



*Building a fair and effective  
social housing sector –  
submission in response to  
Consultation Papers 2 and 3 of  
the Social Housing Regulation  
Review*

20 September 2021

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## About Tenants Victoria

Tenants Victoria is the peak body for Victorian renters and the rental law specialist community legal centre in Victoria. Our vision is a safe, secure, and affordable home for every Victorian renter in a fair housing system. We provide information and referrals, legal advice, casework support, representation and financial counselling support to renters, each year assisting close to 9,000 individual renters. We also provide rental law advice, support, and training to tenancy and community sector workers, and advocate to make laws fairer for Victorian renters. Our website is a critical self-help tool for renters and their advocates and provides much-needed information to renters about their rights. In the year 2020-21, it received over 1.76 million views.

## Structure of this paper

There is some overlap and continuity between themes and questions in Review Consultation Papers 2 and 3. We have therefore brought our responses to the two papers together in this one paper.

We have grouped the consultation questions around key themes in the social housing context. At the commencement of each section, we list the review questions to which that part responds. We have tried to move in chronological order through themes in Paper 2, then Paper 3, as much as possible. There is also a list of consultation questions and our responses in **Appendix A**.

## Endorsements

In addition to endorsements made of individual recommendations in other submissions to this consultation, this paper has also been endorsed by the following agencies:



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## Executive summary and our recommendations

“Social housing is the proof that society knows everyone needs a secure place in which to thrive regardless of their financial status.” – Tenant, East Midlands (UK)<sup>1</sup>

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

It is well known and understood that a safe and secure home is essential for individuals’ health, wellbeing, and dignity<sup>2</sup>. For many in Victoria experiencing hardship or disadvantage, such a home is not possible without access to social (public or community) housing, which is lower-cost rental accommodation for those who cannot afford to access the private rental market. The focus of our submission is on social housing renters who have a fixed-term or periodic rental agreement with the Department of Housing or a community housing provider (**CHP**).<sup>3</sup>

With only about 3%<sup>4</sup> of Victorian housing stock being social housing, compared to the already low Australian national average of 4.2%<sup>5</sup>, we lag far behind the rest of the developed world in relation to investment in social housing<sup>6</sup>. Therefore, we applaud the Victorian Government’s commitment to investing in social housing, as well as its undertaking of this Social Housing Regulation Review (**SHRR**, or the **Review**).

However, the likelihood that future growth in social housing will be predominantly, or exclusively, community housing, is of concern should the regulatory system remain as is. This is because of the inherent inequality in our current system – that community housing renters have fewer protections, and less stable housing, than their public housing counterparts. This undermines the purpose of social housing, as set out in the *Housing Act 1983* (Vic), to ‘ensure that every person in Victoria has access to adequate and appropriate housing’ and to ‘promote security... of tenure’.<sup>7</sup>

We therefore hope that this Review will provide an opportunity for the anticipated growth of community housing through government investment to be matched by appropriate support and protections for renters who depend on social housing and ensure positive tenant outcomes. Without these protections, our housing system will entrench a problematic two-tier approach to social housing.

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<sup>1</sup> Rethinking social housing report.pdf (kc-usercontent.com), page 8.

<sup>2</sup> AHURI, Precarious housing and health: research synthesis, p 3, [https://www.vichealth.vic.gov.au/-/media/ResourceCentre/PublicationsandResources/Health-Inequalities/Precarious-housing/Precarious-housing\\_Research\\_Synthesis.pdf?la=en&hash=9D553A3A4F379246CD2D2D50C66AA0F4410ED78](https://www.vichealth.vic.gov.au/-/media/ResourceCentre/PublicationsandResources/Health-Inequalities/Precarious-housing/Precarious-housing_Research_Synthesis.pdf?la=en&hash=9D553A3A4F379246CD2D2D50C66AA0F4410ED78)

<sup>2</sup> Emma Baker, Laurence H. Lester, Rebecca Bentley & Andrew Beer (2016); Emma Baker, Laurence H. Lester, Rebecca Bentley & Andrew Beer (2016) Poor housing quality: Prevalence and health effects, *Journal of Prevention & Intervention in the Community*, 44(4), 221; Australian institute of Family Studies – *Housing stress and the mental health and wellbeing of families*.

<sup>3</sup> While it is our view that every person deserves long-term, secure and safe housing, with limited resources, some social housing and other housing providers provide short-term accommodation (including crisis, transitional housing and rooming houses) for people who are homeless or at risk of homelessness. Because this group of residents often have a different set of rights and entitlements, this is not the focus of our submission.

<sup>4</sup> This has been reported as 3.2% in 2021: 'This will change lives': \$5.3 billion social-housing construction blitz (theage.com.au) However in the 2016 census this was only 2.8%: Housing tenure | Australia | Community profile (id.com.au)

<sup>5</sup> Victoria to draw on \$27b social housing stock to solve housing crisis (afr.com)

<sup>6</sup> See, for example: AHURI - What is the right level of social housing?

<sup>7</sup> Housing Act 1983 (Vic) s 6(1)(a) and (f).

Drawing on Tenants Victoria's long-standing legal and advocacy work for and with public and community housing renters, we submit that some critical concerns in relation to the current regulation of social housing are as follows:

- We have a two-tiered system of social housing, with community housing renters afforded lesser rights and an alternate regulatory system compared to public housing renters. This creates unnecessary inequality and complexity in our housing system. Rights are manifest in the two systems through the policies and procedures of housing providers (which can be shaped by regulation) and the existing legislative framework, including the lack of clarity about whether CHPs are bound by the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
- The social housing complaints schema is also two-tiered, and at times ineffective, unfair, and complex. Therefore, it does not function, as it should, to identify and rectify systemic issues, properly compensate for non-compliance, or build trust in the system.
- There are differing regulatory approaches to community as compared to public housing, and the mixed purpose of the community housing regulator, the Housing Registrar, that includes both a focus on sector growth and compliance, risks undermining confidence in the Registrar's ability to perform its function.
- There is insufficient emphasis on renter involvement, and empowerment, in all areas of the current regulatory system.
- There is insufficient data about how the social housing system is performing, and in particular comparative data across public and community housing, to enable policy makers, advocates, and renters to make evidence-based decisions.

As we set out below, due to the many challenges with the current system, we support a re-imagining of the social housing regulatory system. Key aspects of this should include:

- Ensuring that social housing is safe, secure, affordable and of good quality.
- Ensuring that all long-term social housing renters are treated equally, and that there is no diminution of rights of renters through this review process.
- Making it easier to know how social housing providers are performing, to increase transparency and accountability.
- Ensuring fair, swift and effective resolution of complaints.
- Strengthening the standards social housing providers must meet and creating a strong, proactive regulatory regime to enforce them.
- Empowering residents.
- Ensuring greater coordination and consistency among support services assisting social housing renters.

Our specific recommendations for reform are set out below.

## Summary of recommendations

### Key principles

1. That the Review Panel is guided by the below principles in the conduct of this Review and the drafting of its recommendations.

1. A fair social housing regulatory system delivers 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.
2. 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. Data should be used and reported in a way that reflects the diversity of the community housing sector.
3. There should be a clear and consistent standard of rights for everyone who lives in social housing.
4. All social housing renters' human rights are protected and enforceable through the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
5. This Review is an opportunity to improve the standard of living of, and protections available to, all social housing renters. Therefore, no renter should be worse off due to the Review or the implementation of any of its recommendations.

### Priorities for reform and regulatory approach

#### Model Rules

2. That the Victorian Government ensure equal rights for social housing renters in key areas by developing a set of Model Rules for all social housing that is of a standard equivalent to the tenancy management policies of public housing. These Rules should include, but not be limited to, the following current policies: temporary absences, disability modification, internal appeals, rent setting, arrears, and eviction (including appropriate use of fixed term leases and notice to leave in rooming houses).
3. These Model Rules should be deemed to apply to all social housing providers (with organisations able to apply to opt-out of particular provisions on reasonable grounds).
4. That the Victorian Government provide funding to the community housing sector to ensure that essential model policies which have financial implications, such as the temporary absence policy and disability modification policy, can be implemented.

#### Human rights

5. That the Victorian Government make legislative amendments to clarify that the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**) applies to all social housing providers, including CHPs.

6. That the Victorian Government amend the *Housing Act* to:
  - a. Require that CHPs 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 CHPs applying for registration under that Act should include a report on how their policies provide for Charter-compatible decision making.
  - c. Create a new Performance Standard that requires 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. This Performance Standard should be phrased as a “mandatory requirement” rather than an “indicator”.
  - d. Give the social housing regulator power to revoke or suspend an agency’s registration under that Act for repeated breaches of the Charter.
7. That the community housing regulator prepare and publish guidance to CHPs on how the Charter should be considered and applied in decision-making.

#### **Eviction as a last resort**

8. That the community housing regulator 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.
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 within the Performance Standards (see also recommendations under “Performance Standards”).
10. That the community housing regulator 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.

#### **Renter empowerment**

11. That the Victorian Government implement the engagement mechanisms used in the Scottish system, with a view to developing best practice in renter voice in the Victorian social housing regulatory system. Relevant elements from the Scottish model include:
  - a. Require that the social housing regulator(s) consult with social housing renters and their representatives in relation to targets for social housing performance improvements, housing activities guidance, and a code of conduct revisions, as is done through the *Housing (Scotland) Act 2010*.
  - b. Establish a Renter Advisory Panel that supports the regulation of social housing (see Recommendation 28 below).
  - c. Establish a clear set of standards on what a social housing renter can expect in key areas, taking guidance from the areas set out in the Scottish Social Housing Charter. These should include a high-standard expectation in relation to renter engagement.



- d. Draft guidance on what may be expected in relation to renter engagement, with alternative models provided depending on the size and type of the housing provider.
- e. Require regular and transparent reporting against these standards (see also recommendations under “Performance Standards”).

## **Renter information**

12. Useful information for renters (prospective and current) to assess performance of social housing providers could include:
- a. Property listings of available properties, and more general information about those currently tenanted, so renters could decide whether the location would be suitable for them and their families. These listings should include the current market rent, number of bedrooms and any additional features – e.g. no stairs, disabled access bathroom, additional security features such as CCTV, and garden or outside space.
  - b. Victorian Residential Efficiency Scorecard ratings for each property that is available for rent, so that the prospective resident can assess what the property will cost them, and how comfortable it will be year-round.
  - c. Maximum timeframes for repairs responses and completion for various common repair tasks – e.g. dripping taps, glass replacement, mould repairs, painting and patching.
  - d. Eviction rates for common causes – e.g. arrears, nuisance, damage, and danger. This information should include the steps that the housing provider undertakes to complete if a renter is considered in breach, and preparatory to pursuing eviction of a renter.
  - e. The policies and procedures of the provider in a range of community languages, as well as information about rights to interpreting and translation services.

## **Rent setting and policies**

13. That the Review Panel consider rent setting and service charges in the social housing sector as part of this Review, including whether disparity of rents between public and community housing is appropriate.
14. That the Review make a finding that rent-setting policies across the social housing sector should be consistent, transparent and follow a set of Model Rules, which include appropriate adjustments being made where renter income is reduced.

## **Victorian Housing Register (VHR) and allocation policy**

15. Social housing Performance Standards should include:
- a. The VHR allocations made to each priority category by the provider;
  - b. The VHR allocations made, by income source;
  - c. The proportion of allocations said to be allocated to ‘long term housing’ that are allocations into rooming houses;
  - d. To what extent the provider satisfied VHR housing preferences through their allocations.

16. Social housing providers should all report against these measures annually, and the results of this reporting should be collated and publicly available.
17. That VHR allocation complaints should be dealt with by way of a centralised social-housing complaints-handling process (see “Complaints Handling and Dispute Resolution”, below).
18. That the Victorian Government commission an independent review of the operation of the VHR priority-access system in order to assess whether the current categories should be altered, or weighted, or used in new ways to help vulnerable Victorians gain secure housing.

### **What should be included in “social housing”**

19. All social housing providers are required to be registered under a uniform scheme.
20. For-profit housing providers should not be able to be registered as a social housing provider, given the prudential and service-quality risks associated with for-profit providers.
21. In the alternative, should the Review recommend that for-profit providers can be registered as such, we recommend that for-profit housing providers be subject to a more stringent regulatory regime to ensure that renters are not disadvantaged by the nature of their housing provider, and to ensure that all policy, housing, and prudential standards are met.
22. It is not appropriate that the Victorian Government include affordable housing in the social housing regulatory framework, given the different needs of the renter cohorts in social housing, vis-à-vis affordable housing.

### **National Regulatory System for Community Housing**

23. The Victorian Government should maintain and improve its own regulatory scheme for social housing in order to ensure that renters are not disadvantaged, particularly by way of reduced rights or protections, through Victoria’s entry into the National Regulatory System for Community Housing.

### **The regulator**

24. The Victorian Government should legislate that the purpose of the community housing regulator is as follows:
  - (1) to safeguard and promote the interests of —
    - a. renters of social housing providers, and
    - b. recipients of housing services provided by social housing providers.
  - (2) The Regulator must, so far as is reasonably practicable, perform its functions in a way —
    - a. which is compatible with its objective, and
    - b. which it considers most appropriate for the purpose of meeting that objective.
25. There must be safeguards to protect the community housing regulator from undue influence, and these include:

- a. The regulator is separate from government (for example, a statutory body that sits outside a government department, and in particular outside the Department of Housing).
  - b. It should be overseen by an independent governance board or panel.
  - c. It has stringent policies in place in relation to board recruitment and management of conflicts of interest.
26. The community housing regulator should report annually, or more regularly, to the public on its enforcement activities, including listing any prosecution activities undertaken.
  27. Its regulatory approach should include, among other things, being ‘intelligence-led’<sup>8</sup>, which should include, as a priority, mechanisms for building stronger relationships with community housing renters and their advocates.
  28. As part of its engagement work the community housing regulator should establish a Renter Advisory Panel constituted of renters, renter advocates, homelessness services, and other relevant stakeholders.
  29. The community housing regulator should be properly resourced to undertake its activities thoroughly, and to enable impartial and effective fulfilment of its objectives.
  30. The performance of the community housing regulator should be regularly assessed, and the outcomes of this assessment should be made publicly available.

### **Performance standards, transparency and accountability**

31. The Victorian Government implement a set of Performance Standards applicable to all social housing (including public housing), that draws inspiration from the Scottish Charter but is drafted on the basis of meaningful consultation and engagement with Victorian social housing renters, their advocates and other relevant stakeholders.
32. The Victorian Government adopt the social housing provider-specific reporting undertaken in Scotland, including its current reporting metrics and comparison-of-housing-provider tool.
33. That the social housing Performance Standards housing-provider reports also include the following:
  - a. List of properties held by each housing provider.
  - b. Data on response times to complaints, and outcomes.
  - c. Eviction data, including number of notices to vacate issued, number of applications for possession made at the Victorian Civil and Administrative Tribunal (VCAT), outcomes of these matters, number of warrants issued, and number of warrants executed.
  - d. The VHR allocations made to each priority category by the provider.

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<sup>8</sup> See for example Consumer Affairs Victoria, which embraces this approach: [Our regulatory approach - Consumer Affairs Victoria](#)

- e. The VHR allocations made, by income source.
  - f. The proportion of allocations said to be allocated to ‘long term housing’ that are allocations into rooming houses.
  - g. To what extent the provider satisfied VHR housing preferences through their allocations.
  - h. Contribution to neighbourhood and socially inclusive communities.
  - i. Mechanisms for access and referral to independent support services.
34. In reporting against renter satisfaction, the community housing regulator make the renter survey questions publicly available, and that the Renter Advisory Panel referred to in our Recommendation 28 be consulted in relation to its questions, scope, and administration.
35. That the community housing regulator undertakes regular analysis, and public reporting, on the data sets described in **Appendix E**.

### **Complaints handling and dispute resolution**

36. That the Victorian Government draft or amend legislation in order to:
- a. Create a central and independent Social Housing Ombudsman, or Joint 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.
  - b. Require that this body have the power to make a binding order and provide a remedy to the renter if a complaint is upheld.
  - c. Where a Joint Housing Appeals Office is implemented, enable both housing providers and renters to apply to the Review and Regulation List of VCAT for merits reviews of this body’s decisions.
37. That this complaints handling body be required to adhere to the principles set out in the Federal Treasury’s *Benchmarks for Industry-Based Customer Dispute Resolution* and that the regulator be independently reviewed against these benchmarks every two years, with the outcome of this review made publicly available.
38. That the Victorian Government amend the definition of “agency” in the *Freedom of Information Act 1982* to include all social housing providers registered under the *Housing Act*.

### **Sector and workforce development**

39. Establishment of a single set of required workforce induction, and then continuing professional development (CPD) training standards for the whole of the social services sector that is client-facing, including in relation to rigorous training related to referral pathways into the community services sector (including the legal assistance sector), trauma-informed practice, working with CALD communities and the use of interpreters, working with family violence survivors, and working with people of low literacy.
40. That the social housing sector work together to establish a Workforce Development Plan, which includes:

- a. Measures that support retention of skilled housing workers in the industry, including through formal career paths and secondment opportunities; and
  - b. Mechanisms for increased interchange between CHP and Director of Housing staff, including through joint training opportunities and conferences, with the aim of increased service consistency, skills enhancement and retention.
41. The professionalisation of social housing officers, including a shared code of conduct and a set of consistent and easy-to-understand standards for all officers.

### **Aboriginal housing**

42. That the Victorian Government be guided by the Aboriginal and Torres Strait Islander community on how culturally safe and appropriate housing be facilitated by the social housing regulatory system.
43. That there be no transfer of sub-standard housing stock to Aboriginal communities as a means of increasing overall Aboriginal social housing.

### **Support services**

44. That the Victorian Government undertake a review of social-renter support services and design wrap-around and independent services for renters to promote their rental security that include legal guidance, financial counselling, social work, and housing access support and that are available according to renter need.
45. That the Victorian Government ensure that sufficient, appropriate and accessible independent advocacy assistance is available to social housing renters through Tenancy Plus and other programs, particularly in relation to repairs, rental disputes and housing applications (including transfers).
46. That the Victorian Government make funding available for pilot projects aimed at enhancing the service coordination, collaboration and integration of the social-renter support sector.

### **Housing standards**

47. All newly built properties in the social housing portfolio, whether public or community housing, be required to be “7 star” rated in the Nationwide Housing Energy Rating Scheme (**NatHERS7**), and that this requirement be reviewed annually as housing standards improve.
48. Any existing properties that are brought into the social housing portfolio be retrofitted as much as possible to maximise their energy efficiency and minimise for their renters the running costs of their home.
49. The Victorian Government should revise social housing performance standards applicable to community housing providers to maximise improvements in energy efficiency of their rental stock.

## Introduction

It is well known and understood that a safe and secure home is essential for individuals' health, wellbeing, and dignity<sup>9</sup> For many in Victoria such a home is not possible without access to social housing, which provides more affordable rental accommodation for those who cannot afford the private rental market. Unfortunately, Australia, and Victoria, lag behind the rest of the developed world in relation to investment in, and regulation of, social housing.

In Victoria, only about 3% of our housing is social (public or community) housing,<sup>10</sup> as compared to 4.2% in Australia,<sup>11</sup> 17% in England,<sup>12</sup> 21.9% in France<sup>13</sup>, and 23% in Scotland<sup>14</sup>. In Victoria, at June 2021 51,823 people were on the Victorian Housing Register (**VHR**),<sup>15</sup> the social housing waitlist. Alongside this, while Australia does not appear to have a nation-wide strategy for social housing (although there is a National Regulatory System for Community Housing (**NRSCH**) established in 2013), we are not aware of a national review of social housing regulation as a whole. We are also not aware of Victoria having previously reviewed its social housing regulatory framework as a whole. Other comparable jurisdictions have undertaken more regular and recent reviews of their social housing regulatory systems: for example, Scotland last reviewed its social housing regulation in 2017-19<sup>16</sup> (and it is currently reviewing its Social Housing Charter)<sup>17</sup>, and England last reviewed its regulatory system in 2018-20<sup>18</sup>.

However, we note that the Victorian Government has indicated this growth in housing is likely to be comprised predominantly of community housing. This aligns with a trend in Victoria, and Australia, to transition to community housing and away from public housing. This is a concern for our service, as through our extensive experience working with both public and community housing renters, we have seen the relative difficulties community housing renters have in sustaining their tenancies, and ensuring their basic housing rights, as compared to public housing renters. A significant factor contributing to this is the disparity in legally enforceable rights afforded to community housing renters vis-à-vis public housing renters. This is therefore a focus throughout our below submission.

## Proposed principles for the social housing regulatory system

This part responds to the following consultation questions:

- Consultation Paper 2: questions 1 and 2.

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<sup>9</sup> See for example [Housing\\_and\\_Health\\_Research-Summary\\_web.pdf](#) ([vichealth.vic.gov.au](http://vichealth.vic.gov.au)); [Housing2.pdf](#) ([globalpolicysolutions.org](http://globalpolicysolutions.org)).

<sup>10</sup> See above n 4.

<sup>11</sup> <https://www.aihw.gov.au/reports/housing-assistance/housing-assistance-in-australia-2019/contents/social-housing-dwellings>

<sup>12</sup> <https://www.ethnicity-facts-figures.service.gov.uk/housing/social-housing/renting-from-a-local-authority-or-housing-association-social-housing/latest>

<sup>13</sup> <https://www.statista.com/statistics/767195/social-housing-tenants-by-region-france/>

<sup>14</sup> [https://www.wheatley-group.com/\\_\\_data/assets/pdf\\_file/0023/63356/English-and-Scottish-social-housing-systems.pdf](https://www.wheatley-group.com/__data/assets/pdf_file/0023/63356/English-and-Scottish-social-housing-systems.pdf)

<sup>15</sup> [https://www.housing.vic.gov.au/victorian-housing-register\\*](https://www.housing.vic.gov.au/victorian-housing-register*)

<sup>16</sup> Scottish Housing Regulator - The Scottish Federation of Housing Associations Limited ([sfha.co.uk](http://sfha.co.uk))

<sup>17</sup> Social housing charter - review: consultation - gov.scot ([www.gov.scot](http://www.gov.scot))

<sup>18</sup> Social Housing Reform in England: What Next? - House of Commons Library ([parliament.uk](http://parliament.uk))

As submitted in response to the SHRR Consultation Paper 1, Tenants Victoria considers that the key principles underpinning the review are:

1. A fair social housing regulatory system delivers 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.
2. 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. Data should be used and reported in a way that reflects the diversity of the community housing sector.
3. There should be a clear and consistent standard of rights for everyone who lives in social housing.
4. All social housing renters' human rights are protected and enforceable through the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.
5. This Review is an opportunity to improve the standard of living of, and protections available to, all social housing renters. Therefore, no renter should be worse off due to the Review or the implementation of any of its recommendations.

For our service, renter focus is the key policy lens to review social housing regulation. People reliant on the Victorian Housing Register (VHR) for housing are often experiencing significant vulnerability or disadvantage, including financial hardship, mental health issues, disabilities, and family violence. They deserve to live, as we all do, in safe, secure, suitable and affordable homes, regardless of whether that is in public or community housing. However, the current legal protections for community housing renters fall short of those available to public housing renters in several critical areas, as set out in this submission.

It is therefore vital that any harmonisation of rights between public housing and community housing renters must not come at the expense of the existing rights and entitlements of public housing renters. The goal and resulting change must be to lift and improve the circumstances and rights of community housing renters to the level enjoyed by public housing renters. All social housing renters should be able to expect and rely on their landlord operating as a “social housing provider” and model litigant, with equity and fairness at the core of their operations.

## Recommendations

We therefore recommend:

1. That the Review Panel is guided by the above principles in the conduct of this Review and the drafting of its recommendations.

## Response to the ‘social tenant’

This part responds to the following consultation questions:

- Consultation Paper 2: questions 3 and 34.

The framing of Consultation Papers 2 and 3, in particular question 3 of Paper 2, focuses on the notion of the “social tenant” – a concept that includes both current social housing renters, and prospective renters who are eligible for social housing but who rent outside the social housing system, for example in private rental, rooming houses or caravan parks.

We are concerned that, without careful controls, such a focus may undermine the purpose of this Review and distract from the experience of current social housing renters and the areas ripe for reform in our current social housing system. It risks making a false comparison between current renters’ needs and experience and those outside the social housing system. At worst, it risks a significant diminution of current social housing renters’ rights through unintended consequences, i.e. a reduction in rental providers investing in the “affordable” end of the market, or discrimination against low-income renters.

Importantly, such a focus of this Review 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. The focus of this Review should be on making sure that all social housing renters are well supported, secure, and able to exercise their rights and live in comfortable, affordable, and appropriate accommodation so they can participate fully in their communities.

### **Additional protections for caravan parks and rooming houses residents**

Many people who are eligible for social housing, and/or are on the VHR, live in caravan parks and rooming houses because more stable and suitable continuing accommodation is simply not available. Our experience of working with rooming house residents in particular is that they are some of the most difficult to engage renters, and are unlikely to make use of, for example, a traditional dispute resolution process without significant support. Our experience is also that despite minimum standards for rooming houses set out in the *Residential Tenancies Act (1997) (RTA)* and its *Residential Tenancies (Rooming House Standards) Regulations 2012*, rooming house standards are frequently not complied with due to, among other things, a limited enforcement approach<sup>19</sup>.

Fundamentally, as 4.2.2 of Consultation Paper 2 makes clear, access to stable, appropriate, and long-term housing would make the greatest impact for this cohort of residents. This would require continuing government investment and incentivisation of social housing, greater investment in services that support entry into, and maintenance, of appropriate and long-term housing (see “Support Services” further below), or, more radically, adopting the Finnish Housing First approach, which dramatically reduced investment in short-term accommodation to instead focus on long-term housing solutions for all<sup>20</sup> Our submission on the 10 Year Social and Affordable Strategy for Victoria sets out a number of strategies the Victorian Government could adopt in this regard.<sup>21</sup>

On its face, we are supportive of the SHRR’s proposal of additional protections for as many renters as possible, including of caravan parks and rooming houses, for example through greater landlord requirements, and access to dispute resolution and tenancy support services. However, this support is conditional on implementation not coming at the expense of social housing renters’ existing rights, and

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<sup>19</sup> See for example [Open-the-Door-The-Residents-View-of-life-in-a-Rooming-House.pdf](#) (pclc.org.au), **Key findings**.

<sup>20</sup> See for example: [Finland - Housing First Europe Hub](#); 'It's a miracle': Helsinki's radical solution to homelessness | Cities | The Guardian.

<sup>21</sup> [210430-submission-10-Year-strategy-for-social-and-affordable-housing.pdf](#) (tenantsvic.org.au)



on a considered analysis and mitigation of any unintended consequences including risk of reduction of housing availability, or discriminatory treatment of groups of prospective renters.

## Priorities for reform and regulatory approach

This part responds to the following consultation questions:

- Consultation Paper 2: questions 4, 19 and 22.

Consultation Paper 2 asks if the overall approach to regulation of public and community housing is effective, transparent, and proportionate. While there are many strengths in the Victorian social housing systems, this submission also sets out many areas for improvement.

Consultation Paper 2 states that the Victorian social housing system is inequitable because of the different standards that apply to current social housing renters, on the one hand, and those in rental hardship who are not in social housing, on the other.<sup>22</sup> However, a significant inequality exists within the social housing system itself: the difference between community housing and public housing renters' rights and protections. Importantly, the legal rights of community housing renters fall below those afforded to public housing renters. This is for a number of reasons, including the financial and resourcing difference between the two housing models (which allows public housing to tolerate greater periods of rental arrears, or renter absence, for example), cultural differences, and legislative differences (see below). This is problematic, because both groups of renters are drawn from the same waitlist, the VHR, and deserve equal treatment on this basis. As there is insufficient comparative data on the performance of the two housing models as against each other, this difference is not easily discerned other than by advocacy services such as ours which service both sets of renters.

This difference is evident in three key areas:

- i. Inconsistent renter rights, as set out in legislation as well as in public and community housing policies, resulting in markedly different treatment between community and public housing renters.
- ii. Lack of clarity in relation to whether the *Charter of Human Rights & Responsibilities Act* applies to community housing renters – again, resulting in reduced protections for community housing renters when it most matters.
- iii. Related to the two matters above, a difference in eviction rates between community housing and public housing, resulting in reduced stability of housing for community housing renters.

These three areas are detailed below.

### Community housing policies should be consistent, and align with public housing policies in key areas

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 key areas, including temporary

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<sup>22</sup> Consultation Paper 2, page 15: The system is inequitable – there are different policies and standards applying across public and community housing and those eligible for social housing, but who live outside the social housing system receive less protection.

absences, rent setting, rent arrears, and others. These key differences often result from a critical difference between CHPs and the Department of Families, Fairness and Housing (DFFH) – that CHPs “are dependent on tenants paying rent in order to remain financially viable”<sup>23</sup>.

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.

Our service conducted a review of community housing policies in Victoria against the 2021 Guidance Note, ‘Agency publication of online policies’, which lists applicable policies that should be published on CHPs’ websites, in compliance with Community Housing Performance Standard 1. The results of this review are set out in **Appendix B**. The results reveal that some CHPs have not made available all policies required by the Guidance Note, resulting in inconsistent transparency and so inconsistent outcomes for renters. More concerningly, on our review of policies, CHPs do not provide rights consistent with those afforded to public housing renters in the Department of Housing Tenancy Management Manual,<sup>24</sup> in key areas resulting in more insecure housing outcomes for community housing renters.

## Recommendations

We therefore recommend the following:

2. That the Victorian Government ensure equal rights for social housing renters in key areas by developing a set of Model Rules for all social housing that is of a standard equivalent to the tenancy management policies of public housing. These Rules should include, but not be limited to, the following current policies: temporary absences, disability modification, internal appeals, rent setting, arrears, and eviction (including appropriate use of fixed term leases and notice to leave in rooming houses).
3. These Model Rules should be deemed to apply to all social housing providers (with organisations able to apply to opt-out of particular provisions on reasonable grounds).
4. That the Victorian Government provide funding to the community housing sector to ensure that essential model policies which have financial implications, such as the temporary absence policy and disability modification policy, can be implemented.

## Community housing should be required to comply with the Victorian *Charter of Human Rights and Responsibilities Act*

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 Victorian Housing Register, CHPs play a role near-identical to that of the Department of Housing. However, the law is not clear on whether the

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<sup>23</sup> PHRP-QON-CHIAVIC-ATT\_1.pdf (parliament.vic.gov.au), page 2.

<sup>24</sup> Tenancy management manual - DHHS Service Providers (dffh.vic.gov.au)

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.

Our service has seen cases where a more optimal outcome would have resulted if the CHP was required to comply with the Charter. As Sammy's story demonstrates below, adhering to the Charter would provide more optimal outcomes for renters who reside in community housing managed properties that are owned by the Department.

### **Case study: Sammy's story**

Sammy is a single father, caring for 3 dependents, 2 of which received NDIA funding and support for autism and ADHD. He suffers from financial hardship, relying on a disability support pension due to an ongoing back injury because of a boating accident in 2010.

Sammy is on the public housing waitlist, and rents a premises overseen by a community housing provider (CHP). The dwelling itself is owned by the Department of Families, Fairness and Housing (DFFH), with the CHP assigned by way of a sub-lease agreement to manage the rented premises.

In April 2021, the rented premises was nominated for demolition and redevelopment. Sammy was served with a notice to vacate for the purpose of demolition. The CHP did not offer to assist him in finding another property. This is because the CHP does not have a policy requiring it to source alternative accommodation or facilitate contact with DFFH around an early relocation from the public housing waitlist.

Under the current DFFH allocation and waitlist policy, stock utilisation transfers only apply for renters residing in Department-managed properties. Where renters reside in community housing properties that are owned by the Department, an application for housing will not be deemed a transfer but instead treated as a rental general stock application for priority only. In this case, despite being at risk of homelessness due to redevelopment, Sammy remained on the segment 3 insecure-housing priority waitlist with low prospects of being rehoused.

Should the Charter be considered in making these policy decisions, it is more likely Sammy would be better supported in finding alternative accommodation for himself and his young family due to the prioritisation of the protection of families and children.

## **Recommendations**

We therefore recommend the following:

5. That the Victorian Government make legislative amendments to clarify that the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* applies to all social housing providers, including CHPs.
6. That the Victorian Government amend the *Housing Act* to:
  - a. Require that CHPs 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 CHPs applying for registration under that Act should include a report on how their policies provide for Charter-compatible decision making.
  - c. Create a new Performance Standard that requires 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. This Performance Standard should be phrased as a “mandatory requirement” rather than an “indicator”.
  - d. Give the social housing regulator power to revoke or suspend an agency’s registration under that Act for repeated breaches of the Charter.
7. That the community housing regulator prepare and publish guidance to CHPs on how the Charter should be considered and applied in decision-making.

## 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, and that “eviction should be a genuine avenue of last resort”<sup>25</sup>. 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.

Our experience is that community housing renters are at a higher risk of eviction than public housing renters, despite the relevant CHP Performance Standard. For example, between mid-February and end-August 2021 we provided advice to 123 community housing renters and 200 public housing renters. Of these, eviction was the main issue for 12% of the community housing matters, compared to only 2% of the public housing matters. As Amanda’s story below illustrates, we do not always see CHPs acting in accordance with their policies, or their legal obligations, in relation to eviction.

### Case study: Amanda’s story

Amanda is a long-term community housing resident with a long history of medical issues which require ongoing care, and make it difficult for her to move premises without specialised assistance. Amanda contacted Tenants Victoria in August 2020 as she believed she had been given a notice to temporarily relocate by her community housing provider (CHP) in order for renovations to be completed in her apartment complex.

After Amanda made enquiries with the CHP, she was advised that she had actually received a notice to vacate and was required to vacate the premises. The CHP was aware of Amanda’s ongoing medical issues. Amanda instructed Tenants Victoria that she was not ordinarily physically able to move without significant support, and this had been

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<sup>25</sup> Performance Standards, page 3, available at: [Performance Standards and Evidence Guidelines | Housing Registrar](#)

made more difficult due to the impact of the COVID-19 lockdown, which had reduced her ability to engage with the healthcare and support services within her local community.

Despite Amanda's circumstances and the fact that any notices to vacate issued between 28 March 2020 and 28 March 2021 were invalid, the CHP advised Amanda that she needed to vacate the property and that if she did not do this they would apply to have her evicted through VCAT. Amanda advised Tenants Victoria that she was receiving daily phone calls and email from CHP staff, questioning when she would leave.

Tenants Victoria agreed to speak to the CHP on her behalf. We spoke to a senior tenancy coordinator from the CHP who advised that they issued a notice for the tenant to vacate the premises and move into temporary accommodation so that they could perform renovations on the apartment complex.

When we raised the moratorium on evictions, the CHP advised that they were aware of the current restrictions and would proceed to apply to VCAT to evict Amanda regardless of knowing they had no legal grounds under the Act to do so. The CHP advised that if Amanda did not leave once the moratorium on evictions ended, they would have her evicted regardless.

After this interaction, Tenants Victoria supported Amanda to apply for an urgent restraining order through VCAT, and she was granted both interim and final orders preventing the CHP from contacting her through any means except post and preventing them from contacting her about ending her tenancy until 28 March 2021.

The Housing Registrar reports annually on the self-reported eviction rate (as a proportion of total exits, not tenancies) by CHPs, where "eviction" is defined as "a warrant of possession is issued (purchase of warrant) and the tenancy is subsequently terminated"<sup>26</sup>. We note that the CHP eviction rate in 2019-20 was 5.47% of exits, a 25% drop from the previous year's result of 7.24% (reflecting the eviction moratorium for about 3 months in that reporting period).

There remains a problematic paucity of comparable eviction data between the community housing and public housing sector that would allow a state-wide understanding of the disparity between the two sectors. We therefore make recommendations below in relation to ensuring more consistent and useful data is gathered in the social sector going forward (see "Accountability, Performance Standards and Service Quality").

## Recommendations

We therefore recommend the following:

8. That the community housing regulator 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.

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<sup>26</sup> Housing Registrar Performance Sector Report 2019-20.pdf

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 within the Performance Standards (see also recommendations under “Performance Standards”).
10. That the community housing regulator 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.

## Renter empowerment

This part responds to the following consultation questions:

- Consultation Paper 2: questions 5, 6, 7, and 8.
- Consultation Paper 3: question 2.

“Tenants are often the least visible stakeholder in policy debate about regulation but have the most immediate interest in the condition, amenity, location, security of tenure and cost of their housing ... Regulation has a primary role to play in protecting the interests of tenants and providing them with a voice.”<sup>27</sup>

Renter empowerment, and learning from renters’ experience, is important, but must not come at the expense of enforceable legal rights. There are currently few if any formal, or required, mechanisms for renter voice and experience to impact on the design of the social housing regulatory system. At a time when “user-centred” and “human-centred” design is at the fore of public policy thinking, this is unfortunate, as renters are a critical and rich source of design input. We are therefore supportive of a much greater focus on renter voice and empowerment in the social housing system, where this is long-term, and genuine, engagement. It should not involve mere tokenism, such as an annual survey, or a solitary position on a committee of management, or similar. Genuine community engagement requires resources, time and the building of trust which includes continuing communication and compromise.

We further caution that tenant voice must not be a proxy for tenant rights. Renter voice should supplement a strong rights-based framework, with adequate funding for renters to exercise these rights. For example, the Scottish social housing model is often noted for its strong tenant outcomes and engagement focus.<sup>28</sup> But these aspects of the Scottish schema are in a very different context to our own. In 2018 23% of housing in Scotland was social housing<sup>29</sup>, compared to 3.2 % in Victoria. The Scottish Social Housing Regulator has a different purpose and enforcement approach to that in Victoria. The complaints mechanism is centralised at the Public Service Ombudsman, while the Victorian system takes a two-tiered approach. The operations of social housing providers are more transparent – for

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<sup>27</sup> VCOSS, *Submission to the National Regulatory System of Community Housing Review*, <https://vcoss.org.au/policylibrary/2019/03/vcoss-submission-to-the-review-of-the-national-regulatory-system-for-community-housing/>

<sup>28</sup> For example The Scottish *Housing Act* requires that social housing providers have a tenant engagement strategy intended to enable tenants, and people experiencing homelessness, to participate in decision making. It also requires that the Social Housing Regulator consults with renters whenever altering a number of regulatory settings including performance standards, or guidance notes. The Scottish Social Housing Charter lists tenant participation as one of its outcomes.

<sup>29</sup> [https://www.wheatley-group.com/\\_\\_data/assets/pdf\\_file/0023/63356/English-and-Scottish-social-housing-systems.pdf](https://www.wheatley-group.com/__data/assets/pdf_file/0023/63356/English-and-Scottish-social-housing-systems.pdf)

example, since 2019, the *Scottish Freedom of Information Act* applies to all social housing providers<sup>30</sup>, which is not the case in Victoria. And, more broadly, there is a long history of tenant involvement in decision making – many housing associations are membership-based and open to local residents<sup>31</sup>.

We are cautiously supportive of the above aspects of the Scottish system, as well as the consideration of other mechanisms of renter empowerment such as tenant councils and advisory groups and new methods to regularly seek feedback from renters on policy initiatives, and consideration of how to diminish a lack of renter engagement due to fear of retribution (i.e. regular communication to renters by their housing providers that there are no forbidden or bad opinions, and that their views will not prejudice their housing provider against them or endanger their housing security).

In conclusion, we support greater renter empowerment and mechanisms for renter involvement in the design of the social housing system. However, such initiatives will only be effective in the context of a social housing system that provides enforceable legal rights, transparency and accountability for social housing providers. One essential element of tenant “empowerment” is an effective complaint-handling mechanism that listens to, and responds to, complaints raised by renters (see recommendations at “Complaints Handling and Dispute Resolution”, below).

## Recommendations

We therefore recommend the following:

11. That the Victorian Government implement the engagement mechanisms used in the Scottish system, with a view to developing best practice in renter voice in the Victorian social housing regulatory system. Relevant elements from the Scottish model include:
  - a. Require that the social housing regulator(s) consult with social housing renters and their representatives in relation to targets for social housing performance improvements, housing activities guidance, and a code of conduct revisions, as is done through the *Housing (Scotland) Act 2010*.
  - b. Establish a Renter Advisory Panel that supports the regulation of social housing (see Recommendation 28 below).
  - c. Establish a clear set of standards on what a social housing renter can expect in key areas, taking guidance from the areas set out in the Scottish Social Housing Charter. These should include a high-standard expectation in relation to renter engagement.
  - d. Draft guidance on what may be expected in relation to renter engagement, with alternative models provided depending on the size and type of the housing provider.
  - e. Require regular and transparent reporting against these standards (see also recommendations under “Performance Standards”).

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<sup>30</sup> New FOI rights in the social housing sector ([itspublicknowledge.info](https://itspublicknowledge.info))

<sup>31</sup> Serin, B., Kintrea, K. and Gibb, K. 2018, *Social housing in Scotland*

## “Choice” currently a hollow concept in Victorian social housing

This part responds to the following consultation questions:

- Consultation Paper 2: question 9.

Currently, for those locked out of the private rental market in Victoria due to financial hardship, until there is an increase of housing supply to meet demand, the notion of “consumer choice” in the social housing space rings hollow. The underlying assumption of question 9 of an informed consumer making choices between a range of competitive options does not exist, given the housing shortage and long VHR wait times<sup>32</sup>. Our experience is that VHR registrants must take what they are offered, even when this is inadequate, given the limited options they have. VHR registrants sometimes wait for an offer for housing for years, with very compelling cases for why they should be housed, to then not receive an offer, or, when they do, receive an offer that meets only some of their needs. Many VHR registrants accept an inadequate offer of housing due to desperation. Others try, in vain, to broaden their priority settings in a way that may diminish connection to community or family in order to increase the likelihood of being housed.

However, should housing supply improve in the medium term to such a point that consumer choice does exist, renters would benefit from basic, as well as more detailed, information to help them decide where they want to live and which provider they should aim to rent their home from. Our recommendations for what this could include are set out below.

### Recommendations

We therefore recommend the following:

12. Useful information for renters (prospective and current) to assess performance of social housing providers could include:
  - a. Property listings of available properties, and more general information about those currently tenanted, so renters could decide whether the location would be suitable for them and their families. These listings should include the current market rent, number of bedrooms and any additional features – e.g. no stairs, disabled access bathroom, additional security features such as CCTV, and garden or outside space.
  - b. Victorian Residential Efficiency Scorecard ratings for each property that is available for rent, so that the prospective resident can assess what the property will cost them, and how comfortable it will be year round.
  - c. Maximum timeframes for repairs responses and completion for various common repair tasks – e.g. dripping taps, glass replacement, mould repairs, painting and patching.
  - d. Eviction rates for common causes – e.g. arrears, nuisance, damage, and danger. This information should include the steps that the housing provider undertakes to complete if a renter is considered in breach, and preparatory to pursuing eviction of a renter.

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<sup>32</sup> AHURI - Public housing renewal and social mix



- e. The policies and procedures of the provider in a range of community languages, as well as information about rights to interpreting and translation services.

## Rent setting and policies

The Review Terms of Reference provide 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”<sup>33</sup>. However, Consultation Paper 2 states that rent setting is a policy decision for government and outside the scope of the Review (page 24).

### Disparity of rent between public and community housing

Affordable rents are a key reason for government intervention in the housing market, and a key factor for renters in social housing. Public housing rent is set at 25% of income. However, CHPs can charge up to 30% of income, including all Commonwealth Rent Assistance payments, which public housing residents don’t receive, and can include 15% of Family Tax Benefits A and B, and a percentage of any child maintenance income, plus service charges. The difference in how rents are calculated can result in community housing renters being more than \$1680 worse off annually compared to their rents if they lived in public housing.

The fair setting of rent and rental arrears policies is critically important in 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 this issue of equality between public and community housing in relation to rent.

### Opaque rent setting and charging

Some rent setting policies published by CHPs are opaque and confusing and do not provide clear information to potential renters. In some cases, different rental policies are adopted for properties owned by the housing provider compared to those managed by the provider, and there are also various programs to which different limitations apply. Often there are also “additional property costs”, which range from “utility costs” of an additional service fee of 2% for properties with solar panels<sup>34</sup> to unspecified costs that are stated as potentially including “electricity, gas, water, media streaming, internet, meals linen, gardening and cleaning”<sup>35</sup>. While some policies refer to a “discount” to the market rent, there is no property address listing, or website statement that would allow a prospective renter to know what the market rent is for a property, or which additional charge may apply.

We therefore call on the Review to consider community housing rent-setting policies, which often relate to 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.

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<sup>33</sup> ‘Context’ (Terms of Reference, p 4-5)

<sup>34</sup> Northcote Rental Housing Co-operative Ltd, <http://nrhc.coop/policies/>

<sup>35</sup> Servants Community Housing Ltd policy for “properties managed on behalf of private owners or affordable housing” – <https://www.servants.org.au/policies-and-procedures/>

## Rent setting and policies

13. That the Review Panel consider rent setting and service charges in the social housing sector as part of this Review, including whether disparity of rents between public and community housing is appropriate.
14. The Review make a finding that rent setting policies across the social housing sector should be consistent and transparent and follow a set of Model Rules, which include appropriate adjustments being made where renter income is reduced.

## Victorian Housing Register and allocation policy

This part responds to the following consultation questions:

- Consultation Paper 2: questions 10 to 12.

### Allocation policy and priority access

It is impossible for our service to provide a meaningful response to questions 10 to 12, given the lack of information and data in relation to how housing allocation and priority access operate across the state. The performance standards under the Housing Registrar's oversight do not set out how many VHR registrants are housed each month, nor is there any reporting of the assessments of renters' relative suitability that would show the policies are working appropriately. In relation to priority access, many of our clients instruct us that they have been on the priority wait list for many years, despite very compelling cases for housing (see Case Studies of Omar and Celeste, at page 41, below). However, we cannot provide a response to question 11 without more system-wide data.

### Community housing flexibility

Without system-wide data we, and other respondents to this Review, cannot know if changes should be made to housing providers' ability to choose among VHR registrants on the priority list. However, recognising the primary of adequate and secure housing as an essential foundation for good health and participation in the community, housing providers' ability to avoid renting to certain tenants on the basis of their income (e.g. those on JobSeeker and Youth Allowance and asylum seekers who have lower income than other vulnerable renters) must be limited. If housing providers are disadvantaged by this change, an adjustment to funding should be made to ensure that those most in need are housed.

### Provision of short-term housing should not remove someone from the housing waitlist

Current community housing regulation, and in particular the Housing Registrar, conflate long-term housing with short-term or unstable housing, in particular rooming houses<sup>36</sup>, despite those living in

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<sup>36</sup> See for example, Sector Performance Report 2018-19, Housing Registrar, p.14 <https://www.vic.gov.au/housing-registrar-reports>

rooming houses being classed as “homeless” by the Australian Bureau of Statistics<sup>37</sup>. In light of this definition of homelessness, it is inappropriate that provision of short-term or rooming house accommodation results in a renter being removed from the VHR. We understand that VHR applicants housed in rooming houses are then put on the “priority transfer” list, but it is not clear how quickly these applicants are rehoused in more suitable properties<sup>38</sup>. It is likely that a shortage of properties limits choice for these applicants, and they may opt for housing that does not suit their needs rather than lose their priority status by refusing 2 housing offers.

## Recommendations

We therefore recommend the following:

15. The Social housing Performance Standards should include:
  - a. The VHR allocations made to each priority category by the provider;
  - b. The VHR allocations made, by income source;
  - c. The proportion of allocations said to be allocated to “long term housing” that are allocations into rooming houses;
  - d. To what extent the provider satisfied VHR housing preferences through their allocations.
16. Social housing providers should all report against these measures annually, and the results of this reporting should be collated and publicly available.
17. That VHR allocation complaints should be dealt with by way of a centralised social-housing complaints-handling process (see “Complaints Handling and Dispute Resolution”, below).
18. That the Victorian Government commission an independent review of the operation of the VHR priority access system in order to assess whether the current categories should be altered, or weighted, or used in new ways to help vulnerable Victorians gain secure housing.

## Scope – which entities should be included in “social housing”?

This part responds to the following consultation questions:

- Consultation Paper 2: questions 20, 23, and 30.
- Consultation Paper 3: questions 11, and 18 to 20.

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<sup>37</sup> The Australian Bureau of Statistics defines homelessness as “if their current living arrangement: is in a dwelling that is inadequate; or has no tenure, or if their initial tenure is short and not extendable; or does not allow them to have control of, and access to space for social relations”. ABS, 4922.0 Information Paper - A Statistical Definition of Homelessness, 2012.

The 2016 Census found 116,427 people homeless including 17,503 in boarding houses and 21,235 in supported accommodation for the homeless, reported in Australian Institute for Health and Welfare, Homelessness and Homelessness Services Snapshot, December 2020. <https://www.aihw.gov.au/reports/australias-welfare/homelessness-and-homelessness-services>

<sup>38</sup> The Priority Access housing waiting list of 24,472 at 30 June 2020, compared to 22,723 at 30 June 2019, Housing Assistance Additional Service Delivery Data, 2019-2020, DHHS. <https://www.dhhs.vic.gov.au/publications/annual-report-department-health-and-human-services>

## Unregistered providers

As Consultation Paper 2 states, the data on unregistered housing providers is limited. The Paper refers to a number of “smaller” Aboriginal housing providers, which Aboriginal Housing Victoria has noted “would face intense challenges in meeting the current regulatory requirements”<sup>39</sup>. Without knowing more, we cannot know with certainty what these “intense challenges are”, although they likely relate to resourcing and capability. It is our view that community housing residents deserve, as much as is possible, a consistent standard of treatment. Therefore, we submit that alongside a requirement that all social housing providers are registered under a uniform scheme, there should be a program for supporting unregistered housing providers with limited resources to meet the registration requirements.

## Recommendations

We therefore recommend that:

19. All social housing providers are required to be registered under a uniform scheme.

## For-profit community housing providers

As set out in our response to the 2018 Review of the National Regulatory System for Community Housing (**NRSCH**), Tenants Victoria does not support for-profit providers being able to be registered as social housing providers. As the findings of the Royal Commission into Aged Care Quality and Safety make clear<sup>40</sup>, the privatisation of a sector entrusted with the care of people experiencing vulnerability who often find it difficult to advocate for themselves carries with it significant risk in relation to quality, safety and ultimately, social outcomes.

Some cautionary tales in relation to for-profit housing investors exist across the world. One example is private equity firm Blackstone, which received an open letter from the UN Special Rapporteur on the right to adequate housing, Leilani Farha, and Surya Deva, Chairperson of the Working Group on Business and Human Rights, for buying up affordable properties, upgrading them and substantially raising rents, thus putting them out of the reach of those living on low incomes<sup>41</sup>. Blackstone is said to be one of the biggest landlords in the world, and owner of thousands of housing units across North America, Europe, Asia and Latin America. The experts cited “countless” examples of tenants whose rents increased by up to 50% almost immediately after their buildings were bought by private equity firms, making it impossible for them to remain.

Another example is private investors’ purchase of affordable housing in Germany at the commencement of the 2000s. The Financial Times reports that, “[a]ccording to an account by Vonovia, a listed housing group, the private equity owners ‘came under financial pressure, with the effect that maintenance and investment in the housing stock had to be largely cut back. This was at the expense of serious housing defects.’”<sup>42</sup>

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<sup>39</sup> Consultation Paper 2, page 13.

<sup>40</sup> Final Report | Royal Commission into Aged Care Quality and Safety

<sup>41</sup><sup>41</sup> Tenants ‘forced out their homes’ by global investment firms, say UN experts | | UN News

<sup>42</sup> <https://www.ft.com/content/d667c6e4-605c-11e9-9300-0becfc937c37>

Kate Henderson, CEO of the National Housing Federation in the UK, a group of social housing providers, states this in relation to the risks of for-profit social housing: “If you are a for-profit organisation, are you there for the long term? ... The question of accountability is a key one ... will they add value in a sector that desperately needs investment, rather than being there to extract value? Housing associations are known for being not-for-profit and they exist to deliver long-term value to their communities. They can do this because they don’t have to return value to shareholders.”<sup>43</sup>

While we oppose the use of for-profit providers in the social housing context, should this proceed, for-profit providers should be regulated separately to not-for-profits as their purpose differs dramatically – to make a financial profit for shareholders rather than achieve a social good. Therefore, a stronger, more active regulatory regime than is currently in operation in relation to Victorian social housing is needed to ensure that for-profit housing providers meet appropriate policy, housing, and prudential standards. It is especially important that for-profit providers receiving government funding are subject to stringent prudential, quality and risk oversight, to ensure that the policy aims of the funding are fulfilled.

## Recommendations

We therefore recommend that:

20. For-profit housing providers should not be able to be registered as a social housing provider.
21. In the alternative, should the Review recommend that for-profit providers can be registered as such, we recommend that for-profit housing providers be subject to a more stringent regulatory regime to ensure that renters are not disadvantaged by the nature of their housing provider, and to ensure that all policy, housing, and prudential standards are met.

## Affordable housing

There are notable differences in the renter cohorts subsisting in social housing, vis-à-vis affordable housing.

As part of their eligibility to live in subsidised housing, social housing tenants are on low incomes, with many also experiencing characteristics such as health and mental health issues, drug dependency, being a family violence survivor, and being of low literacy and low education outcomes. A chronic shortage of social housing has resulted in Victoria’s limited social housing stock being targeted at those in “greatest need”—individuals and households who rely on government benefits and cannot afford to pay market rents, particularly the elderly, single parents and people with a disability<sup>44</sup>. At the same time, social housing tenants who have the means often choose to exit the tenure, leaving behind “neighbourhoods comprised of those with least resources and opportunities”, a process known as “residualisation”<sup>45</sup>.

The same cannot be said of affordable housing renters. The *Planning and Environment Act 1987* defines affordable housing as ‘being appropriate for the housing needs of very low, low and moderate income

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<sup>43</sup> Ibid.

<sup>44</sup> AHURI - Examining the role of social housing providers

<sup>45</sup> Ibid.

households'.<sup>46</sup> Affordable housing is therefore available to a much broader cohort of people, who are less likely, in general, to be experiencing the financial hardship of those in social housing (who are exclusively 'very low' income), or the degree of disadvantage (due to the lack of priority categories). Therefore, the two cohorts of renters have significantly different needs and levels of capability, and may also require differing renter protections, accountability mechanisms and support structures.

We are therefore not supportive of the inclusion of affordable housing in the social housing regulatory framework and are concerned this would risk undermining appropriate renter protections and structures being put in place to achieve optimal renter and service outcomes.

## Recommendations

We therefore recommend:

22. It is not appropriate that the Victorian Government include affordable housing in the social housing regulatory framework, given the different needs of the renter cohorts in social housing, vis-à-vis affordable housing.

## National Regulatory System for Community Housing

This part responds to the following consultation questions:

- Consultation Paper 2: question 29.
- Consultation Paper 3: questions 21 to 22.

The National Regulatory System for Community Housing appears to be a “lighter touch” regulatory system than the Victorian system, without the beneficial purpose established by the Victorian *Housing Act*. The NRSCH is a minimalist regulatory scheme, focused on financial probity, not tenant outcomes, and relies on community housing providers' desire to maintain registration to encourage compliance, without significant intervention in, or enforcement of, standards. The NRSCH does not provide for tenant participation in direction of their community housing provider nor measure participants by tenant-centred measures or outcomes. The recent introduction of significant renter protections in Victoria by way of the *Residential Tenancies Amendment Act 2018 (Vic)* makes the difference between the Victorian scheme and the NRSCH even greater.

A feature of the NRSCH is that a community housing provider operating in more than one jurisdiction may nominate their primary jurisdiction, so regulatory conflict can be minimised. Therefore, the NRSCH does not guarantee equity of treatment or outcome for community housing renters in similar circumstances in properties separated by a state border.

A 2017 Australian Housing and Urban Research Institute (**AHURI**) review of the NRSCH found that:

*The NRSCH (planned in 2010, launched in 2014) has fallen well short of expectations, especially with regard to governance, jurisdictional scope, consistency of operation and value-adding functions – such as the production of industry data, communication about industry capacity and performance, and stewardship of provider effectiveness.*

*... Post-2014 experience strongly suggests that [achieving national coverage] requires Australian Government leadership. A joint government-industry regulatory governance model is also essential to*

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<sup>46</sup> Section 3AA.

*ensure the regulatory system remains effective and responsive. Additionally, such an arrangement would establish a degree of autonomy from government potentially beneficial in terms of regulatory independence. This could be a responsibility of the proposed industry council, or otherwise separately constituted.*

*A reallocation of resources may be required to increase organisational capacity within housing registrar offices, to ensure that registrar staff have the requisite skills and capacities to meet their regulatory duties and that registrar teams are appropriately structured. With the initial “provider registration focused” phase of NRSCH implementation now largely complete, a thorough review is warranted to streamline the system and to minimise duplicate regulatory practices.*

*Among other things, the review will need to encompass the proper remit of the system (e.g. the appropriateness of including specialised homelessness service provider entities), the performance standards, the compliance guidance, and the “tiers” framework. The industry should also review and replace the 2010 National Community Housing Standards with a new set of Affordable Housing Industry Standards, and re-engage with and promote its accreditation system.*

The NRSCH review was due to be completed in December 2020, but as “the national response to COVID-19 required a shift in the allocation of government resources to meet the financial, safety and social needs of the Australian community....work on the review of the NRSCH could not continue.”<sup>47</sup> Because of this, and in particular due to the lack of national leadership (and appropriate resourcing), a national community housing council, centralised regulator, or completion of the review of the existing system, we are concerned that Victoria’s entry into this system may risk undermining the strengths of Victoria’s current regulatory arrangements.

## Recommendations

We therefore recommend:

23. The Victorian Government should maintain and improve its own regulatory scheme for social housing in order to ensure that renters are not disadvantaged, particularly by way of reduced rights or protections, through Victoria’s entry into the National Regulatory System for Community Housing.

## The regulator

This part responds to the following consultation questions:

- Consultation Paper 2: questions 24, 31 to 33, and 45 to 46.
- Consultation Paper 3: questions 12 to 15.

The current approach to regulation of social housing is again 2-tiered, and there are very different approaches to regulating community and public housing, as set out below. The consultation questions’ focus on a single and independent regulator is welcome. For this to be effective, this regulator would require proper resourcing, separation from the complaints function, a streamlined function, and improved focus on compliance, enforcement, and engagement with relevant stakeholders. We would hope that such a regulator would provide for equality and likely efficiencies across the system.

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<sup>47</sup> Review of the National Regulatory System for Community Housing | Family & Community Services (nsw.gov.au)

## Principles of effective regulation

As a starting point, we endorse the following best-practice principles for the governance of regulators issued by the OECD<sup>48</sup>:

1. **Role clarity.** An effective regulator must have clear objectives, with clear and linked functions and the mechanisms to co-ordinate with other relevant bodies to achieve desired regulatory outcomes.
2. **Preventing undue influence and maintaining trust.** Regulatory decisions and functions must be conducted with the upmost integrity to ensure that there is confidence in the regulatory regime. There need to be safeguards to protect regulators from undue influence.
3. **Decision making and governing body structure.** Regulators require governance and decision-making mechanisms that ensure their effective functioning, preserve their regulatory integrity and deliver the regulatory objectives of their mandate.
4. **Accountability and transparency.** Business and citizens expect the delivery of regulatory outcomes from government and regulatory agencies, and the proper use of public authority and resources to achieve them. Regulators are generally accountable to three groups of stakeholders: i) ministers and the legislature; ii) regulated entities; and iii) the public.
5. **Engagement.** Good regulators have established mechanisms for engagement with stakeholders as part of achieving their objectives. The knowledge of regulated sectors and the businesses and citizens affected by regulatory schemes assists to regulate effectively.
6. **Funding.** The amount and source of funding for a regulator will determine its organisation and operations. It should not influence the regulatory decisions and the regulator should be enabled to be impartial and efficient to carry out its work.
7. **Performance assessment.** It is important that regulators are aware of the impacts of their regulatory actions and decisions. This helps drive improvements and enhance systems and processes internally. It also demonstrates the effectiveness of the regulator to whom it is accountable and helps build confidence in the regulatory system.

We do not always see these principles borne out in the current regulatory arrangements. On the basis of the above principles, we make the recommendations set out further below.

## The important of enforcement

Effective enforcement and “accessible, consistent and clear reporting on enforcement strategies and activities” is an essential part of any well-functioning regulatory framework<sup>49</sup>. It is necessary to demonstrate the effectiveness of a regulator in administering the laws in its remit and enabling individuals, the advocates who represent them and parliament to hold the regulator to

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<sup>48</sup> (OECD, 2014[1]), *The Governance of Regulators, Best Practice Principles for Regulatory Policy*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264209015-en>. Available online: [OECD iLibrary | Home \(oecd-ilibrary.org\)](https://www.oecd-ilibrary.org/)

<sup>49</sup> Consumer Action Law Centre, ‘Regulator Watch’ (2020), pages 5 and 10. Available at: [RegulatorWatch\\_Report\\_Compressed \(consumeraction.org.au\)](https://www.consumeraction.org.au/RegulatorWatch_Report_Compressed)



account. This is particularly important when what is being regulated are the standards in place to ensure safe and secure housing of some of Victoria’s most vulnerable tenants.

Three key reasons why effective enforcement of standards of social housing is important are<sup>50</sup>:

- a. Individuals need their regulators to act on their behalf, as there are significant barriers (financial and other) to individuals enforcing their rights.
- b. Poor housing outcomes impacting tenants occur when there is non-compliance with laws and the market is seen to “get away with it” due to a lack of regulatory action.
- c. There is a need to test the boundaries of the law so tenants, CHPs, governments and regulators are clear on their rights and responsibilities under that law.

The lack of sufficient accountability mechanisms through enforcement activity can undermine the integrity of a regulatory framework.

## Current community housing regulation

The Housing Registrar is the regulator of community housing in Victoria. It has no legislated purpose, and its functions are set out in section 79 of the *Housing Act 1983* (Vic) as follows:

- (a) to register rental housing agencies under this Part;
- (b) to establish and maintain the Register of Housing Agencies;
- (c) to recommend to the Minister the making of **regulations** for the purposes of this Part;
- (d) to recommend to the Minister the making of **performance standards** to be met by registered agencies;
- (e) to monitor compliance by registered agencies with the **performance standards**, this Part and the **regulations** under this Part;
- (f) to provide the Minister with any information and reports about the carrying out of the functions of the **Registrar** as the Minister may request;
- (g) any other functions conferred on the **Registrar** by this Act or the **regulations**.

In contrast to the Scottish Social Housing Regulator’s stated purpose of safeguarding and promoting the interests of the users of social housing, namely renters, recipients of housing services, and the homeless (those eligible for these services)<sup>51</sup>, the Victorian Registrar’s primary focus appears as a mix of ensuring growth of the community housing sector, and the provision of “safe, secure and affordable housing”, without explicit reference to its users or their experiences. This is clear in the Registrar’s Strategic Framework, which provides that (emphasis ours)<sup>52</sup>:

- Its vision is a “well-regulated, *growing and sustainable* community housing regulated sector”.

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<sup>50</sup> Ibid.

<sup>51</sup> Housing (Scotland) Act 2010, section 2. Source: Housing (Scotland) Act 2010 (legislation.gov.uk)

<sup>52</sup> Housing Registrar reports | Victorian Government (www.vic.gov.au), page 1

- Its purpose is to “enable the *development, growth*, and continual improvement of the Victorian community housing regulated sector”.
- Its first two sought outcomes are that “the Registrar (1) *promotes the growth* and continual improvement of the community housing regulated sector / (2) *protects government’s investment* for the benefit of tenants, the community and future generations”.

This evident focus of the Registrar on growth of the sector impacts on how its independence and effectiveness as a regulator of the sector is perceived, particularly in relation to non-compliance and enforcement.

Another important factor influencing how the Registrar operates and is perceived is its light engagement presence in the community sector that works to support renters. One way this is evidenced is by its annual survey on its effectiveness, which is sent only to housing providers<sup>53</sup>, rather than a broader range of relevant stakeholders including our sector. This is in contrast to the engagement of other regulators with community and support services, for example the Consumer Consultative Committee of the Australian Competition and Consumer commission<sup>54</sup>, and the “intelligence-led” approach of Consumer Affairs Victoria<sup>55</sup>, which involves engagement with a broad range of stakeholders including community advocates and organisations. The limited engagement of the Registrar with renter advocates also impacts on the perception of the Registrar’s independence, effectiveness and responsiveness, as well as on our sector’s trust and confidence in the Registrar.

As we understand, the Registrar is a relatively small office, which increased its staffing profile from 10 to 12 staff in 2020-21<sup>56</sup>. With such limited resourcing, and a broad range of functions, including registration, compliance and enforcement, stakeholder engagement, resources and publications, and complaints handling, it is unclear what the allocation of resources is to each, what expertise staff have for each function, and whether resourcing is appropriate for each activity. Our sector’s perception is that the resourcing allocated to complaints handling and enforcement is unclear, and this may be due to low resourcing across the organisation more broadly, lack of prioritisation of these areas of work, or lack of engagement with the sector that results in a lack of referrals to these functions.

## Current regulatory oversight over public housing

Public housing is regulated more stringently and has greater public safeguards than community housing. Public housing operates within the Victorian Government budgetary process with oversight by Parliament (and its committee structures) for its expenditure and operations. The Department of Housing’s decisions and activities are overseen by the Victorian Ombudsman (which reports to the Parliament), the decisions of the Department of Housing are subject to judicial review, and it is required to apply the Human Rights Charter. The Director of Housing is also required to be a model litigator in any contested matter (whether before or during a hearing at VCAT or the Supreme Court). This not the case in the community housing sector.

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<sup>53</sup> Regulatory Update Report 2020-21.pdf, page 12-16.

<sup>54</sup> ACCC and AER Annual Report 2019-20.pdf, page 124.

<sup>55</sup> <https://www.consumer.vic.gov.au/library/publications/about-us/annual-report/2019-20/201920-cav-annual-report--word.docx>

<sup>56</sup> Regulatory Update Report 2020-21.pdf, page 12.

While we are agnostic on the question of a single regulator for social housing, such an arrangement would only be acceptable on the condition of a greater degree of accountability being required of the community housing sector, rather than a diminution of the regulation of public housing (and/or the rights of public housing renters). There are significant risks in the latter. Firstly, reduction in oversight of public housing would not be acceptable: oversight and accountability for expenditure of public monies is necessary in a parliamentary democracy. Rather any change should seek to improve standards for community housing to make performance and operational standards more transparent and raise accountability in this sector. Where community housing is acting as a proxy for government housing provision, it should be required to meet equivalent accountability and outcome standards.

## Recommendations

We therefore recommend:

24. The Victorian Government should legislate that the purpose of the community housing regulator is as follows:
  - (1) To safeguard and promote the interests of —
    - (a) renters of social housing providers, and
    - (b) recipients of housing services provided by social housing providers.
  - (2) The Regulator must, so far as is reasonably practicable, perform its functions in a way —
    - (a) which is compatible with its objective, and
    - (b) which it considers most appropriate for the purpose of meeting that objective.
25. There must be safeguards to protect the community housing regulator from undue influence, and these include:
  - a. The regulator is separate from government (for example a statutory body that sits outside a government department, and in particular outside of the Department of Housing).
  - b. It should be overseen by an independent governance board or panel.
  - c. It has stringent policies in place in relation to board recruitment and management of conflicts of interest.
26. The community housing regulator should report annually, or more regularly, to the public on its enforcement activities, including listing any prosecution activities undertaken.
27. Its regulatory approach should include, among other things, being “intelligence-led”<sup>57</sup>, which should include, as a priority, mechanisms for building stronger relationships with community housing renters and their advocates.

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<sup>57</sup> See for example Consumer Affairs Victoria, which embraces this approach: [Our regulatory approach - Consumer Affairs Victoria](#)

28. As part of its engagement work the community housing regulator should establish a Renter Advisory Panel constituted of renters, renter advocates, homelessness services, and other relevant stakeholders.
29. The community housing regulator should be properly resourced to undertake its activities thoroughly, and to enable impartial and effective fulfilment of its objectives.
30. The performance of the community housing regulator should be regularly assessed, and the outcomes of this assessment should be made publicly available.

## Accountability, performance standards and service quality

This part responds to the following consultation questions:

- Consultation Paper 2: questions 15 to 18 and 35 to 38.
- Consultation Paper 3: question 29.

### Comparison of performance standards

We have included a side-by-side comparison of Victorian CHP Performance Standards as against the standards set out in the Scottish Social Housing Charter at **Appendix D**. This comparison highlights the following:

- The audiences of the two documents are different. While the Scottish Charter presents as being targeted to the renter as its reader, the CHP Standards read as targeted at housing providers.
- The Scottish Charter has an emphasis on “outcomes” and the CHP Standards have an emphasis on “indicators”, again reflecting their divergent audiences.
- The Scottish Charter is much shorter, more succinct, and is written in simpler language. Part of the reason for this is that it only includes those parts which are relevant to renters, while the CHP Standards include matters relating to governance, which are likely of limited interest to most renters.
- The Scottish Charter is applicable to both council (public) and community housing, with some parts only applying to councils.

While not included in **Appendix D**, the introductions to both documents vary greatly. They again reflect the 2 intended audiences and their interests. One particular point of difference is that while the CHP Standards have no stated purpose, the purpose of the Scottish Charter is put in tenant-focused terms, as follows<sup>58</sup>:

2.1 The Charter helps to improve the quality and value of the services that social housing providers provide, and supports the Scottish Government's long-term aim of creating a safer and stronger Scotland. It does so by:

- stating clearly what tenants and other customers can expect from social housing providers, and helping them to hold landlords to account

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<sup>58</sup> Scottish Social Housing Charter April 2017 - gov.scot ([www.gov.scot](http://www.gov.scot))

- focusing the efforts of social housing providers on achieving outcomes that matter to their customers
- providing the basis for the Scottish Housing Regulator to assess and report on how well landlords are performing. This assessment enables the Regulator, social housing providers, tenants and other customers to identify areas of strong performance and areas needing improvement.

## Performance reporting

In Victoria, the Registrar assesses performance of CHPs against the Performance Standards<sup>59</sup> during an annual compliance assessment, on the basis of self-reported data provided by CHPs and relying on evidence guidelines<sup>60</sup>. There is limited reporting on the outcomes of this, which are generally aggregated and reported on a sector-wide basis. The range of what is acceptable or unsatisfactory for each of these standards is not published and can only be inferred through the Registrar’s reporting. For example, a “satisfactory” staff turnover percentage ranges from 15% to 30% per annum<sup>61</sup>, but there is no statement of the scores that would be unsatisfactory or excellent.

Providers are required to survey their tenants to evidence tenant satisfaction (in relation to repairs, and engagement with their tenants), but this is only required every 2 years, and asks only a minimum of questions. This therefore has limited value in assessing the performance of CHPs. Biannual surveys do not adequately track views, cannot take account of events (for example opening a new building for renters or the COVID-19 pandemic effects). The survey questions are not publicly available, and there is no public information about whether they have been altered or evaluated, how the survey is administered, or what percentage of each provider’s renter base participates. While other forms of engagement are suggested by the Registrar’s guidance materials, additional engagement is limited. This minimal contact is not, in our view sufficient to understand and take account of tenant views and does not focus services on the people who are using them.

In Scotland, by comparison, the Social Housing Regulator collects and publishes performance information on each individual registered housing provider, as against key performance measures in the Scottish Housing Regulator’s Landlord Report<sup>62</sup>. This contains a comprehensive set of metrics gathered at an aggregate and per-organisation basis. Some metrics provided include:

- A breakdown of the property types managed by the organisation, the rent charged across these property types, and the average rent increase for the year.
- Tenant satisfaction, including with keeping tenants informed opportunities to participate and repairs and maintenance.
- Rent forgone from empty houses.

Each metric in the report is provided against the sector average, but there is also a tool to allow for comparisons against up to four organisations. One can also easily access the following organisational

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<sup>59</sup> Performance Standards for Registered Agencies, July 2015, Housing Registrar, <https://www.vic.gov.au/performance-standards-and-evidence-guidelines>

<sup>60</sup> Evidence Guidelines, April 2015, Housing Registrar, <https://www.vic.gov.au/performance-standards-and-evidence-guidelines>

<sup>61</sup> Housing Sector Performance Report 2019-20, p. 13, <https://www.vic.gov.au/housing-registrar-reports>

<sup>62</sup> Find a Landlord | Scottish Housing Regulator

reports: engagement plan, regulation plan, annual return on the charter, assurance statement, accounts, rules.

## **Data: sufficient and comparative data is necessary**

As submitted in the joint Community Legal Centre (CLC) response to Consultation Paper 1, there is a paucity of publicly available data about the activities of social housing providers, particularly as they relate to renter outcomes. The data we called on the Review to consider as part of its work in that submission is set out again for convenience in **Appendix E**. To the extent that this data is not currently easily or publicly available, it is our view that it should be, as it would enable a proper understanding and analysis of the performance of the social housing sector in key areas. The data that is available does not readily allow for the type of comparative analysis needed to provide for evidence-based assessment of the performance of social housing providers and so best-practice regulation. Clear, regular and informative data is needed to understand if public investment, and policy decisions, are providing appropriate housing and renter outcomes for vulnerable Victorians.

Currently publicly available comparisons of public and community housing are limited – requiring investigation of the Director of Housing tenant survey, and individual results from community housing providers. However, given the limits on individual CHP data available through the Registrar, it is difficult to get a clear picture of the relative performance of the two tenures. Of course, individual community housing providers vary, as do local housing area offices, so a regular assessment and comparison is needed. This is especially required if other changes are occurring, to assess the effectiveness of new policy measures, and whether their effects change over time. Clear comparability would help establish if the Victorian Government is achieving value for money in housing investment, and alert policy makers to particularly effective service models, policy deficiencies and areas for reform.

Finally, there is scope for data reporting on social housing providers to be better coordinated and drawn from a wider range of sources. For example, regular publication of VCAT data on eviction matters initiated by (and against, in relation to repairs) identified social housing providers would allow for analysis and a more “real time” understanding of social housing providers’ performance against performance standards.

## **Recommendations**

We therefore recommend the following:

31. The Victorian Government implement a set of Performance Standards applicable to all social housing (including public housing), that draws inspiration from the Scottish Charter but is drafted on the basis of meaningful consultation and engagement with Victorian social housing renters, their advocates and other relevant stakeholders.
32. The Victorian Government adopt the social housing provider-specific reporting undertaken in Scotland, including its current reporting metrics and comparison-of-housing-provider tool.
33. That the social housing Performance Standards housing-provider reports also include the following:
  - a. List of properties held by each housing provider.
  - b. Data on response times to complaints, and outcomes.

- c. Eviction data, including number of notices to vacate issued, number of applications for possession made at VCAT, outcomes of these matters, number of warrants issued, and number of warrants executed.
  - d. The VHR allocations made to each priority category by the provider.
  - e. The VHR allocations made, by income source.
  - f. The proportion of allocations said to be allocated to ‘long term housing’ that are allocations into rooming houses.
  - g. To what extent the provider satisfied VHR housing preferences through their allocations.
  - h. Contribution to neighbourhood and socially inclusive communities.
  - i. Mechanisms for access and referral to independent support services.
34. In reporting against renter satisfaction, the community housing regulator make the renter survey questions publicly available, and that the Renter Advisory Panel referred to in our Recommendation 28 be consulted in relation to its questions, scope, and administration.
35. That the community housing regulator undertake regular analysis, and public reporting, on the data sets described in **Appendix E**.

## Complaints handling and dispute resolution

This part responds to the following consultation questions:

- Consultation Paper 2: questions 39 and 40.

Effective complaints handling is essential for accountability, good function, and stakeholder confidence in a system. It brings to light systemic issues, and encourages rectification of shortcomings and fair compensation for loss caused by non-compliance. While currently both public housing and community housing complaints-handling processes have their shortcomings, it is our view that the public housing process is relatively more rigorous, for the reasons set out below. Moving forward, to remove complexity, as an element of renter “empowerment”, and to enhance accountability, our view is that a well-resourced, single social-housing complaints mechanism, whether through a Social Housing Ombudsman or joint Housing Appeals Office, which adheres to the principles of best-practice dispute resolution principles, would be an optimal outcome.

While we acknowledge that the Federal Treasury’s Benchmarks for Industry-based Customer Dispute Resolution relates to a different context<sup>63</sup>, it sets out some useful best-practice principles for complaints handling which we endorse and that submit should apply to social housing complaints:

- Accessibility
- Independence
- Fairness
- Accountability

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<sup>63</sup> Benchmarks for Industry-based Customer Dispute Resolution (treasury.gov.au)

- Efficiency
- Effectiveness

## Public housing complaints handling

Public housing renters have two streams through which they can seek to resolve complaints with the Department of Housing. For almost all complaints (excluding rent arrears recovery processes, and emergency requests for repairs and maintenance) one option is to go through an internal complaints process. The stages of this are: raise the complaint with (1) your Housing Officer; (2) if there is no resolution, their manager; (3) if there is no resolution, the Housing Appeals Office; (3) if there is no resolution, the Victorian Ombudsman. None of these offices has the power to make a “binding” order. At any stage of that process, the renter can make an application to VCAT, which has the power to make a binding order. Departmental decisions are also subject to judicial review by the Supreme Court.

Between February and June 2021, we provided 125 advice services and 8 casework assistances to public housing renters. Of the casework matters, in 5 of the 8 matters the renter had raised a complaint with a Housing Officer, and this was also the case in about 40% of the advice matters. We are not aware of any of these renters themselves escalating the matter beyond this point. As the people calling us are seeking assistance with a complaint, all these renters (58 people) were unsatisfied with the resolution offered by the Housing Officer. In the 8 casework matters in which we assisted, in all but one (which is ongoing) the matter progressed to VCAT in order to attain resolution of the complaint and did not go through the formal complaints process. This was generally due to the urgency of the matter when it reached us.

Our conversations with public housing renters indicate a general unwillingness to raise complaints, and a lack of knowledge of the formal complaints process beyond contacting their Housing Officer. In particular, our service experience is that public housing residents do not escalate their problems to a complaint unless the problem is of significant urgency. For example, many public housing renters will not raise repair issues until absolutely necessary (see Omar’s case below). Some raise concerns about how this may impact the security of their tenure, and some express a general lack of trust in the Department. A more common complaint or enquiry that public housing renters raise relates to transfers (see Celeste’s case below): for example, a request to transfer a lease after the last remaining tenant dies, or to be placed on the priority transfer list due to urgent issues such as family violence. However, these are rarely resolved satisfactorily, often due to the current shortage of appropriate housing options.

### Case study – Omar’s story: ongoing and dangerous repair issues

Omar is an elderly public housing tenant of non-English speaking background, with low literacy. Since at least 2016, his public housing apartment has had problems with leaking from the roof. He has been on the priority transfer list since 2016 for this issue, and so we understand the issue was raised with the Housing Office prior to that. Omar has frequently raised complaints with his Housing Office about this issue, and the leaks will periodically be repaired, but then start again in another room. When Omar came to our service (and we note he attended our office on multiple occasions, despite the lack of a drop-in service), he had leaks in all the rooms in his house, and was concerned about how the wiring for his roof lighting might pose a risk of electrocution due to the amount of water coming through the roof. We engaged initially with the Housing Office, which was



aware of the issue, and suggested that Omar had prevented repairers from attending the premises, which Omar denied. We assisted him with an urgent repair application at VCAT, and with progressing the priority transfer application.

### **Case study – Celeste’s story: chronic over-crowding**

Celeste is a person experiencing multiple vulnerabilities including chronic illness, disability, family violence, and mental health issues. When Celeste moved into the property in which she currently lives, prior to 2016, she requested particular modifications be made due to her disabilities, but these have not been undertaken. She has therefore been on the priority transfer list out of this property since 2016. She moved into the property with her daughter, and some time later, her ex-husband and her son moved into a bungalow on the property. During the COVID lockdown a tree fell on the bungalow, and her ex-husband and son moved into the main premises. This has resulted in over-crowding, which in turn resulted in family violence against Celeste. There are also issues of hoarding on the premises. Despite these multiple priority issues, in particular family violence, being raised with the Housing Office, Celeste has not been transferred from the premises, and it is unclear when this will occur. It is unclear to what extent this is due to Celeste’s request for a 2-bedroom premises due to the amount of equipment required to manage her disability.

*Note: Both case studies have been de-identified.*

Overall, our experience is that the current system does not offer fair, fast, consistent or accessible decision making. Particular issues include:

- Little distinction between “feedback” and “complaints”, resulting in renter confusion about what the complaints process can offer.
- Lack of a transparent timeline and process for complaints handling, resulting in some complaints going unresolved for years without resolution, ongoing safety and maintenance issues, failure to identify and resolve systemic issues, and a lack of trust and confidence in the system.
- Lack of active and effective communication with renters about their right to complain, resulting in a lack of knowledge about this process, and widespread concern about fear of retribution. While a different complaints process, one public example of this lack of communication was the failure of the Department to advise public housing tower residents during “hard lockdown” in July 2020 of their rights to complain under the *Public Health and Wellbeing Act* in relation to the conditions of their lockdown<sup>64</sup>. While a different complaints mechanism, this exemplifies what renters tell us about their experience of departmental communication relating to complaints avenues.
- Lack of independence of the complaints handling body, which fosters fear of retribution.

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<sup>64</sup> Investigation into the detention and treatment of public housing residents arising from a COVID-19 ‘hard lockdown’ in July 2020 (ombudsman.vic.gov.au), page 172.

- Failure to adhere to best-practice principles as set out in the Federal Benchmark for Industry-based Customer Dispute Resolution.
- The culture of Housing Offices differs, and inconsistently demonstrate what is required of a “social housing provider”: for example, in relation to understanding family violence, a trauma-informed service practice, and the needs of culturally and linguistically diverse communities.

## Community housing complaints handling

Community housing is regulated by the Housing Registrar, and this role includes a complaint handling function, set out in sections 96-101 of the *Housing Act*. However, due to a relatively narrow reading of its own jurisdiction, and other limits on its function, including limited resources, most tenancy-related complaints are not currently considered by the Registrar.

One key issue with the existing accountability mechanisms for CHPs is that the Housing Registrar and individual CHPs have a narrow interpretation of the scope of section 96(2) of the *Housing Act* and the kinds of complaints that can be made. Section 96(2) states that complaints cannot be made to CHPs or the Housing Registrar about matters that are capable of being referred to VCAT under the RTA. This is theoretically any dispute arising under a tenancy agreement or residency agreement, given the broadness of sections 452 and 472 of the RTA.

It is clear from a common sense reading of section 96 that complaints can still be made about a CHP’s failure to follow its own policies, unprofessional conduct, breaches of the *Housing Act* or breaches of the Performance Standards, even if the ultimate decision or matter is one that can theoretically be referred to VCAT under the RTA. That is, section 96 appears to leave open complaints about the process or procedure that leads up to a referral to VCAT under the RTA, rather than the decision, action or matter itself that is capable of being referred to VCAT.

The historically limited responsiveness of the Registrar to complaints made to it by our sector, and the likelihood of referral of matters to VCAT (which has the power to make binding decisions in relation to matters), has diminished the confidence and trust of our sector in referring complaints to the Registrar. Consequently, fewer complaints have been made to the Registrar over time, compared to other regulators. For example, at Tenants Victoria we much more frequently refer systemic issues to Consumer Affairs Victoria or the local council to investigate, but have recorded no complaints made to the Housing Registrar in the last 12 months.

## Experience of the Residential Tenancies Dispute Resolution Scheme

From April 2020 to 28 March 2021, the Victorian Government established a Residential Tenancies Dispute Resolution Scheme (RTDRS), run by Consumer Affairs Victoria (CAV), which provided a free dispute-resolution process for resolving rent reduction and deferral disputes pursuant to the emergency measures legislation that was in place to respond to the COVID-19 pandemic lockdown and its financial consequences. We know that at September 2020 (after 6 months of operation), CAV had received more than 66,160 webforms, comprising approximately 70% registered agreements between tenants and rental providers and 30% applications for assistance in negotiating an agreement<sup>65</sup>. At 30 June 2020, more than 5,400 disputes between landlords and tenants were resolved and over 2,000

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<sup>65</sup> <https://www.consumer.vic.gov.au/latest-news/residential-tenancy-matters-to-cav-news-alert>

matters were referred to VCAT for resolution. In addition, over 1,600 matters were referred to the scheme's Chief Dispute Resolution Officer with more than 400 of those matters completed through alternative dispute resolution<sup>66</sup>.

During the period of its operation, the legal assistance sector had a number of concerns in relation to the operation of the RTDRS. These include lack of an evidentiary framework for decision-making, a lack of transparency in relation to the principles governing its operation and the decisions that it made, and a lack of review rights, among other things. In our collective experience, many renters were for a long time either unaware of the existence of the RTDRS, or uncertain about participating in the scheme due to a lack of knowledge about how it works, or feared retaliation through eviction proceedings, negative rental references or being blacklisted.

Drawing on this experience, a group of legal-assistance sector organisations drafted a set of minimum standard principles that would be required to make a fair and effective rental dispute-resolution scheme in the future. This is attached at **Appendix C**.

## Recommendations

We therefore recommend the following:

36. That the Victorian Government draft or amend legislation in order to:
  - a. Create a central and independent Social Housing Ombudsman, or Joint 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.
  - b. Require that this body have the power to make a binding order and provide a remedy to the renter if a complaint is upheld.
  - c. Where a Joint Housing Appeals Office is implemented, enable both housing providers and renters to apply to the Review and Regulation List of VCAT for merits reviews of this body's decisions.
37. That this complaints handling body be required to adhere to the principles set out in the Federal Treasury's *Benchmarks for Industry-Based Customer Dispute Resolution* and that the regulator be independently reviewed against these benchmarks every two years, with the outcome of this review made publicly available.
38. That the Victorian Government amend the definition of "agency" in the *Freedom of Information Act 1982* to include all social housing providers registered under the *Housing Act*.

## Sector and workforce development

This part responds to the following consultation questions:

- Consultation Paper 2: questions 25-28.
- Consultation Paper 3: questions 15 to 17, 28.

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<sup>66</sup> CAV 2019-2020 Annual Report, p 21, <https://www.consumer.vic.gov.au/annual-report/previous-annual-reports>

‘How could you trust someone like that after what they had just done to us in the last two weeks?’ – Oral submission from family member of public housing tower resident after ‘hard lockdown’ in July 2020 to Victorian Ombudsman investigation<sup>67</sup>

The social housing workforce supports renters who are, in the large part, experiencing a number of disadvantages and complex needs. To be able to appropriately support this renter group, the social housing workforce must be appropriately qualified and experienced, well trained in working with people with complex needs, well supported and have an appropriate workload. Some of the issues we see renters face with their social housing provider stem in some part, or entirety, on workforce challenges, whether in training, capability or pressure of work. For example, the Victorian Ombudsman’s reports on *Investigation of the management of maintenance claims against public housing tenants*<sup>68</sup> (2017) and the *Investigation into the detention and treatment of public housing residents arising from a COVID-19 ‘hard lockdown’ in July 2020*<sup>69</sup> (2020) both evidence the limitations of Department of Housing staff’s skills and capacity to appropriately service public housing renters, including a failure to appropriately engage with and support culturally and linguistically diverse (CALD) groups.<sup>70</sup> These are both issues that are regularly raised with our clients in relation to both CHPs and the Department.

In addition to this, we note the absence of a defined career path in the community housing sector, and high staff turnover (that may in part be related to this absence) and are likely to also impact on service outcomes. The Housing Registrar’s Sector Performance Report 2019-20 found the sector percentage staff turnover of 17.52% was “a decline from 19% in 2018–19, and overall positive trend for the past five years”.<sup>71</sup> The Registrar notes that a small staff change in a small organisation can result in a significant percentage change. Similarly, in a small organisation, loss of staff can result in significant loss of expertise, and reduced customer service.

## Recommendations

We therefore recommend the following measures being introduced to support an adequately skilled and experienced social housing workforce going forward:

39. Establishment of a single set of required workforce induction, and then continuing professional development (CPD) training standards for the whole of the social services sector that is client-facing, including in relation to rigorous training related to referral pathways into the community services sector (including the legal assistance sector), trauma-informed practice, working with CALD communities and the use of interpreters, working with family violence survivors, and working with people of low literacy.

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<sup>67</sup> Investigation into the detention and treatment of public housing residents arising from a COVID-19 ‘hard lockdown’ in July 2020 (ombudsman.vic.gov.au) at page 163.

<sup>68</sup> Investigation into the management of maintenance claims against public housing tenants (ombudsman.vic.gov.au)

<sup>69</sup> Investigation into the detention and treatment of public housing residents arising from a COVID-19 ‘hard lockdown’ in July 2020 (ombudsman.vic.gov.au)

<sup>70</sup> Ibid, see in particular the Opinion and Recommendation 8.

<sup>71</sup> Sector Performance Report 2019-20, Housing Registrar, p.12-13, <https://www.vic.gov.au/housing-registrar-reports>

40. That the social housing sector work together to establish a Workforce Development Plan, which includes:
- a. Measures that support retention of skilled housing workers in the industry, including through formal career paths and secondment opportunities; and
  - b. Mechanisms for increased interchange between CHP and Director of Housing staff, including through joint training opportunities and conferences, with the aim of increased service consistency, skills enhancement and retention.
41. The professionalisation of social housing officers, including a shared code of conduct and a set of consistent and easy-to-understand standards for all officers.

## Aboriginal housing

This part responds to the following consultation questions:

- Consultation Paper 2: questions 13 to 14.

We endorse and support the submissions made by the Victorian Aboriginal Legal Service through its engagement with the Review consultation process. Broadly, we submit that any measures taken to facilitate culturally safe and appropriate housing for Aboriginal and Torres Strait Islander residents must be predicated on self-determination and decision making led by Aboriginal and Torres Strait Islander people (“nothing about us without us”).

### Recommendations

We therefore recommend:

42. That the Victorian Government be guided by the Aboriginal and Torres Strait Islander community on how culturally safe and appropriate housing be facilitated by the social housing regulatory system.
43. That there be no transfer of sub-standard housing stock to Aboriginal communities, as a means of increasing overall Aboriginal social housing.

## Support services

This part responds to the following consultation questions:

- Consultation Paper 2: questions 41 to 44.

It is important here to make a clear distinction between a housing officer, who is employed by a renter’s landlord (a social housing provider) and independent support services that assist with housing-related advocacy, including CLCs such as Tenants Victoria. As set out above in relation to public-housing complaints handling, very often a renter is reticent to engage fully with a housing officer for fear of retribution or other reasons, simply because they are a representative of their landlord. This is why independent support services are so important – because they can advocate to a housing provider on behalf of a renter when there is a dispute, non-compliance, systemic issue, or, sometimes, a mere miscommunication that impacts on a renter’s housing quality, safety or security.

As noted in Consultation Paper 2 at 4.4, there are a number of independent housing support programs, which fall into two broad categories – those that assist people to exit homelessness into housing, and sustain it, and those that help to prevent eviction and stabilise a tenancy. There is, of course, overlap and complementarity between the two. The rental support sector, of which Tenants Victoria is a part, assists largely in the latter form of support. This sector includes other community legal centres, Tenancy Assistance and Advocacy Program (TAAP) providers (which support private renters), and Tenancy Plus providers (which support social housing renters). Tenants Victoria provides rental law support and advice to this sector.

## Enhanced support for social housing renters

We note the comments made at 4.4 in Consultation Paper 2 in relation to existing services, and agree that in an ideal world support services would not be resource-pressured and time-bound, eligibility requirements and programs would be accessible to all including those with complex needs. For those with multiple or complex needs, best practice is an integrated model of “wrap around” services that bring together multiple disciplines to support that person with the various issues that may arise from a crisis or experience of disadvantage. For example, Tenants Victoria aims to do this through its integrated practice of lawyers, financial counselling and other supports.

Through our social housing advice line, we receive hundreds of calls from social housing renters each year. Over the last six months, the most common problems for social housing renters have been:

Top problems	Community housing	Public housing
1	Rent increase	Public housing – transfer (priority)
2	Repairs – urgent	Repairs – urgent
3	Community housing – rental rebate	Mould
4	Utilities	Compensation claim by tenant

It is evident that repairs, rental disputes, and housing applications (particularly in relation to priority transfers) are key issues for social housing renters. However, our experience has been that at times, we have been unable to refer non-eviction matters to Tenancy Plus providers, in particular repairs and transfer issues, due to providers’ matter-based eligibility criteria, or resourcing issues. We contrast this with the private rental equivalent, TAAP. The program’s providers are required to, and do, receive referrals on such matters from our service where the renter meets a means test and eligibility criteria. It would be ideal if social housing renters were afforded advocacy support equal to, if not extending beyond, that available to private renters.

## Improved service collaboration and coordination

Regulation could better support integrated support services, for example through requiring that social housing providers train their workforce in relation to referral pathways, requiring referrals at particular instances to support services, and incentivising greater engagement between independent support services and social housing providers (in particular community housing). This could extend, for example, to imposing a requirement that social housing providers demonstrate that they have referred a renter for legal advice before they seek to initiate an eviction or issue a Notice to Vacate. As previously

stated, the extension of the Human Rights Charter to community housing would help ensure that eviction is in reality, not just in a policy document, the last resort.

## Supporting effective rental support referrals

In recent years there has been a shift in both federal and state public policy and program guidelines from a professional to a client-centred perspective, as well as a recognition that “services should mirror the experience and needs of those people who use them, and a hope that joined-up services will better deliver the whole-system objectives of federal and state governments”<sup>72</sup>. There are a number of mechanisms by which services can join up their services, ranging from fairly limited collaboration (e.g. regularly making passive referrals to another service) to full integration (e.g. co-location of services and merger of different services)<sup>73</sup>.

Noting that this has not been common practice in the tenancy support sector, Tenants Victoria commenced a Tenancy Referral Project in 2020, in recognition that effective and targeted referrals are an essential part of both delivering access to justice and successful legal-service design, and, with the aim of understanding the efficacy of tenancy referrals made in the sector, look at how these could be improved, ultimately fostering enhanced service coordination. The final report of the project is due to be released in late 2021.

Some preliminary findings of this research are that integration within the rental support sector, as well as between it and other parts of the community and social-services sectors, could be improved to better support renters. This could be done through ensuring that, for example:

- Partnership and engagement work required for building and enhancing referral relationships and infrastructure is properly resourced.
- There are ore consistent operational guidelines between various parts of the rental support sector that undertake a similar function, to support improved service coordination and consistency of service available to different renter cohorts (for example between TAAP and Tenancy Plus).

## Recommendations

We therefore recommend the following:

44. That the Victorian Government undertake a review of social-renter support services and design wrap-around and independent services for renters to promote their rental security that include legal guidance, financial counselling, social work, and housing access support and that are available according to renter need.
45. That the Victorian Government ensure that sufficient, appropriate and accessible independent advocacy assistance is available to social housing renters through Tenancy Plus and other programs, particularly in relation to repairs, rental disputes and housing applications (including transfers).

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<sup>72</sup> Reshaping Legal Assistance, 28.

<sup>73</sup> Reshaping Legal Assistance, 70.

46. That the Victorian Government make funding available for pilot projects aimed at enhancing the service coordination, collaboration and integration of the social-renter support sector.

## Housing standards

This part responds to the following consultation questions:

- Consultation Paper 3: question 23.

We know that climate change and a poorly managed transition to a clean economy will affect people on low incomes and experiencing disadvantage, being social housing renters disproportionately, for a number of reasons, including:

- Low-income earners tend to live in areas more likely to be adversely affected by climate change, and have far less ability to move or make other necessary adjustments to their living circumstances<sup>74</sup>.
- On average, low-income earners spend almost twice as much of their total weekly household budget on energy and water than wealthier households. This means increasing frequency of extreme weather conditions requiring heating or cooling will impact them disproportionately, as will utility cost rises associated with extreme weather conditions<sup>75</sup>.
- Social housing households generally do not have the budget, rights or incentives to make capital improvements that may reduce their energy costs, for example in relation to insulation, water tanks or solar panels<sup>76</sup>.
- Energy consumption in low-income households is partly shaped by the market in second-hand appliances. Many second-hand appliances are inefficient, waste energy and increase bills<sup>77</sup>.

There is therefore a moral imperative to support low-income households and disadvantaged communities in relation to the energy efficiency of their homes. In addition, the Victorian Government may have a legislated reason to do so. Section 20 of the *Climate Change Act 2017* (Vic) states that “[t]he Government of Victoria will endeavour to ensure that any decision made by the Government and any policy, program or process developed or implemented by the Government appropriately takes account of climate change if it is relevant by having regard to the policy objectives and the guiding principles”.

The policy objectives set out in section 22 of that Act are:

- (a) to reduce the State's greenhouse gas emissions ...
- (b) to build the resilience of the State's infrastructure, built environment and communities ...

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<sup>74</sup> Climate change – ACOSS; Supporting vulnerable people to adapt to climate change | VCOSS; Sevoyan, A et al, *Impact of climate change on disadvantaged groups: Issues and interventions*, National Climate Change Adaptation Research Facility, Gold Coast, 2013.

<sup>75</sup> Ibid.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.



- (c) to manage the State's natural resources, ecosystems and biodiversity to promote their resilience; and
- (d) to promote and support the State's regions, industries and communities to adjust to the changes involved in the transition to a net zero greenhouse gas emissions economy, ... and
- (e) to support vulnerable communities and promote social justice and intergenerational equity.

On this basis it is our view that there is an obligation on government to commit to energy-efficient and climate-adaptive homes for social housing renters, and thus take this opportunity to support climate change adaptation for this significant vulnerable community.

## **Recommendations**

We therefore recommend that:

- 47. All newly built properties in the social housing portfolio, whether public or community housing, be required to be “7 star” rated in the Nationwide Housing Energy Rating Scheme (NatHERS7), and that this requirement be reviewed annually as housing standards improve.
- 48. Any existing properties that are brought into the social housing portfolio be retrofitted as much as possible to maximise their energy efficiency and minimise for their renters the running costs of their home.
- 49. The Victorian Government should revise social housing performance standards applicable to community housing providers to maximise improvements in energy efficiency of their rental stock.

## Appendix A – response to questions in order

Question	Responding part in our submission
<b>Paper 2</b>	
1. Do you agree with the above principles and objectives for the social housing system? Are there any principles that you would add or remove?	Proposed principles for the social housing regulatory system
2. Which principles do you think are the most important for a well-functioning regulatory system for social housing?	Proposed principles for the social housing regulatory system
3. Do you agree that people who are eligible for social housing renting in the private or non-social rental market should be afforded the same protections and benefits as those renting from a social housing provider?	Response to the ‘social tenant’
4. What are the key problems with the current system for regulating social housing relating to the tenant experience and service delivery? What should be the priorities for reform?	Priorities for reform and regulatory approach
5. Is there a lack of focus the tenant experience in the current regulatory framework? If yes, please provide examples of issues this has caused for tenants.	Renter empowerment
6. How can regulation be used to bring about great focus on tenant experience?	Renter empowerment
7. Are there examples where organisations have captured the tenant voice well, both in Victoria and in other jurisdictions?	Renter empowerment
8. How can tenant voice and empowerment be improved in both public and community housing?	Renter empowerment
9. What information would be useful for tenants to be able to assess the performance of social housing providers?	“Choice” currently a hollow concept in Victorian social housing
10. Are the policies and processes underpinning the Victorian Housing Register working well to allocate people to housing across	Victorian Housing Register and allocation policy

the public and community housing systems? If not, what changes need to be made?	
11. Are the current categories for priority access appropriate?	VHR and allocation policy
12. Is the level of flexibility for community housing providers to allocate prospective tenants from the Victorian Housing Register appropriate? If not, what changes are needed?	Victorian Housing Register and allocation policy
13. How should the need for culturally safe and appropriate housing be facilitated by the regulatory system?	Aboriginal housing
14. What are the current barriers to registration for Aboriginal housing providers? What approaches could facilitate a greater number of registered Aboriginal housing providers?	Aboriginal housing
15. Does current performance reporting promote transparency and accountability of public and community housing providers? What metrics are important for tenants? Should tenants be involved in choosing metrics? Should the reporting be in a format that is easily understood by tenants?	Accountability, performance standards and service quality
16. How could greater comparability of performance across public and community providers support accountability and ultimately benefit tenants through better service delivery?	Accountability, performance standards and service quality
17. What additional data should be collected and/or made available to enable performance assessment of Victoria's social housing system? Is there any data currently collected which is unnecessary?	Accountability, performance standards and service quality
18. Are there any areas in which data collection could be better coordinated to improve comparability?	Accountability, performance standards and service quality
19. Is the overall approach to regulating public and community housing effective, transparent and proportionate? If not, how could it be improved?	Priorities for reform and regulatory approach
20. Are the categories of registration for community housing organisations appropriate? Do they broadly reflect the risk of entity failure? What are possible alternatives?	Scope – which entities should be included in “social housing”?
21. Should there be a system of routine inspections of registered community housing organisations?	NA

22. How can regulation drive improvements in the sector beyond minimum requirements? How could self-regulation be used?	Priorities for reform and regulatory approach
23. Should unregistered agencies operating community housing be brought into the regulatory system?	Scope – which entities should be included in “social housing”?
24. Is the approach to regulatory oversight of public housing appropriate?	The regulator
25. Could the current social housing workforce be better equipped to perform the role of a social housing provider?	Sector workforce & development
26. What measures (if any) are required to ensure the social housing workforce has adequate skills and expertise to meet the needs of tenants.	Sector workforce & development
27. What are any barriers to increasing professionalisation of the social housing workforce?	Sector workforce & development
28. How could regulation be used to support social housing workforce professionalisation? What should be avoided in using regulation for this objective?	Sector workforce & development
29. How does the National Regulatory System for Community Housing compare to the Victorian Regulatory System in relation to how it regulates (and influences) the quality of services and tenant experience?	National Regulatory System for Community Housing
30. Should for-profit providers be able to become registered as social housing providers?	Scope – which entities should be included in “social housing”?
31. What are the potential benefits of including public housing providers under similar regulatory arrangements as community housing? What would be the barriers to, and risks of this approach?	The regulator
32. What changes would be needed to the regulatory framework to accommodate public housing? Are there areas of the regulatory framework that should not apply to public housing?	The regulator
33. What are any alternative options for improving the regulation and governance of public housing?	The regulator

34. Would a set of standards and protections that apply to certain provider types such as caravan parks and rooming houses benefit other tenants in the private sector?	Response to the 'social tenant'
35. How could a set of tenant standards be designed and applied to minimise the costs and risks to landlords, while maximising the benefits to social tenants?	Accountability, performance standards and service quality
36. If a set of additional standards for social tenants were introduced, what should it contain? Are there other ways of achieving greater protections for social tenants?	Accountability, performance standards and service quality
37. What form should the standards take – for example, they could be in the form of a charter, performance standards, or more prescriptive requirements?	Accountability, performance standards and service quality
38. If a set of additional standards for social tenants were introduced, which types of landlords and accommodation providers should they apply to? Which types should be excluded? What support would need to be provided to landlords and accommodation providers to help them meet the standards?	Accountability, performance standards and service quality
39. Do the current existing dispute resolution processes available to current and prospective social housing tenants offer fair, fast, low-cost, accessible and consistent decision making? If not, where are the shortcomings?	Complaints handling and dispute resolution
40. Are there possible alternative models for dispute resolution that would offer greater benefits than the current approach? Could the dispute resolution process introduced during the pandemic offer any insights?	Complaints handling and dispute resolution
41. Is the existing range of support services available to tenants in public, community and private rental housing effective? If not, where are their limitations?	Support services
42. What changes need to be made to integrate support services with housing support?	Support services
43. What additional support do tenants need that is not currently being provided?	Support services

44. How could regulation assist in the integrated provision of support services with housing assistance?	Support services
45. Do you think there would be benefits in a single social housing regulator that has oversight of the services provided to vulnerable tenants across a range of tenure types?	The regulator
46. What governance structure do you think would be the best option for a single social housing regulator, and why?	The regulator
<b>Consultation Paper 3</b>	
1	NA
2	Renter empowerment
3 – 10	NA
11	Scope – which entities should be included in “social housing”?
12 – 14	The regulator
15 – 17	Sector and workforce development
18 – 20	Scope – which entities should be included in “social housing”?
21 – 22	National Regulatory System for Community Housing
23	Housing standards
24 – 28	NA
29	Accountability, performance standards and service quality

# Appendix B – CHP policy comparison

Current CHPs	Guidance Note: Policies which should be made available													
	Housing allocation	Rent setting	Alterations and disability modifications	Maintenance and repairs	Inspections	Privacy and information security	Complaints and appeals	Code of conduct and conflicts of interests	Arrears management and hardship	Tenant transfer and succession	Neighbours	Evictions	Tenant recharge	Transitional housing (not all CHP are transitional housing)
Aboriginal Housing Victoria Limited	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	No	No
Baptcare Affordable Housing Ltd	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
BeyondHousing (Rural Housing Network Limited)	Yes	Yes	No (mentioned in maintenance, but not)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Centacare Housing Services Ltd	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Common Equity Housing Limited	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Community Housing (Vic) Ltd	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No
EACH Housing Ltd	Yes	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Eastcoast Housing	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Eastern Suburbs Rental Housing Co-operative Limited	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Haven, Home, Safe (Loddon Mallee Housing Services Ltd)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Housing Choices Australia Limited	Yes	No	Yes	No	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes
Housing First Limited	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Inner East Social Housing Group Limited	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Launch Housing Ltd	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Mallee Accommodation & Support Program Ltd	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Northcote Rental Housing Co-operative Ltd.	Yes	Yes	No (mentioned in maintenance, but not)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No
Prahan/Malvern Community Housing Inc.	Yes	Yes	No	No	No	No	No	No	No	Yes	No	No	No	No
Salvation Army Housing (Victoria)	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes code of conduct (but no conflict of interest)	Yes	Yes	Yes	No	Yes	Brochure, but no policy
Servants Community Housing Limited	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
South Port Community Housing Group Inc	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
SouthEast Housing Cooperative Ltd	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
St Kilda Community Housing Ltd	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Sunshine/St Albans Rental Housing Co-operative Ltd	Yes	Yes	Yes	Yes	Yes (but brief)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
The Haven Foundation Ltd	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Unison Housing Limited	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No
United Housing Co-operative Ltd	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	No
Uniting Housing Australia	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
VincentCare Community Housing	Yes	No (coming soon)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
WAYS Limited	Yes	Yes	Yes	Yes	Yes (but brief)	Yes	Yes	No	Yes	Yes	Yes	Yes (but brief)	Yes	Yes
Williamstown Rental Housing Co-operative Ltd	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Wintringham Housing Ltd	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No
Women's Housing Ltd	Yes	No (coming soon)	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Women's Property Initiatives Ltd	No	Yes	No	No	No	Yes	Yes	Yes	No	No	No	No	No	No

## Appendix C – Proposed principles for tenancy dispute resolution

# Proposed Principles of the Residential Tenancy Dispute Resolution Scheme (RTDRS)

### **Background**

As set out in our July 2020 briefing paper, for those tenants who cannot reach agreements with their landlords in private negotiations, the Residential Tenancy Dispute Resolution Scheme (RTDRS) is key mechanism through which tenants may find a fair outcome to a rental reduction dispute.

However, since its commencement, the legal assistance sector has had a number of concerns in relation to the operation of the RTDRS. These include a lack of evidentiary framework for decision-making, a lack of transparency in relation to the principles governing its operation and the decisions that it makes, and a lack of review rights, among other things.

In our collective experience, many tenants have been either unaware of the existence of the RTDRS, or uncertain about participating in the RTDRS due to a lack of knowledge about how it works, or fear of retaliation through eviction proceedings, negative rental references or being blacklisted.

Moving forward, and particularly should the RTDRS remain a fixture in the tenancy law landscape, a number of changes need to be made in order to ensure its effectiveness. This paper sets out a series of minimum standard principles that the legal assistance sector believes are required to make a fair and effective RTDRS, should it continue beyond 28 March 2021.

### **Guiding Principles**

In preparing these principles we are guided by and endorse the Commonwealth Government's *Benchmarks for Industry-Based Dispute Resolution: Principles & Practices*,<sup>78</sup> and *Key Practices for Industry-Based Dispute Resolution*.<sup>79</sup> We believe in order to be an effective and fair decision-making forum, the RTDRS must demonstrate:

#### **Independence**

- Should the RTDRS continue beyond a transitional phase, the Victorian Government should consider establishing it as a separate entity to CAV.

#### **Accessibility**

- Targeted communication and promotion of the RTDRS to Victorian tenants, including through non-digital channels and grassroots community-based organisations.

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<sup>78</sup> [https://treasury.gov.au/sites/default/files/2019-03/benchmarks\\_ind\\_cust\\_dispute\\_reso.pdf](https://treasury.gov.au/sites/default/files/2019-03/benchmarks_ind_cust_dispute_reso.pdf)

<sup>79</sup> [https://treasury.gov.au/sites/default/files/2019-03/key\\_pract\\_ind\\_cust\\_dispute\\_resol.pdf](https://treasury.gov.au/sites/default/files/2019-03/key_pract_ind_cust_dispute_resol.pdf)



- Accessible information for tenants about the process and the consequences for their tenancies (including, for example, clear information that landlords cannot evict due to making an application to the RTDRS). This includes information in other languages, suitable modifications for those living with disabilities, and targeted information for specific cohorts who may have particular needs, for example family violence survivors.
- Clear articulation of both tenants' and landlords' rights, responsibilities, and conduct expectations throughout the RTDRS process, including the role of real estate agents in negotiation.
- Tenants are entitled to elect to have a legal representative, support person or advocate.
- A legal assistance referral mechanism for all tenants who are identified as experiencing vulnerability or disadvantage, at each step of the dispute resolution process.
- RTDRS staff should be trained in identifying vulnerability, and clear internal guidance on identifying and assisting vulnerable tenants should be developed and implemented by the RTDRS, in consultation with the legal assistance and social services sectors.
- Sufficient funding for legal assistance services in order to meet any increase in demand for their services resulting from this mechanism.

## Transparency

- Establishment of a Tenant Consultative Committee that provides feedback to the RTDRS about its accessibility for tenants experiencing vulnerability or disadvantage, and to which the RTDRS operational staff are accountable in relation to improvements made in response to that feedback.
- Clear and publicly accessible guidelines, practice directions, processes and decision-making tools to assist with consistent decision-making.<sup>80</sup> The guidelines and practice directions should be developed with consultation.
- RTDRS decisions are published and made available online.

## Accountability

- Should the RTDRS continue beyond a transitional phase, there should be regular (ideally annual) comprehensive public reporting about the operation of the RTDRS.<sup>81</sup>
- Transparent and regular data sharing about the operation and outcomes of the RTDRS with relevant stakeholders, including with the Tenant Consultative Committee recommended above.

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<sup>80</sup> See for example the easily accessible AFCA Rules and Operational Guidelines, as well as its 'Approach' documents which set out its approach to particular categories of disputes: <https://www.afca.org.au/about-afca/publications>

<sup>81</sup> See for example the Australian Financial Complaints Authority (AFCA) Annual Review: <https://www.afca.org.au/about-afca/annual-review>

## **Fairness**

- Clear evidentiary requirements for both tenants and landlords to inform negotiations and to prevent unnecessary, intrusive or unequal evidentiary requirements.
- RTDRS decision-makers must, when making RTDRS decisions, properly apply the law and act fairly and according to the substantial merits of the case.
- There should be a clear, accessible, transparent and balanced review process for all RTDRS decisions. One option is that such reviews are heard by VCAT.
- Should a review mechanism be implemented at VCAT, the RTDRS and review process should be as integrated and joined up as possible. This could be achieved through the use of digital case files transferred from one entity to another. The parties to the dispute as well as legal representatives should be granted easy access to these digital case files before transfer from the RTDRS.

## **Efficiency**

- Appropriate timeframes for Director decisions in assessing eligible disputes, as well as timeframes for mediation and dispute resolution. This would avoid significant delays which currently cause tenants to leave their tenancies or agree to unfavourable rent reduction agreements.
- Automatic referral (with an opt out option for tenants) of disputes to VCAT for determination when a dispute is ineligible for RTDRS dispute resolution.

## **Effectiveness**

- Opportunities for consultation and feedback from key stakeholders about the operation of the RTDRS, including through the Tenant Consultative Committee recommended above.
- If a joined-up review process of RTDRS decisions by VCAT is developed, there should be a mechanism by which VCAT can provide feedback to the RTDRS on the quality of its decision-making (including in cases where decisions are not published).

## **Jurisdiction**

- That the RTDRS provide a forum for a Transitional Rent Reduction Scheme for a minimum 6-month transition period beyond 28 March 2021, with the option of extension should circumstances require it (for example should there be a third wave of COVID-19 cases). This transition period remains open as it is directly connected to circumstantial and economic changes.
- That the RTDRS only hears matters in relation to rent reductions and COVID-related rent arrears waiver applications.
- That RTDRS expressly exclude disputes relating to eviction, family violence related applications, compensation claims (including bond matters), and repair matters, all of which are more appropriately dealt with by VCAT.

## **Further required elements**

### **Streamlined with external processes**

- That the RTDRS, including any transitional arrangements, must be streamlined with DHHS financial packages. For example, should the Rent Relief Grant continue to be contingent on registration of an agreement with the RTDRS, or on a particular RTDRS outcome, parties should be able to apply for the Grant as part of the RTDRS process, and receive an outcome to that application at an appropriate time.

### **Quality decision-makers**

- That those conducting mediations or conciliations are nationally accredited mediators who have a high level of knowledge of the Victorian tenancy law.

### **The RTDRS should be a true ‘alternative’**

- That the RTDRS run alongside VCAT rather than replace it in relation to categories of disputes. That is, parties should have the option of making an application at either forum, similar to the way industry-based dispute resolution schemes operate.

### **Evaluation**

There should be a structured evaluation of the efficacy of the RTDRS, including:

- **Broad input** – including opportunities for consultation and feedback from key stakeholders such as the legal assistance sector about operation of RTDRS.
- **Timeliness** - Evaluation should capture time taken from initiating to resolution of the claim, including for dispute type. Data from the pilot should be measured against pre-existing tenancy dispute resolution processes (for example as against VCAT processes).
- **Procedural justice outcomes** - Information on: (a) claimant or defendant engagement with the process and other sources of legal help and advice; (b) nature and volume of the evidence produced; (c) opportunities for parties to engage effectively and meaningfully in the process; (d) whether participants perceived the process as independent and fair; (e) the degree to which people trust the process; (f) understanding the instruction, method and implications of the process; and (g) whether people are treated with dignity and respect through the process.<sup>82</sup>
- **Substantive outcomes** - assessing the number of consensual outcomes through the RTDRS process as against the need to go to contested VCAT hearing and user satisfaction in either case.

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<sup>82</sup> See for example there is the US Centre for Court Innovation ‘Measuring Perceptions of Fairness: An Evaluation Toolkit’, available online at: [https://www.courtinnovation.org/sites/default/files/documents/P\\_J\\_Evaluation.pdf](https://www.courtinnovation.org/sites/default/files/documents/P_J_Evaluation.pdf)

- **User satisfaction** - Capturing whether users are satisfied with the process, potentially against procedural justice metrics described above.<sup>83</sup>
- **Vulnerability** - Data could be captured on user “vulnerability”, from self-identification through initiating processes, and/or proactive inquiries made by the RTDRS. In current circumstances, any definition of vulnerability might include digital capability or a claimant's capacity to engage in a remotely delivered process.

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<sup>83</sup> (The British Columbia Civil Resolution Tribunal (which mainly adjudicates strata disputes) Participation Satisfaction Survey captures user satisfaction against a range of metrics, including against professionalism of adjudicators, ease of use, timely resolution, accessibility and fair treatment, <https://civilresolutionbc.ca/participant-satisfaction-survey-january-2020/>)

## Appendix D – Comparison of performance standards

The Department of Housing’s conduct requirements are set out in the Public Housing Policy and Procedures Manual,<sup>84</sup> but we are not aware of them having any publicly available ‘performance standards’.

Current Victorian CHP	Current Scottish model
Community Housing Performance Standards <sup>85</sup>	Scottish Social Housing Charter 2017 <sup>86</sup>
<p>[introduction not included]</p> <p><b>1. Tenant and housing services</b></p> <p>The registered agency is fair, transparent and responsive in delivering housing assistance to tenants, residents and other clients particularly in relation to the following.</p> <ol style="list-style-type: none"> <li>Determining and managing eligibility, allocation, and termination of housing assistance.</li> <li>Determining and managing rents.</li> <li>Setting and meeting relevant housing service standards.</li> <li>Supporting tenant and resident engagement.</li> <li>Facilitating access to support for social housing applicants and tenants with complex needs.</li> <li>Managing and addressing complaints and appeals relating to the provision of housing services.</li> <li>Maintaining satisfaction with the overall quality of housing services.</li> </ol> <p><b>Indicators</b></p> <p><b>Eligibility, allocation and termination of assistance</b></p> <ol style="list-style-type: none"> <li>The registered agency makes information about its tenancy management policies and procedures available in a variety of formats.</li> <li>The registered agency manages housing assistance in accordance with its policies and the legal and policy requirements.</li> <li>The registered agency has developed policies about fair and equitable access and allocation of housing and strategies responsive to local needs to implement its policies.</li> <li>The registered agency’s access and allocations policy is sensitive to clients with complex needs and low incomes and, to the extent permitted by other performance standards, ensures allocation of tenancies to this client group.</li> <li>The registered agency has policies and procedures which strive to sustain tenancies.</li> <li>Enforced transfers are minimised and eviction is treated as a mechanism of last resort.</li> </ol> <p><b>Rents</b></p> <ol style="list-style-type: none"> <li>The registered agency makes information about its policies and procedures to determine and manage rents available in a variety of formats.</li> <li>The registered agency manages rent in accordance with the specific legal and policy requirements.</li> <li>The registered agency has policies and strategies to deliver housing services at affordable rents to low-income tenants. The Registrar and registered agencies will monitor the extent to which rent charged is below 75% of market rent and between 25% and 30% of tenant income (in compliance with the current</li> </ol>	<p>[introduction not included]</p> <p><b>2. Charter outcomes and standards</b></p> <p>The customer/landlord relationship</p> <p><b>1: Equalities</b></p> <p>Social housing providers perform all aspects of their housing services so that:</p> <p><i>every tenant and other customer have their individual needs recognised, is treated fairly and with respect, and receives fair access to housing and housing services.</i></p> <p>This outcome describes what social housing providers, by complying with equalities legislation, should achieve for all tenants and other customers regardless of age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, or sexual orientation. It includes landlords' responsibility for finding ways of understanding the rights and needs of different customers and delivering services that recognise and meet these.</p> <p><b>2: Communication</b></p> <p>Social housing providers manage their businesses so that:</p> <p><i>tenants and other customers find it easy to communicate with their landlord and get the information they need about their landlord, how and why it makes decisions and the services it provides.</i></p> <p>This outcome covers all aspects of landlords' communication with tenants and other customers. This could include making use of new technologies such as web-based tenancy management systems and smart-phone applications. It is not just about how clearly and effectively a landlord gives information to those who want it. It also covers making it easy for tenants and other customers to make complaints and provide feedback on services, using that information to improve services and performance, and letting people know what they have done in response to complaints and feedback. It</p>

<sup>84</sup> Public housing policy and practice manuals - DHHS Service Providers (dffh.vic.gov.au)

<sup>85</sup> Performance Standards and evidence guidelines | Victorian Government (www.vic.gov.au)

<sup>86</sup> Scottish Social Housing Charter April 2017 - gov.scot (www.gov.scot)

<p>affordable rent parameters).</p> <ol style="list-style-type: none"> <li>4. Policies developed by the registered agency under the preceding paragraph detail the method of assessing affordability, the treatment of Commonwealth Rent Assistance in the assessment and the treatment of additional service charges if applicable.</li> <li>5. The registered agency has policies and strategies to deal with tenants in financial difficulties and with arrears of rent.</li> <li>6. The registered agency has policies and strategies to ensure that service and other charges do not exceed fair market or actual charges.</li> </ol> <p><b>Housing service standards</b></p> <ol style="list-style-type: none"> <li>1. The registered agency communicates and monitors what tenants and residents can expect from the service.</li> <li>2. The registered agency provides safe, secure and affordable housing, managed in accordance with requirements of the <i>Residential Tenancies Act 1997</i> (RTA).</li> </ol> <p><b>Tenant and resident engagement</b></p> <ol style="list-style-type: none"> <li>1. The registered agency involves tenants and residents in the planning and delivery of housing services in a variety of accessible ways.</li> <li>2. The registered agency promotes appropriate opportunities for tenants and residents to be involved in their community.</li> <li>3. The registered agency obtains feedback from tenants and residents on its services and consults with them on proposals that will affect them.</li> <li>4. The registered agency has identified the standards of performance it will achieve in tenant and housing services.</li> <li>5. The dispute resolution procedure the registered agency has established under Section 97 of the Act is easily accessible by tenants and prospective tenants and provides for prompt and effective resolution of complaints.</li> <li>6. The registered agency accepts and deals appropriately with client advocates.</li> </ol> <p><b>Access to support for applicants and tenants with complex needs</b></p> <ol style="list-style-type: none"> <li>1. The registered agency establishes and maintains arrangements that are adequate to ensure tenants and residents with support needs receive appropriate support, if relevant and where available, to maintain their tenancies.</li> </ol> <p><b>Complaints and appeals</b></p> <ol style="list-style-type: none"> <li>1. Information is readily available and promoted to tenants on complaints and appeals.</li> <li>2. The registered agency manages complaints and appeals promptly and fairly.</li> <li>3. The registered agency regularly monitors the effectiveness of the complaints and appeals system.</li> </ol> <p><b>Satisfaction with assistance provided</b></p> <ol style="list-style-type: none"> <li>1. The registered agency maintains a satisfactory level of tenant and resident satisfaction.</li> </ol> <p><b>2. Housing assets</b></p> <p>The registered agency manages its assets in a manner that ensures suitable properties are available now and into the future, particularly in relation to the following.</p> <ol style="list-style-type: none"> <li>1. Determining changing housing needs and planning asset acquisitions, disposals and reconfiguration to respond (strategic asset management).</li> <li>2. Setting and meeting relevant property condition standards.</li> <li>3. Planning and undertaking responsive, cyclical and life-cycle maintenance to maintain property conditions (asset maintenance).</li> <li>4. Planning and delivering its housing development program (asset development).</li> </ol> <p>Indicators</p>	<p>does not require landlords to provide legally protected, personal or commercial information.</p> <p>3: Participation Social housing providers manage their businesses so that:</p> <p><i>tenants and other customers find it easy to participate in and influence their landlord's decisions at a level they feel comfortable with.</i></p> <p>This outcome describes what landlords should achieve by meeting their statutory duties on tenant participation. It covers how social housing providers gather and take account of the views and priorities of their tenants, other customers, and bodies representing them such as registered tenant organisations; how they shape their services to reflect these views; and how they help tenants, other customers and bodies representing them such as registered tenant organisations to become more capable of involvement - this could include supporting them to scrutinise landlord services.</p> <p>Housing quality and maintenance</p> <p>4: Quality of housing Social housing providers manage their businesses so that:</p> <p><i>tenants' homes, as a minimum, meet the Scottish Housing Quality Standard (SHQS) when they are allocated; are always clean, tidy and in a good state of repair; and also meet the Energy Efficiency Standard for Social Housing (EESH) by December 2020.</i></p> <p>This standard describes what landlords should be achieving in all their properties. It covers all properties that social housing providers let, unless a particular property does not have to meet part of the standard. If, for social or technical reasons, landlords cannot meet any part of these standards, they should regularly review the situation and ensure they make improvements as soon as possible.</p> <p>5: Repairs, maintenance and improvements Social housing providers manage their businesses so that:</p> <p><i>tenants' homes are well maintained, with repairs and improvements carried out when required, and tenants are given reasonable choices about when work is done.</i></p> <p>This outcome describes how landlords should meet their statutory duties on repairs and provide repairs, maintenance and improvement services that safeguard the value of their assets and take account of the wishes and preferences of their tenants. This could include setting repair priorities and timescales; setting repair standards such as getting repairs done right, on time,</p>
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<p><b>Strategic asset management</b></p> <ol style="list-style-type: none"> <li>The registered agency plans for how it will manage its housing assets to optimise outcomes on financial investment, service delivery and meeting housing needs.</li> </ol> <p><b>Property condition</b></p> <ol style="list-style-type: none"> <li>The registered agency manages community housing assets in accordance with the specific legal and policy property condition requirements relevant in Victoria.</li> <li>Housing stock acquired meets building standards before being offered for occupation by tenants.</li> <li>The registered agency maintains an accurate and current list of the properties it owns and manages.</li> <li>The registered agency seeks consensual agreement with tenants in relation to access to properties that do not compromise tenants' rights under the RTA.</li> </ol> <p><b>Maintenance of properties</b></p> <ol style="list-style-type: none"> <li>The registered agency (commensurate with its responsibilities) ensures: <ul style="list-style-type: none"> <li>properties are well maintained;</li> <li>maintenance is undertaken in a timely manner; and</li> <li>maintenance work is undertaken by suitably qualified staff/contractors/consultants.</li> </ul> </li> </ol> <p><b>Asset development</b></p> <ol style="list-style-type: none"> <li>The registered agency plans, monitors and reviews its development program to ensure effective and efficient delivery of new housing.</li> </ol> <p><b>3. Community engagement</b></p> <p>The registered agency works in partnership with relevant organisations to promote community housing and to contribute to socially inclusive communities, specifically in relation to the following.</p> <ol style="list-style-type: none"> <li>Promoting community housing to local organisations that work with potential residents, tenants or clients, and agencies.</li> <li>Contributing to place renewal and social inclusion partnerships and planning relevant to the agency's community housing activities.</li> </ol> <p><b>Indicators</b></p> <p><b>Promotion of community housing</b></p> <ol style="list-style-type: none"> <li>The registered agency engages with relevant organisations using appropriate communication tools to promote community housing and benefits of partnership.</li> </ol> <p><b>Contributing to socially inclusive communities</b></p> <ol style="list-style-type: none"> <li>The registered agency works with others to maximise positive economic and social outcomes for tenants and the community through place renewal.</li> <li>The registered agency works with others to maximise positive economic and social outcomes for tenants and the community through social inclusion.</li> </ol> <p><b>4. Governance</b></p> <p>The registered agency is well-governed to support the aims and intended outcomes of its business, specifically in relation to the following.</p> <ol style="list-style-type: none"> <li>Ensuring coherent and robust strategic, operational, financial and risk planning.</li> <li>Ensuring effective, transparent and accountable arrangements and controls are in place for decision making to give effect to strategic, operational, financial and risk plans.</li> <li>Complying with legal requirements and relevant government policies.</li> <li>Ensuring that the governing body has members with appropriate</li> </ol>	<p>first time; and assessing tenant satisfaction with the quality of the services they receive.</p> <p>Neighbourhood and community 6: Estate management, anti-social behaviour, neighbour nuisance and tenancy disputes</p> <p>Social housing providers, working in partnership with other agencies, help to ensure as far as reasonably possible that:</p> <p><i>tenants and other customers live in well-maintained neighbourhoods where they feel safe.</i></p> <p>This outcome covers a range of actions that social housing providers can take on their own and in partnership with others. It covers action to enforce tenancy conditions on estate management and neighbour nuisance, to resolve neighbour disputes, and to arrange or provide tenancy support where this is needed. It also covers the role of landlords in working with others to tackle anti-social behaviour.</p> <p>Access to housing and support 7, 8 and 9: Housing options Social housing providers work together to ensure that:</p> <ul style="list-style-type: none"> <li><i>people looking for housing get information that helps them make informed choices and decisions about the range of housing options available to them</i></li> <li><i>tenants and people on housing lists can review their housing options.</i></li> </ul> <p>Social housing providers ensure that:</p> <p><i>people at risk of losing their homes get advice on preventing homelessness.</i></p> <p>These outcomes cover landlords' duties to provide information to people looking for housing and advice for those at risk of becoming homeless. This could include providing housing 'health checks' for tenants and people on housing lists to help them review their options to move within the social housing sector or to another sector.</p> <p>10: Access to social housing Social housing providers ensure that:</p> <p><i>people looking for housing find it easy to apply for the widest choice of social housing available and get the information they need on how the landlord allocates homes and on their prospects of being housed.</i></p> <p>This outcome covers what social housing providers can do to make it easy for people to apply for the widest choice of social housing that is available and suitable and</p>
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<p>expertise or that such is available to the governing body.</p> <p><b>Indicators</b></p> <p><b>Planning</b></p> <ol style="list-style-type: none"> <li>1. The governing body sets and implements its strategic directions and scrutinises performance using: <ul style="list-style-type: none"> <li>– business planning;</li> <li>– financial planning;</li> <li>– risk management planning; and</li> <li>– business continuity planning.</li> </ul> </li> <li>2. The governing body provides effective control of related party arrangements (for example, through a group structure agreement, service level agreement, partnership agreement, or contract).</li> <li>3. Where any aspect of the management of the registered agency’s business or functions is outsourced, the registered agency ensures that the entity to which the business or functions are outsourced complies with these performance standards and with the registered agency’s policies to the extent they apply to the business or functions outsourced.</li> </ol> <p><b>Decision making</b></p> <ol style="list-style-type: none"> <li>1. The registered agency operates in accordance with a code of governance, consistent with the ASX Corporate Governance Principles, including in relation to: <ul style="list-style-type: none"> <li>– the roles and responsibilities of the governing body and sub-committees;</li> <li>– decision making processes;</li> <li>– managing conflicts of interest;</li> <li>– internal business compliance; and</li> <li>– the selection and performance of the Chief Executive Officer.</li> </ul> </li> </ol> <p><b>Compliance with legal requirements and government policies</b></p> <ol style="list-style-type: none"> <li>1. The registered agency has a system in place to ensure compliance with all applicable legal requirements and relevant government policies.</li> <li>2. The registered agency’s core purpose, mission and values are aligned with the provision of affordable housing and the agency acts at all times in accordance with its core purpose.</li> </ol> <p><b>Expertise of governing body</b></p> <ol style="list-style-type: none"> <li>1. The registered agency has fair and transparent processes in place to ensure the governing body has members with, or access to, an appropriate range of skills and knowledge to deliver on its business plan and manage the risks in its business, including in relation to, where undertaken: <ul style="list-style-type: none"> <li>– recruitment and selection;</li> <li>– induction;</li> <li>– professional development;</li> <li>– succession;</li> <li>– engaging external expertise;</li> <li>– remuneration; and</li> <li>– performance assessment of the governing body.</li> </ul> </li> </ol> <p><b>5. Probity</b></p> <p>The registered agency maintains high standards of probity relating to the business of the provider, specifically in relation to the following.</p> <ol style="list-style-type: none"> <li>1. Establishing and administering a code of conduct.</li> <li>2. Establishing and administering a system of employment and appointment checks.</li> </ol>	<p>that meets their needs. It includes actions that social housing providers can take on their own and in partnership with others, for example through Common Housing Registers or mutual exchange schemes, or through local information and advice schemes.</p> <p>11: Tenancy sustainment Social housing providers ensure that:</p> <ul style="list-style-type: none"> <li>• <i>tenants get the information they need on how to obtain support to remain in their home; and ensure suitable support is available, including services provided directly by the landlord and by other organisations.</i></li> </ul> <p>This outcome covers how landlords on their own, or in partnership with others, can help tenants who may need support to maintain their tenancy. This includes tenants who may be at risk of falling into arrears with their rent, and tenants who may need their home adapted to cope with age, disability, or caring responsibilities.</p> <p>12: Homeless people Local councils perform their duties on homelessness so that:</p> <p><i>homeless people get prompt and easy access to help and advice; are provided with suitable, good-quality temporary or emergency accommodation when this is needed; and are offered continuing support to help them get and keep the home they are entitled to.</i></p> <p>This outcome describes what councils should achieve by meeting their statutory duties to homeless people. Getting good value from rents and service charges</p> <p>13: Value for money Social housing providers manage all aspects of their businesses so that:</p> <p><i>tenants, owners and other customers receive services that provide continually improving value for the rent and other charges they pay.</i></p> <p>This standard covers the efficient and effective management of services. It includes minimising the time houses are empty; managing arrears and all resources effectively; controlling costs; getting value out of contracts; giving better value for money by increasing the quality of services with minimum extra cost to tenants, owners and other customers; and involving tenants and other customers in monitoring and reviewing how landlords give value for money.</p> <p>14 and 15: Rents and service charges Social housing providers set rents and service charges in consultation with their tenants and other customers so that:</p>
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<p>3. Establishing and administering a system for preventing, detecting, reporting on, and responding to, instances of fraud, corruption and criminal conduct.</p> <p>4. Maintaining the reputation of the community housing sector.</p> <p><b>Indicators</b></p> <p><b>Code of conduct</b></p> <p>The registered agency has a code of conduct designed (or is supported by additional policies and procedures) to ensure it maintains high standards of probity, including in relation to:</p> <ul style="list-style-type: none"> <li>• whistle blowing;</li> <li>• conflict of interest;</li> <li>• gifts and hospitality;</li> <li>• procurement;</li> <li>• preventing exploitation of knowledge or information about the affairs of the agency for personal financial gain;</li> <li>• observing the confidentiality of the registered agency's business transactions and the privacy of individuals dealing with the registered agency;</li> <li>• dealing fairly with stakeholders; and</li> <li>• protecting the registered agency's assets.</li> </ul> <p><b>Employment and appointment</b></p> <p>The registered agency conducts checks for governing body members, employees, volunteers and agents commensurate with the requirements of the position, including in relation to relevant:</p> <ul style="list-style-type: none"> <li>• referees and previous employment;</li> <li>• criminal record;</li> <li>• bankruptcy;</li> <li>• working with children; and</li> <li>• working with aged.</li> </ul> <p><b>Prevention and handling of improper conduct</b></p> <p>The registered agency's system is consistent with good practice established by relevant anti-fraud, anti-corruption and anti-crime agencies and professional standards bodies.</p> <p><b>Protection of sector reputation</b></p> <ol style="list-style-type: none"> <li>1. The registered agency notifies the Registrar of any incident related to its operations (and its response) that damages or has the potential to damage the reputation of the community housing sector.</li> <li>2. Decisions relating to the business and functions of the registered agency must be made ethically and conform to the registered agency's code of conduct.</li> </ol> <p><b>6. Management</b></p> <p>The registered agency manages its resources to achieve the intended outcomes of its business in a cost-effective manner, specifically in relation to the following.</p> <ol style="list-style-type: none"> <li>1. Demonstrating it utilises its assets and funding to meet business goals.</li> <li>2. Implementing appropriate management structures, systems, policies and procedures to ensure the operational needs of its business can be met (including having people with the right skills and experience and the systems and resources to achieve the intended outcomes of its business).</li> </ol> <p><b>Indicators</b></p> <p><b>Effective utilisation of assets and funding</b></p> <ol style="list-style-type: none"> <li>1. The business planning process includes an assessment of costs and returns on assets and funding to meet its business goals.</li> <li>2. The registered agency generates and utilises surplus to achieve its business goals.</li> </ol>	<ul style="list-style-type: none"> <li>• a balance is struck between the level of services provided, the cost of the services, and how far current and prospective tenants and service users can afford them</li> <li>• tenants get clear information on how rent and other money is spent, including details of any individual items of expenditure above thresholds agreed between landlords and tenants.</li> </ul> <p>These outcomes reflect a landlord's legal duty to consult tenants about rent setting; the importance of taking account of what current and prospective tenants and other customers are likely to be able to afford; and the importance that many tenants place on being able to find out how their money is spent. For local councils, this includes meeting the Scottish Government's guidance on housing revenue accounts. Each landlord must decide, in discussion with tenants and other customers, whether to publish information about expenditure above a particular level, and in what form and detail. What matters is that discussions take place and the decisions made reflect the views of tenants and other customers.</p> <p>Other customers 16: Gypsy/Travellers Local councils and social housing providers with responsibility for managing sites for Gypsy/Travellers should manage the sites so that:</p> <p><i>sites are well maintained and managed, and meet the minimum site standards set in Scottish Government guidance.</i></p> <p>This outcome includes actions landlords take to ensure that: their sites meet the Scottish Government guidance on minimum standards for Gypsy/Traveller sites, and those living on such sites have occupancy agreements that reflect the rights and responsibilities set out in guidance. All the standards and outcomes in the Charter apply to Gypsy/Travellers.</p> <p>Scottish Government April 2017</p> <p>[note on language not included]</p>
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<p><b>Appropriate structures, systems and documentation</b></p> <ol style="list-style-type: none"> <li>1. The registered agency's management structure, systems, policies and procedures are fit-for-purpose.</li> <li>2. The registered agency must be managed effectively to achieve the outcomes of its business plan in a timely manner and within a continuous improvement framework.</li> <li>3. The registered agency has privacy policies that comply with legislative requirements and has strategies to ensure that tenants' privacy is maintained with respect to disclosure within the registered agency and to third parties.</li> <li>4. The business plan identifies: <ul style="list-style-type: none"> <li>– strategies to sustain, expand and develop its housing portfolio including leverage on its portfolio through such avenues as private investment, philanthropic agencies, and local government participation;</li> <li>– strategies to optimise rent collection and recovery; and</li> <li>– a plan for continuous improvement of its functions and services.</li> </ul> </li> <li>5. The business plan is reviewed as required by the Registrar.</li> <li>6. The registered agency meets mandatory verifiable measures of performance as agreed with the Registrar.</li> <li>7. Reports required to be produced to the Registrar or to the relevant regulatory body are provided when due and represent an accurate and balanced account of the matters reported.</li> </ol> <p><b>7. Financial viability</b></p> <p>The registered agency is financially viable at all times, specifically in relation to the following.</p> <ol style="list-style-type: none"> <li>1. Ensuring a viable capital structure.</li> <li>2. Maintaining appropriate financial performance.</li> <li>3. Managing financial risk exposure.</li> </ol> <p><b>Indicators</b></p> <p><b>Capital structure</b></p> <p>The registered agency monitors and manages its capital structure to achieve its business goals.</p> <p><b>Financial performance</b></p> <ol style="list-style-type: none"> <li>1. The registered agency monitors and manages its financial performance to achieve its business goals.</li> <li>2. The registered agency has policies and strategies to minimise prolonged vacancies in housing stock and loss of rental income.</li> <li>3. The registered agency submits financial and other reports relevant to its ongoing viability and business operations in the form and reporting timeframe determined by the Registrar.</li> </ol> <p><b>Risk exposure</b></p> <ol style="list-style-type: none"> <li>1. The registered agency monitors and manages its financial risk exposure to protect its financial interests and the interests of investors.</li> </ol>	
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## Appendix E – data sets

- Comparable eviction and exit data across the social housing landscape (public housing, community housing –disaggregated by provider(for CHPs) and by tenure type (transitional, rooming housing etc), including, where possible:
  - a. Notices to Vacate served for
    - i. Rent arrears
    - ii. Other reasons
  - b. Applications to VCAT for an Order of Possession
  - c. Applications to VCAT for, and executions of a Warrant of Possession
  - d. Number of and reason for tenant exit
- Number of Breach of Duty Notices issued to tenants
- Number of applications for Compliance or Compensation order made to VCAT
- Tenancy and eviction data should also be disaggregated by tenant demographics, including, where possible:
  - a. By allocation basis (Register of Interest or Priority Access)
  - b. Income source
  - c. Family type
  - d. 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 –
  - a. average number of days in arrears
  - b. average days of rent arrears before application to VCAT-
- Rent calculation –
  - a. proportion of tenants paying 25%of income
  - b. proportion paying 30% of income
  - c. proportion paying market rent
  - d. proportion paying a ‘service charge’ in addition to rent.