuing public benefit, and not as state agencies.

## Improvements to the Current Regulatory System

This section of our submission uses the framework provided by the IGA regulatory principles to structure our feedback on those areas of the current regulatory system where significant improvements can be made, which better support delivering on the stated objectives of social housing regulation.

There are a number of strengths of the current community housing regulatory system that this review provides an opportunity to build on.

- The newly Rental Provider Report is designed to provide greater clarity for all stakeholders on the performance, size and activities of each CHO. The implementation of this report will be reviewed to ensure that the information provided meets the needs of renters.
- Regulatory Action Plans: The Housing Registrar prompts practice improvement through regulatory action plan requirements that mean organisations need to develop and report on continuous improvement planning.
- Guidance notes and best practice guidance are utilised to address arising issues and improve practice.
- The Housing Registrar engages in joint project work with CHIA Vic, state government and NRSCH registrars to support system improvements.
- Financial accountability and viability monitoring, with compliance processes designed to improve performance and monitoring within organisations.
- Collection and reporting on KPMs for each organisation and basing continual improvement activities on this data.

However, this submission also identifies areas within the current system of social housing regulation that should be prioritised for reform. These are:

- Multiple regulatory bodies: as outlined in the consultation paper, there are a range of regulatory functions spread throughout government agencies and centralising these within a single social housing regulator could improve clarity, streamline processes, improve data collection and create a strengthened source of social housing regulatory expertise.
- Complaints: Improving the clarity around dispute resolution options for renters and the efficiency and timeliness of complaints management is also a key opportunity from this review.

- The Performance Standards for community housing have not significantly changed since they were introduced in 2005, the review provides an opportunity to ensure that they are fit for purpose in line with the agreed priorities and principles of regulation.
- Data: The review should lead to the streamlining of reporting, and the provision of timely and relevant data which can improve transparency and drive service improvements and strategic planning.
- Reporting inefficiencies: There is currently overlap with regulatory, contractual and procurement reporting obligation and these inefficiencies should be addressed through changes to the regulatory system.
- Regulatory intervention: The review should provide clarity on how, when and which intervention powers are held by the regulatory and how and when these powers should and will be used.
- Amend the classification for registered CHOs to better reflect the diversity in size and activity levels across the sector. This should include creating a pathway to assist ACCOs in joining the regulated sector.
- Consider the governance arrangements of the Housing Registrar and whether an independent board would support greater independence
- Explore opportunities for renters to influence CHOs through roles in assessment and by ensuring performance standards encourage renter involvement and report on renter experience in a way that reflects renters' perspectives.

### Proportionate

Proportionate regulation balances reporting requirements and intervention against the scale and scope of a CHOs activities. Larger and more complex businesses will have more to report on than small CHOs, while organisations with a history of good performance may have less scrutiny than organisations where there has been significant change in recent years.

Good regulation must balance a desire for data with how critical that information is to assessing risk and compliance.

### Reporting burden

Under the current regulatory system registered community housing organisations have identified a significant regulatory burden, largely due to the duplication of reporting requirements to the Housing Registrar, contractual and VHR reporting to Homes Vic/DFFH, and annual/ongoing reporting to other key regulatory bodies such as Australian Charities and Not-For-Profits Commission (ACNC) and Australian Securities Investments Commission (ASIC).

Although reporting requirements to the Registrar may be proportionate to the scale and scope of a CHO's activities they fail to take into account other reporting obligations, ultimately contributing to a substantial reporting burden for the sector.

The overall regulatory burden on providers should be minimised by a requirement that memorandums of understanding are negotiated between key regulatory bodies such as Australian Charities and Not-For-Profits Commission (ACNC) and Australian Securities Investments Commission (ASIC). There should also be consideration of mutual recognition between other regulatory and assurance schemes where appropriate, for example for assurance processes for mental health services and SDA providers. There are international [examples](#) to draw on.

We consider national regulation later in the submission but accept that in the short term it is unlikely that the Victorian Government will decide to join a national system. In the interim we are therefore calling for serious consideration to be given to exploring a form of mutual recognition in functions where standards are common between the Victorian system, the NRSCH and the Western Australian Community Housing Regulatory Framework, to reduce regulatory burden and release regulatory resources for deployment elsewhere. This could involve simplifying registration where CHOs are already registered in another jurisdiction, synchronising assessments and even sharing of compliance activity.

Of equal significance is the need to ensure that contractual compliance agencies are persuaded to avoid duplication and encourage reliance on relevant aspects of the Registrar's work. So important is this issue that we recommend commissioning further study to identify where there is scope to minimise regulatory burden to Government and CHOs without compromising the integrity of these schemes.

At the same time the performance standards and evidence guidelines of the Housing Registrar should be revised. The evidence is largely composed of planning, policy and procedural documents together with financial information and performance data. Part of this review should consider the utility of evidence, particularly that which is used for the initial risk assessment and that which is only required when that risk assessment reveals possible non-compliance.

CHIA Vic has engaged with the Registrar to improve the amount and quality of information available while minimising the reporting burden wherever possible, and will continue to do so. However, the review should not overlook the information needs of existing and potential renters and investors. CHIA Vic recommends that the performance standards and evidence guidelines be reviewed with the key aims of the regulatory system in mind, to ensure that appropriate data is being collected in the most efficient way possible.

There are also opportunities to streamline data collection from the sector by harmonising data requirements across data collection agencies. The principle of 'collect once and share many times' should be adopted. Regardless of whether Victoria joins the NRSCH, data definitions should be identical to allow consistent national reporting. The Australian Institute of Health and Welfare led data improvement plan (which starts with community housing) is an opportunity to promote this.

### **Performance Standards**

A clear objective in relation to the Regulatory registration schemes performance is its role in promoting confidence for the general public, government and private sector investors. Up to date and relevant performance standards are essential for this task.

The Victorian performance standards were updated in 2014 but are largely unchanged from those issued in 2005. They should be re-examined to reflect the changing operating environment and context for CHOs and also to allow for other organisations and housing types (such as public housing) to be included. As outlined in the IGA's regulatory principles, they should allow for CHOs to deliver services in a way which responds to local circumstances and, for this reason, excessive prescription should be avoided.

We believe there is scope for:

- Reducing the requirements for smaller and specialist organisations to reflect their risk profiles and other regulatory obligations. We can see merit in reducing and targeting evidence requirements.

- Harmonising some of the current standards – for example there is overlap between the governance, probity, financial viability and management standards.
- Enhancing/revising standards to reflect more complex corporate structures, arrangements and business diversification amongst some CHOs.
- Introducing a separate property development standard.
- Placing more emphasis on value for money within the financial performance standard – recognising that its assessment needs to accommodate the diversity of operations – within businesses as well as between different organisations.
- Community engagement is difficult to assess within a compliance based regulatory system and further discussion and planning is needed between the sector and regulator on how to promote and measure effective community and renter engagement.

In addition, there is scope for inclusion of a performance standard on cultural safety. Careful consideration and consultation will be needed on how to evidence and assess compliance, particularly if regulatory engagement remains largely reliant on desk top review. One possible option is to support the adoption of the Community Housing Aboriginal Cultural Safety Framework as an industry standard.

### **Classification of CHOs**

Classification of registered CHOs as Housing Associations or Housing Providers is a key method by which the Registrar determines the level of risk, and associated reporting requirements for a CHO. However, as used in the Victorian regulatory scheme it is at best only a partial indication of a CHO's risk of non-compliance and is often misunderstood by external stakeholders such as councils and developers to be synonymous with capability/performance. Furthermore, over time the distinction between associations and providers has become blurred.

The current registration framework for community housing organisations makes a hard distinction between just two categories: Housing Associations and Housing Providers. Providing only two categories does not suit the nuances of the sector which includes a range of housing providers, some of which are quite large and complete housing development projects and others which do not. CHIA Vic understands that the registrar currently utilises sub-categories for housing providers for their own internal purposes, but these are not reflected in the registration process.

On this basis, CHIA Vic recommends that the Association / Provider classification be removed, and a more appropriate method be developed to distinguish organisations by size, operational locations, and main functions / resident base. This could then be used to set evidence requirements consistent with a CHOs size and scope of activity.

The review should include an examination of whether the various tiers of regulation should be purely risk based (providing higher levels of registration based on organisational size and complexity of operations) or both risk and performance based (incentivising performance improvement by reserving higher levels of registration for organisations which meet higher performance standards). The basis of differing levels of registration should be made explicitly clear to all parties.

We believe CHO profiling by the regulator should combine performance related factors and financial, governance and management concerns with organisational context considerations. Contextual factors could include an organisation's property portfolio (numbers and quality), tenancy turnover, the amount of public funding and private finance it is servicing or has committed by lenders, organisational complexity, the degree of local community dependence on the organisation, and the nature of its overall business. We understand that assessments of this type have occurred in the



past through a regulatory engagement tool and that the tool may be more relevant as the sector grows.

The tiers used in the NRSCH have the same shortcomings as the Housing Association / Provider classification. State and National peaks previously collaborated with the Queensland Registrar to produce options for reform of the Tiers classification used in the NRSCH, which may be relevant for the Victorian context too.

### Compliance vs inspection-based regulation

Victoria operates a risk-based compliance system for its social housing regulation.

The current risk-based compliance system provides reasonable confidence that all registered providers meet a set of minimum standards. An alternative approach is an inspection-based registration scheme which seeks to determine current provider performance and aims to raise overall standards.

There are limits to the effectiveness of compliance-based regulation as an administrative tool. It is not sufficient in scope or depth to judge providers' relative performance, nor to assess how well individual organisations are performing. It is not the same as a more rigorous (and expensive) on-site inspection registration scheme. With the emphasis placed by the Review on including data on renter voice and outcomes in regulatory reporting it is worth considering the differences between these two methods of regulation and assessment and completing a thorough cost-benefit analysis.

The inspection-based registration schemes which operated in both England and Scotland until the mid-2000s required all registered organisations to make annual data returns including financial data, contextual information and performance data. These returns were analysed and information published about individual providers and the sector as a whole. They could prompt further engagement with a provider. In addition to this regular data analysis, every provider regardless of performance or size was inspected. The inspection cycle varied though in Scotland and there was an intention it would be roughly every five years.

Inspections covered everything a provider did – including development activity and specialist services, along with its governance, strategic and business planning and financial management. The preparation, on site activity and reporting took four – six months on average. Reporting was public and providers received a rating. In England providers received a grade denoting current performance and one indicating their prospects for improvement. In Scotland the grading conflated the two measures. Providers needed to report against improvement plans.

Understandably much rode on an inspection and around the formal process a whole support industry evolved, with most larger providers choosing to have a 'mock' inspection beforehand.

While providers found the process time consuming, most also recognised the 'free consultancy' aspect and in the context of a reasonably generous funding registration scheme that saw the sector expand, an appreciation of this oversight was necessary. Inspections also shone a light on management and raised the profile of services and the importance of these to governing bodies.

However, an inspection scheme is expensive and it needs to employ individuals who have professional credibility with the regulated entities and other stakeholders. Not the least of the skills needed is to grade an organisation and craft an in-depth report that accurately and fairly represents an organisation. In the UK inspection was rolled back in the mid-2000s and more risk-based approaches adopted.

At this stage CHIA VIC is agnostic about whether the system is performance improvement or risk based but would support further investigation of the relative cost benefits of each and potential hybrid options. The latter could include combining risk-based compliance with targeted activity (short notice inspections, in-depth thematic investigations) that focus on systemic challenges or topical issues for all or parts of the sector; and co-regulation with CHOs. As part of this process the impact on smaller CHOs should be considered.

### Accountable

The principle of accountability requires that the regulatory system be able to justify regulatory assessments and be subject to scrutiny. Here we have taken this to mean that the Housing Registrar must operate in a way which allows them to be held accountable, both by the public through transparent reporting, and by the registered CHOs it regulates.

Social housing policy, funding decisions as well as public housing operations and asset management are all currently delivered within a single government body (DFFH) and funding and community housing regulation is also provided through another single government body (DTF). In order to ensure effective oversight can be provided of both performance and investment in social housing, the review should consider the appropriate departmental structures necessary to provide effective, transparent and accountable regulatory oversight. Regulatory governance arrangements should reflect and reinforce independence and provide transparency and accountability in their operations and we strongly recommend that the regulator be independent from DFFH and Homes Vic. Consideration should also be given to the appropriateness of remaining within DTF given that DTF has joint responsibility for the Social Housing Growth Fund with Homes Vic. Actual or perceived conflicts of interest and limitations to independence need to be managed.

A possible way that transparency could be strengthened is through the creation of an independent board for the social housing regulator. Its members could be selected based on their skills, knowledge and experience of regulation and the functions and services delivered by the social housing sector.

### Consistent

Consistency requires that regulation be based on standardised information and methods. Data collection, including the technology used to do so, and data quality are two critical means to ensure that the regulator has access to standardised information.

Standardised property data could be published in a format that allows aggregation, allowing for analysis and identification of systemic issues. The NRSCH regulators are currently consulting on what property data to publish. To enable national sector reporting Victoria should input to and adopt the same approach.

The Registrar also needs to be aware of future developments that might influence data availability such as the sector's work on Environmental, Social and Governance (ESG) reporting.

### About the social housing workforce

CHOs' workforces include professionals across multiple disciplines including tenancy management, finance, property development, real estate, communications and housing support. They require comprehensive ongoing professional development that is appropriate, relevant and useful.

Until recently a Certificate IV in social housing, a certified, entry level qualification was being offered in Victoria but has recently been discontinued and there are now no tertiary social housing courses offered within the state.

Training should be accredited, build career pathways and help the industry be viewed as a long-term career option. While there could be jurisdictional specific workforce planning, setting professional standards would ideally be on a national basis.

CHIA Vic takes an active role in workforce professionalisation, through development of a capability framework for tenancy management workers and short courses. We run a short course program that trains 800-1,000 people per year in 50-70 courses. In our response to the Victorian 10-year housing strategy we outlined the need for a workforce development strategy. We also noted that there is a pressing need for training and development to become more structured and to provide clear pathways for key parts of the community housing sector workforce.

With the growth projected from the Big Housing Build the community housing sector needs to rapidly grow its workforce over the next 3-5 years. Creating the training and development pathways for new workers is essential to building and retaining a professional workforce. Although this work directly supports the aims of regulation it is not a direct responsibility of a regulator. Rather, the Registrar should look at how it's existing data collection could be used to support capacity building and professionalisation by other actors in the system, such as peak bodies and training organisations.

To be truly effective, these capacity building initiatives need to be sector-led and CHIA Vic is currently in discussions with members and Homes Vic regarding the development and delivery of an industry workforce development plan that builds on the existing work and the emerging needs of our growing sector.

## Transparent

Transparency by the regulator and by regulated CHOs is a critical element in ensuring that the regulatory aims can be achieved. This principle is closely aligned with the data collection issues noted above under Consistency, and some issues are relevant to both sections but have only been covered in one.

In line with the aim of improving renter outcomes and enhancing confidence in the social housing system the Victorian regulatory registration scheme should be more accessible and useful for renters and investors. Subject to consultation with the sector, CHIA Vic believes there is scope for more public information about social housing performance to encourage organisations to proactively make service improvements. The provision of more public information should be based on improvements in data collection and the consistent application of data definitions.

As noted earlier in our response there is work to do to ensure that data is reliable. Over time and in full consultation with the sector, the regulator could also adopt a form of traffic light reporting to more easily distinguish full compliance from where providers need to make improvements.

Although the Registrar already publishes information about the sector, there is an opportunity to undertake wider stakeholder engagement to ensure that this information appropriately meets the needs of renters and other stakeholders dealing with the sector, such as local governments and investors. Stakeholder survey could be used with the feedback used to inform an assessment of what data is collected and reported publicly.

## Enforcement

The enforcement powers of the Victorian Regulator are one area where greater transparency would be welcomed. Although there has been no indication that the Victorian registrar's extensive enforcement and investigative powers are insufficient, feedback from the sector is that when enforcement measures are used there should be a clear explanation of the steps that will be taken and the decision-making processes involved.

As the NRSCH operates without several of the powers available to the Victorian Registrar and it may be worth investigating whether the existing wide-ranging powers are necessary, including how often they have been used in the last 15 years.

## Flexible

The regulatory system needs to be flexible enough to avoid unnecessary prescriptions and impositions on how housing providers organise their business and demonstrate compliance with performance requirements. Some of this was already noted under the issue of reporting burdens being proportionate but there are other considerations about the flexibility of the system that are outlined below.

The consultation papers acknowledge that the operating and funding environment will influence CHOs strategies, decisions and performance. This is to be expected, and it requires the Registrar to understand the constraints faced by, and opportunities open to, CHOs when carrying out their regulatory assessments.

Operating and funding environments are also changeable, as we have seen in the past several years. Funding opportunities such as the Big Housing Build, or environmental factors such as COVID-19 motivate sector changes and require the regulator to adapt.

These changes can involve innovative partnerships - in part designed to mitigate risk - such in the Victorian 'ground rent' scheme. They can also involve more ambitious property development where social and affordable rental housing is combined with a market product - rental or for sale and exposure to cyclical risks.

It is important for the Regulator to understand the coming challenges and opportunities for the sector. This requires an appreciation of how CHOs work with other services and the overlapping responsibilities they have, for example in tenancy sustainment. The Victorian Registrar had to adapt quickly to the impacts of COVID-19 this year and feedback was positive on how it recognised the impact this would have on the sector. Other challenges are slower moving but no less important - climate change being the most significant

Although difficult to write into regulation and performance standards, the regulatory system and the sector need to have strong processes and relationships to allow them to understand and adapt their practice to these types of changes.

## Targeted

This is perhaps the most critical principle for good regulation. As has been raised earlier in this submission, there is a substantial reporting burden that comes with assessing CHOs compliance with regulation. Setting reporting requirements must reflect a clear targeting of the requirements that are essential to achieving the aims of the regulatory system, and be proportionate to the scale and risk of the activities.

Throughout this submission we have highlighted issues which are critical for protecting government funding and enhancing confidence for people dealing with registered CHOs. However, improving renter outcomes and protecting vulnerable renters is the primary aim of good social housing regulation. The renter experience and voice have been placed at the centre of this review, and we would like to focus on how this could be enhanced in Victoria's regulatory system.

## Tenant Voice

CHIA Vic supports a strong emphasis on renter outcomes and believes that a regulatory approach which combines the renter voice with prudential assessments could be a useful path for Victoria. One of the strengths of such a 'combined' approach is that it is often difficult to separate the prudential (including governance), and renter and property service aspects of providers' organisations in an overall organisational assessment.

There are a range of ways that the renter voice can be brought into the management and regulation of social housing. We have here distinguished between:

- a role in regulatory governance;
- a voice within CHOs – encompassing board membership and formal advisory groups and other renter engagement practice; and
- the degree to which regulatory practice prioritises renter experiences.

We believe there is a role for renter representatives in regulatory governance, however, to make this governance role effective it needs to draw on renter experience and expertise from registered organisations. Renters will need to be trained and supported to participate in regulatory governance activities and currently there does not exist the infrastructure to deliver these types of supports. In the UK there are well developed scrutiny panels models used by regulators and CHOs alike and we could learn from their experience.

Bringing the renter voice into the management and decision-making processes of a CHO can take many forms. All CHOs have set up some form of engagement mechanisms, as this is required under the current regulatory system, however the nature and effectiveness of these has not been evaluated so assessing current practice would be a useful starting point. The findings should inform changes to the performance standards to place more emphasis on renter involvement and the degree to which broader regulatory system requirements limits renter involvement. The findings may also support the design of programs to develop capacity in renter groups and CHOs to embed strong practice.

To properly assess 'renter experience' a different form of regulation would be required that incorporates reality checking and direct engagement with renters and their representatives. There is also potential in an inspection-based regime for renters to be involved in the inspection process (not for their own CHO but as trained assessors), however, this is a resource intensive approach.

There is also scope to draw on other parts of the regulatory system to complement the housing scheme, including through co-regulation with the CHO sector, potentially through complementing regulatory standards with industry accreditation in specialist practice areas such as disability housing or responding to family violence.

Whatever approach is taken, there will be challenges. Even in the UK where social housing makes up 17-25% of all homes, there is difficulty capturing the views of those renters with more complex conditions or lives. In Australia where social housing is viewed as a safety net for the most

vulnerable much thought needs to go into this function. Multiple measures are probably the answer, and the desire by some renters to be left alone by their CHO needs to be recognised and accommodated in any attempt to expand the assessment of the renter experience.

Building on the comments made earlier about the need for better data for renters and other key stakeholders in the social housing system, the Regulatory Review should ask renters what data and information about CHOs is meaningful. The recent work undertaken by the Registrar to trial rental provider reports, provides an excellent opportunity to do this.

Lastly, embedding a renter voice in social housing system could be assisted through the creation of a renter voice framework for social housing co-designed by social housing providers and renters. CHIA Vic is currently exploring how to best create such a framework and the implementation, use and continual review of a renter voice framework is work that could be monitored and supported by the regulator.

## Sector capacity building

The consultation paper asks how regulation can drive improvements in the sector beyond minimum requirements. There are existing initiatives that the Housing Registrar utilises to support continuous improvement, including regulatory action plans, regular engagement, benchmarking, collaborative capacity building and reporting on KPMs. These initiatives can be built on and applied across the social housing sector.

However, this raises the larger question of whether or not the Housing Registrar is the most appropriate body to be driving sector development.

CHOs are focused on service improvement. The extent to which a regulatory registration scheme can support individual and sector wide improvements will be dependent upon the resources (time and expertise) it has to understand individual and collective CHO performance and assess progress. In regulatory registration schemes where continuous improvement has been prominent, engagement includes considerable on-site presence.

In the absence of inspection-based regulation, the ability of regulation to drive improvements in the sector beyond minimum requirements will be more limited. However, it has a valuable role to play, potentially through benchmarking and identifying areas where capacity building initiatives are needed that should be incorporated into industry development plans. In some areas, where the Registrar has particular expertise, guidance could be issued or commissioned.

CHIA VIC strongly supports a sector led and government supported industry development approach to drive service improvements and build capacity to respond to new opportunities such as the Big Housing Build. We have developed an [industry-plan](#) which includes actions to support the industry's growth in Victoria.

Industry development was recognised as an essential part of the National Regulatory Scheme but never acted upon. What has evolved are a series of smaller and often ad-hoc initiatives from the National Housing Finance and Investment Corporation capacity grants to state based industry growth strategies. More recently, as part of the Big Housing Build, the Victorian Government has supported sector capacity building through the creation of a \$6M Sector Development Fund where the major areas of investment are likely to be workforce development, digital transformation and improving the renter experience.

To date there is nothing like the Canadian [Community Housing Transformation Centre](#) which is funded by governments but governed by National, First Nations and Provincial peak housing bodies. The Centre supports both individual organisations to build capacity to grow and develop new homes, and initiatives to drive sector wide improvements. This could be an opportunity for future growth and development within the community housing sector.

## National Regulatory System for Community Housing

Given the efforts to get Victoria to join the national regulatory system have been unsuccessful to date, it is clear that there is a significant amount of work required to achieve this change. CHIA Vic suggests that a helpful question to consider as part of this review is whether joining the National Regulatory System for Community Housing (NRSCH) furthers the aims of good regulation and delivers better outcomes.

CHOs operating across multiple jurisdictions advise that there are substantial costs involved in registering and then running separate compliance systems. To operate in Victoria, national organisations need to set up a subsidiary and meet multiple sets of regulatory requirements for essentially the same activities. There are different reporting mechanisms and processes, minor definitional differences and different reporting timelines

Some of the issues that may be worth examining in this light include:

- The waste of resources that could otherwise be spent on delivering improved services.
- Less investment in the system as a whole. For investors such as the NHFIC, one single registration scheme will simplify administration and any future Commonwealth funding would be more straightforward if a consistent regulatory registration scheme was in place.
- A single regulator would also enable nationally consistent information to be published.

However, CHIA Vic's support for a single national regulatory system is predicated on improvements being made to the NRSCH.

CHIA Vic was disappointed with the outcome from the NRSCH review and we joined with other colleagues in writing to the Minister for Housing, the Hon Michael Sukkar outlining what remedial actions should be taken to improve the registration scheme. Many of the issues we raised are also ones that we have identified in our submission to the Victorian regulatory review – including an absence of independent governance, insufficient focus on renter outcomes, regulatory burden, little public information or data, and shortcomings in risk profiling.

## Dispute Resolution

A key opportunity for this review is to improve the current dispute resolution framework for renters.

Dispute resolution regulation and systems should ensure that there are clearly understood, fair, timely, cost-effective and efficient internal and external pathways and processes for dispute management. Such pathways should allow all parties to feel heard and provide clearly reasoned outcomes. The process should negate the need for the more legalistic and time-consuming option of applying to VCAT in most cases while allowing parties to retain rights to access VCAT if required.

Social housing providers have developed robust internal complaint mechanisms and consideration of the impact of changes to external complaints processes on existing internal complaints systems is needed.

Complaints are a key source of the renter voice and a valuable tool in driving service improvement. However, complaints data is not necessarily representative with a small number of renters often over-represented within the data.

The discussion of the Housing Appeals Office in the consultation paper as a “dispute resolution agency” alongside the external complaint management bodies gives a misleading impression of the role of this office. The Housing Appeals Office sits within DFFH as an internal avenue of appeal for renters and applicants receiving services from DFFH.

CHIA Vic recommends that the review panel clarify in future papers that all social housing renters have access to internal avenues of appeal and that for public housing renters, the Housing Appeals Office is an internal avenue. This would reduce the risk of potential confusion in the discussion of creating an external and independent housing appeals office as a new avenue of complaint for both community and public housing renters, an option we believe is worthy of further exploration. To further reduce risks of confusion, we believe that a different name should be used, other than “Housing Appeals Office”, in future discussions of this option as this name is already associated with the public housing system’s internal appeals function.

We note that there are multiple options for creating a common avenue of redress for all social housing renters. Whatever option is chosen, we believe that complaints resolution should not be part of Regulator’s role. Regulation should focus on whether CHOs have robust internal complaint mechanisms and responding to systemic issues revealed by complaints.

CHIA Vic supports the establishment of an independent complaints resolution function for social housing. This should sit outside Homes Victoria and the Housing Registrar. A new body should have a MOU with the Victorian regulator clearly setting out how and in what circumstances information will be shared. Initial work to progress this initiative could include an analysis of the costs, benefits and impacts of the UK Housing Ombudsman approach.

## A Single Regulator

A complementary initiative to the creation of a social housing ombudsman would be the establishment of a single regulator for public and community housing.

The design, creation and implementation of a single regulatory system will require careful planning and a strategy that takes account of the differences in size, diversity of programs, financial models and business models across public and community housing. However, it would extend upon the aim of creating a social housing system which is easy for vulnerable clients to navigate, which drove the



establishment of the Victorian Housing Register. It's worth noting that all the UK regulatory registration schemes have successfully accommodated the equivalent of public housing in their registration schemes.

As outlined above, the review should consider the appropriate departmental structures necessary to provide effective, transparent and accountable regulatory oversight of the social housing system via a single regulatory body.

Appropriate ministerial oversight of the regulator should also be considered including the appropriateness of separating ministerial oversight for regulation and social housing operations.

The regulator should provide concise summaries of the data most relevant to social housing investors in an accessible, timely, reliable format based on quality analysis.

## Victorian Housing Register

The Victorian Housing Register (VHR) is a key component in managing the allocations of social housing to eligible Victorians, and has been mentioned repeatedly in the Review's consultation papers.

The VHR was adopted by the community housing sector in 2019 and works well for allocating general long term social housing.

Some critics have claimed that the flexibility of allocations approaches taken by the community housing sector means community housing is less suited than public housing as a solution for housing those with complex needs. This claim was noted in the consultation papers, but such claims ignore how allocation requirements currently work and the [data on allocations](#).

In order to receive state government funding, CHOs are required to sign up to the VHR and make all their housing allocations from that shared waiting list. When capital grants or head leased properties are received from government, the number of allocations they are required to make from the "priority access" section of the wait list increases.

Community housing organisations exist to house people in need. It is their charitable purpose, and allocations data demonstrates that they are housing priority applicants at a far greater rate than funding agreements require. CHOs also make allocations plans based on renter and community need as well as ensuring that sufficient rental income is received to support financial viability and cross-subsidise the operational costs of providing homes to households where management costs exceed rental revenue.

The community housing sectors' ability to sustain financial viability while making the majority of allocations from the priority waitlist and meeting the needs of various communities demonstrates that calls for a more prescriptive approach to allocations are not warranted.

Nevertheless, there remain ongoing issues with the effectiveness of the VHR for the community housing sector due to overlapping categories, the challenges in finding appropriate applicants for some programs and minimal flexibility in meeting the needs of specific cohorts.

There are also opportunities to improve the usefulness of the VHR to meet renter needs, for example by creating a means of matching renters with support through the VHR at the time they are housed. This would ensure that new renters had the support they needed to establish and maintain their tenancy.

We understand that Homes Vic are leading a review of the VHR and that these issues will be explored further in this forum.

## Support

The consultation papers consider the role of support in sustaining social housing tenancies, and CHIA Vic supports a principle that all social housing renters should have access to the supports needed to sustain tenancies, live independently and build meaningful lives.

To achieve this aim the support system requires an overhaul with greater investment, flexibility and targeting. Although CHIA Vic strongly supports improvements to the support system, we understand that the regulatory system for support is being reviewed separately so recommend that the Review Panel be mindful of this parallel work and be clear about what areas of support fall within the scope of this regulatory review, and what will be dealt with elsewhere.

As noted above, there are opportunities for utilising the VHR to match renters with support at the time they are allocated a home that should be explored. Tenancy Plus should also be reviewed with a view to improving the programs' ability to quickly respond to all social housing renters and support tenancy sustainment.

A specialist response is needed for the most complex renters, those with complex needs who are unable to sustain their tenancies despite support from the services.

The consultation paper states that the Support for High-Risk Tenancies program is available to both community and public housing renters, however, the program does not currently accept referrals for community housing renters. CHIA Vic would recommend that this be reviewed, with an aim to ensuring that all social housing renters can access the supports they need.

## Expanding the regulated system to protect vulnerable renters

The consultation papers consider several mechanisms for extending the protections of regulation to people who are eligible for social housing but who rent in the private market. These include extending some kind of regulation to all private landlords housing vulnerable renters, creating a category of registration for ACCOs, and opening the social housing regulatory system to for-profit housing providers.

In our response to the Homes Victoria's Ten Year Social and Affordable Housing Strategy CHIA Vic called for access to housing to be enshrined in legislation. We are sympathetic to the intent behind extending regulatory protections to renters in the private sector. However, while believing all renters should be afforded protections through residential tenancy law, we are sceptical about whether a regulatory system for social or affordable housing providers can be extended to private landlords, even those whose renters are receiving Commonwealth Rental Assistance (CRA).

Apart from operational complexities, when low cost rented housing is in such short supply, care needs to be taken that regulation does not have unintended consequences, such as further stigmatising or otherwise disadvantaging low-income renters, or causing private landlords to withdraw their properties from the rental market. We strongly support examining how and if these risks can be offset when considering extending social housing regulation to private landlords.

An initial focus could be to ensure existing health and safety requirements and RTA obligations are met and that there is more public reporting of landlord failures.

A further step may be to phase in regulation by housing type - possibly starting with caravan parks and private rooming houses – consulting with representatives from those sectors and renter bodies.

## Expanding the Regulated System to Other Parties

CHIA Vic does not support allowing for-profit housing providers to register under a social housing regulatory system. For profit organisations are obliged to put their owners interests first, and with surpluses from social and affordable rental housing being small there is an inevitable tension between maximising profit and delivering quality services.

The community housing branding is important to the community housing sector. It distinguishes our sector, which is charitable, from both ‘for profits’ and non-charitable NFP organisations. CHIA Vic strongly opposes any changes which would add to the challenges of building public understanding of the businesses that operate social housing.

If a regulatory registration scheme is introduced to register for-profit organisations, for example to regulate organisations receiving government funding, tax concessions or planning contributions for the explicit purpose of delivering affordable housing, then CHIA Vic strongly recommends that such a scheme be kept separate from the social housing regulatory system. These operators should not be considered community housing organisations, or social housing providers.

## Cultural Safety

We understand that smaller Aboriginal housing providers have difficulty in meeting the registration and reporting requirements, even at the Housing Provider level, as the regulatory reporting requirements are onerous for small organisations and have not been reviewed for appropriateness for ACCOs. This may prevent ACCOs from meeting their potential to scale up and we support measures to examine and overcome this, which may include customised registration requirements for small scale Aboriginal housing organisations.

Including ACCOs in the social housing regulatory system will expand the number of culturally appropriate housing options for Aboriginal Victorians, but embedding cultural safety in mainstream organisations is also an important element in achieving culturally safe, accessible and sustainable housing for Aboriginal people that builds pathways to independence and prosperity.

CHIA Vic is committed to Aboriginal self-determination and strongly supports the aims outlined above for safe, accessible and sustainable housing for Aboriginal Victorians. We support the inclusion of a Performance Standard on cultural safety and on regulation providing greater clarity for applicants and renters through public reporting on initiatives to improve culturally safe policies and practices.

The Community Housing Aboriginal Cultural Safety Framework is an important step towards improving cultural safety and provides a foundation that can be built on further, including through the regulation and reporting suggested here.

Aboriginal Housing Victoria is leading consultations and work to examine how regulatory change can lead to better outcomes for Aboriginal renters, and they will be responding directly to the consultation paper. We look forward to working with AHV and the broader community housing sector following this consultation.

## Conclusion

Through this paper we have argued for a separation between those who make social housing policy – DFFH – and the social housing regulator. However, a common vision and shared understanding of the role and responsibilities of the players at a system level is crucial. For example: do we want a substantial increase of registered CHOs with interstate CHOs and other housing providers joining to access BHB funding? Or do we have a preference for a system of organisations of a particular scale and focus? The work of the Industry Working Group and Homes Vic on the Social Housing System Design may assist in informing the design of a social housing regulatory system for the future. It is not clear where this planning for the future comes together.

CHIA Vic acknowledges the time and effort of our members in providing input and feedback on this submission, and the work of the Social Housing Regulatory Review team in preparing the consultation papers.

We thank the Review for this opportunity to provide input to the review of Victoria's social housing regulatory system.

Given the wide-ranging nature of the three consultation papers issued to date this submission should not be taken to be an exhaustive representation of the sector's views on the many ideas put out by the Review Panel. However, we hope that this feedback identifies key areas in the regulatory system which would benefit from being revisited, updated or expanded. We are happy to continue to meet with the Review Panel to discuss these ideas in more detail, and to respond to any further questions that our submission has raised.

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