

Social Housing Legal Program

The Social Housing Legal Program (SHLP) is a recently established specialist service of Inner Melbourne Community Legal (IMCL) and West Heidelberg Community Legal (WHCL).

The SHLP aims to bridge existing knowledge and service gaps for social housing renters. It supports renters through dedicated and specialist legal assistance, representation, and systemic advocacy for improved rights. It seeks to help social housing in Victoria deliver on its mission to provide sustainable homes for Victorians through best-practice regulation and accountability.

The SHLP builds on the experience of IMCL and WHCL in tenancy legal service provision within their communities and in particular their focus on assisting clients and community partners understand and respond to changes to the delivery of social housing in Victoria.

IMCL has a high proportion of social housing in its catchment. Specifically, 5.7% of all dwellings compared with only 2.3% in Greater Melbourne and the second highest number of community housing properties. The proportion of social housing varies within IMCL's catchment, with the highest proportion of 19% in Flemington. In the last year, nearly a quarter (24%) of all IMCL clients were resident in public housing. However, many of these public housing residents have already, or will soon, transition to community housing.

According to the SEIFA Index of Disadvantage, West Heidelberg, Bellfield and Heidelberg Heights remain among the most disadvantaged areas in Australia. Around a quarter of households in West Heidelberg, Bellfield and Heidelberg Heights live in social housing, a figure that is roughly ten times the state average. In addition, this area of Banyule is also a centre of the shift from public housing to community housing characteristic of the recent social housing “renewal” initiatives. Specifically, two of West Heidelberg’s largest public housing estates have been demolished and are in varying stages of being transformed into estates in which the social housing available is managed by community housing providers.

RESPONSE TO TERMS OF REFERENCE

(c) the findings and adequacy of consultations with:

(i) public housing tower residents and their representatives

(ii) relevant local stakeholders, such as health, community and education service providers, residents and councils.

(iii) state and federal government departments and agencies

The High-Rise Redevelopment Program (‘the plan’) has been characterised by a much hastier implementation schedule than has been the case in previous programs to “renew” or redevelop public housing estates. Within hours of the HRR Program’s announcement in the media, residents on Tranche 1 estates (Flemington, North Melbourne) were being doorknocked by representatives of Homes Victoria who were immediately notifying them that they would be moving from their homes. Within a week of the announcement, in addition to doorknocking, Homes Victoria had deployed information stalls on the estates, left calling cards, delivered SMS messages and letters to notify residents of the decision to demolish their homes and the fact of their relocation.

Haste is rarely associated with a genuinely consultative process; indeed, it is generally regarded as counterposed. Further, it appears not to have been contemplated by Homes Victoria that many renters might experience as unsettling and intimidating – not consultative - the sudden, unexpected and unsolicited appearance on their estates, and at their doors, of housing officers.

The challenges associated with the compressed timeline were identified by the Homes Victoria Communication team in its engagement with the Review and Improve Panel commissioned by Homes Victoria. The Panel summarised the Communications team feedback thus:

“One of the key challenges in this area was the timeline for the department’s Communications team, i.e., the nature of the project and the way it was announced, created short time frames.”¹

Specific reported feedback from Communications team members included:

- “We would have loved more time to develop drafts and check in with community leaders, but the nature of the project, the way it was announced meant we didn’t have that time.”²
- “We have had to work very quickly, and did not have much notice from the government.”³
- “We have to work with a lot of internal areas – and this was a new situation – so we really were scrambling to ensure information was correct.”⁴
- “We didn’t have a lot of information – this made it really difficult to confirm that information was correct.”⁵

While Homes Victoria was demonstrably eager to ensure that all residents on Tranche 1 estates were notified immediately about the impending demolition of their homes, it appears from the above feedback, a review of the contemporaneous materials and reports from residents, that this communication was lacking clarity and specificity about key associated questions, including in particular about community housing.

Questions about community housing were routinely raised by residents, including whether they would be relocated to community housing and if they were, what that would mean for their rent, housing tenure and rights; whether the post-development estates would include public housing or only market and community housing; whether they would remain public tenants if they opted to relocate temporarily to community housing; and fundamentally, what were the differences between public and community housing?

Rather than communicating openly and clearly about the above and the differences between community housing and public housing in its material to affected residents Homes Victoria material tended to minimise or obfuscate the differences.

Specifically, as an example, the Homes Victoria HRR Program published a ‘Relocations – Flemington and North Melbourne renter Q&A’ (available in the months following the announcement but not any longer) which stated:

¹ Review and Improve Panel, Panel Report #2: Relocation process for high-rise redevelopment, May 2024, p.8

² Ibid, p.21

³ Ibid, p.22

⁴ As above

⁵ As above

“How will relocations affect rental arrangements?”

To ensure new housing is right for you, a range of housing options will be provided and there will be no change to your rights.

Renters who relocate into housing managed by Community Housing Providers will continue to enjoy the same rental rights and you will not be out of pocket in respect of your rental payments.”

This type of messaging is broadly reflective of the communication between Homes Victoria and affected residents on this question. It would be easy, and indeed reasonable, to read the above statement as providing an assurance to residents that their rental payments and rental rights will be unaffected by an election to relocate to a community housing property – either temporarily or permanently.

Contrary to this, it is in fact the case that in respect of rent, temporary contractual arrangements have been negotiated for a defined period between specified community housing providers and Homes Victoria in order that relocated public renters will pay 25% of their income as rent (instead of the usual 30% generally required of community housing providers). These renters though will remain subject to the obligation imposed upon all community housing renters to apply for and obtain Commonwealth Rent Assistance in order that the entirety of this sum is provided to the community housing provider and included as deemed rent. Despite requests, it has not been disclosed for how long this arrangement has been negotiated. It is clear, however, that upon this contractual arrangement lapsing, public renters living in community housing properties will be subject to the ordinary rental policies of those providers, which in most cases will mean paying higher rents. Similarly, on currently available information, any residents that return to these estates post-development, will be subject to the rental settings applicable to that community housing provider and will lose access to public housing rent settings.

With respect to the rights and protections of relocating and any returning renters, it is also the case that the reasonable and expected interpretation of the assurance is not in fact what is proposed. Specifically, in subsequent communications Homes Victoria has provided the additional detail that “all social housing renters are protected under the *Residential Tenancies Act 1997 (Vic)*.” This of course is true, as it is for *all* renters in Victoria. Such an assurance does nothing more than confirm that the legislative framework which underpins all Victorian residential rental agreements continues to apply as the law of Victoria. However, it is not the *Residential Tenancies Act (Vic) 1997*, which provides what the Social Housing Regulation Review Panel described as the “layer of protection” afforded to public housing renters as distinct to those renters renting through the private market. Rather this layer is composed of a comprehensive suite of accessible and protective tenancy policies; application of the *Charter of Human Rights and Responsibilities Act (Vic) (the Charter)* and the *Freedom of Information Act (Vic) 1982*; access to robust internal appeals; judicial oversight and external oversight by Victorian Ombudsman.

While the community housing sector offers an additional “layer of protection” to tenants, policy protections are not as expansive or consistently applied, options for review of decisions are more limited, and transparency and accountability measures are less rigorous.

Given the centrality of the role it appears was anticipated for the community housing sector in both the relocation of affected residents and in the delivery of social housing post-development of the estates, in our submission consultation with affected residents and other stakeholders,

including the community broadly, has not included a fulsome explanation of the characteristics that distinguish community housing from public housing.

To date, IMCL has received multiple enquiries from clients seeking to return to publicly managed homes after residing in community housing homes for only a matter of months; some clients report that they were unaware that they would not have access to disability modifications or shared facilities upon relocation – fundamental disadvantages that ought to have been explained prior to their relocation. Indeed, while many relocations are occurring from public housing on these estates to community housing nearby, the characterisation of these relocations as voluntary must be viewed with caution. In reality, residents who hope to remain connected with their social, community, health and education supports are presented with an exceedingly difficult choice – either move to a publicly owned and managed home outside of their preferred catchment (often some distance away) or remain by way of a transfer to a community housing property in their existing neighbourhood.

(g)(iv) ‘The likely impact of the plan on the future of public housing in Victoria.’

The High-Rise Redevelopment Program is a moment of great significance in the future of public housing in Victoria. If the Plan proceeds unchanged, it will be remembered as the pivotal intervention to accelerate the expansion of community housing and decline of public housing in this state.

In its press release of 11 March 2025, the state government confirmed that the public housing on the Flemington and North Melbourne estates would be reborn as community housing on the redeveloped sites. It said, “Under the Ground Lease Model, Homes Victoria will lease the land to a community housing organisation to finance, design, build, manage and maintain the new housing”.¹

Based on the available evidence and our practice experience, the Social Housing Legal Program is concerned with a transition from public housing to community housing on the estates being redeveloped under the Plan. Without improved regulation of community housing provision, and stronger protections for renters, the replacement of public housing with community housing will have the effect of eroding rental standards for social housing residents.

In our experience, the changing makeup of Victoria's social housing landscape is already impacting renters - including in relation to evictions, rental costs and engagement with the Victorian Civil and Administrative Tribunal (VCAT).

Given that prospective social housing renters access public and community housing from a combined waitlist – the Victorian Housing Register – and many current public housing residents are being moved to community managed homes under the Plan, a priority objective must be to achieve equity in social housing standards across the landscape. Until this is achieved, the SHLP opposes the replacement of public housing with community housing. Growth within the community housing sector should not, and need not, occur at the expense of existing publicly owned and managed homes.

Community housing policy-based rental protections are currently less beneficial than public housing protections

A disparity exists in the standards experienced by renters in community and public housing, respectively. In the past, this disparity has not always been openly acknowledged by stakeholders within the sector. However, we note that in its Consultation Paper 2, the

independent panel tasked with undertaking the Social Housing Regulation Review identified that there is an inequity in the standards and policies applying across public and community housing.⁶

The dimensions of this disparity can be understood by considering the following characteristics of the policy-based protections afforded public and community renters:

- *Content*: policy-based rights and protections applicable to community housing renters are frequently weaker than those applicable to public housing renters, including but not limited to the following areas of policy – temporary absences, disability modifications, service charges and rental rebates.
- *Consistency*: there is no consistent standard of rights and protections within the community housing sector, and it is more difficult for community housing renters, and their advocates, to understand how policies will be interpreted and in what circumstances and within what parameters discretion may be exercised in their application.
- *Transparency*: it can be difficult for community housing renters to identify and locate the policy-based rights and protections applicable to their tenancies.
- *Enforceability*: public housing tenancies are governed by a strong regulatory framework with clear avenues of internal review and options for judicial review and external complaint whereas the community housing regulator has adopted a narrow view of its scope to receive and investigate complaints.

Community housing renters are more likely to experience eviction, and enforcement action at the Victorian Civil and Administrative Tribunal

Research undertaken by West Heidelberg Community Legal, analysing existing publicly available datasets showed that, over the period examined, when measured as a proportion of tenancies, community housing evictions were between 3 and 5 times more frequent than evictions from public housing. Even when rooming houses were excluded (as rooming houses would be expected to have among the highest exit rates), residents in community housing were 2 to 3 times more likely to experience eviction than public housing residents.⁷

Looking at VCAT application rates across all application types – not only in respect of eviction – the rate of application to VCAT by community housing providers (excluding those managing transitional housing types), was 3 times greater than Homes Victoria.⁸

Inconsistent application of the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

There remains uncertainty that community housing providers universally accept that they are bound by the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* ('the Charter'), despite their significant and growing role in housing Victorians with few, if any, alternative housing options. Where community housing providers do acknowledge the application of the Charter to their decision-making our experience is that too often their policies seeking to give

⁶ Social Housing Regulation Review, Consultation Paper 2, p.9

⁷ The Social Cost of Community Housing Growth, Evictions and Allocations in Victorian Social Housing, Dino Varrasso, West Heidelberg Community Legal (2021), p.11

⁸ Ibid, p.17

effect to this obligation are patchy, vague and lacking the detailed guidance provided by Homes Victoria's operational guidelines. It is crucial that community housing providers have detailed policies ensuring that their representatives are acting consistent with, and lawfully under the Charter, and that human rights are protected.

Recommendations

1. Social housing on the redeveloped estates should remain publicly managed and owned until there is comprehensive reform of the performance standards and regulation of the community housing sector such that parity with existing public housing protections can be guaranteed in any other proposed model of delivery, including the Ground Lease Model.
2. Support the implementation of the recommendation made by the Social Housing Regulation Review that reform of the sector would be best achieved by “a single social and affordable housing regulator that has the authority and independence to effectively oversee diverse sector participants.”⁹
3. Standards in community housing should be improved by way of implementation of the recommendations made by the SHRR (recommendation 1.2) that a ‘customer charter of social housing service standards’ be developed, as well as common performance standards (recommendation 2.1). This would rectify the inconsistencies that exist between various community housing providers’ policies and could raise policy standards overall to the level that currently exists in public housing.
4. Any performance standards developed in line with recommendation 2.1 of the SHRR should be at least as beneficial to renters with respect to their housing tenure, security, costs and protections as those set out in existing public housing policies and operational guidelines.
5. Performance standards developed for community housing provision should acknowledge that community housing providers are bound by the *Charter of Human Rights and Responsibilities Act 2006* and include a stated objective and purpose to act compatibly with, and promote, human rights in their management of housing and engagement with residents.
6. Affected residents who wish to remain public renters should be entitled to do so and should only be transferred to a publicly managed home in their preferred catchment, including by way of relocation to a spot purchased property where no other publicly owned and managed properties are available. Affected residents already relocated to community housing from public housing under the Plan should not be disadvantaged and should receive a legally enforceable written guarantee to this effect from Homes Victoria.

⁹ Social Housing Regulation Report – Final Report, p.14