

# Social Housing Regulation Review – Consultation Paper 2

## About Inner Melbourne Community Legal

Inner Melbourne Community Legal (**IMCL**) is an independent community legal centre (**CLC**) working for social purpose. Since 1978, we have served the inner Melbourne area.

We are a small but dedicated team of lawyers, administrative and project staff supported by volunteer law students and pro bono corporate partners. Our lawyers are experts in community law. We are funded by government grants and donations.

## Who we help

People experiencing chronic disadvantage (such as homelessness, mental illness or low literacy) are more likely to experience a cluster of legal and non-legal issues. This can result in more frequent interaction with the justice system, which has an effect on their wellbeing and ability to achieve stability. We aim to minimise this impact.

Adverse circumstances in a person's life (such as ill health, relationship breakdown or unemployment), can put them in an acutely vulnerable position and trigger legal issues that expose them to further risk of longer-term, entrenched disadvantage. We aim to break this cycle.

For our clients, legal issues often do not occur in isolation, but are inter-related with other non-legal issues. We work holistically and tailor solutions to achieve sustained outcomes for our clients.

## How we work

We provide free legal help in the form of information, advice, casework and representation. We provide help in our office and through integrated outreach services to reach people who face barriers in accessing help. By reaching people earlier with their legal issues, we prevent problems from escalating.

We work in partnership with other community organisations that are committed to improving community health and wellbeing. Together we strengthen the impact of each other's work. Our partnerships include homelessness services, hospitals, community health services and maternal and child health services.

We are informed by our work with clients and community partners. Through our casework, we identify systemic issues and work with others to come up with solutions and influence decision makers.

To make sure we are effective in what we do, we continually monitor and evaluate our work.

## Our legal outreach partners

- Ozanam House – VincentCare Victoria
- The Royal Melbourne Hospital
- The Royal Women’s Hospital
- Peter MacCallum Cancer Centre
- Inner-West Police and Clinician Emergency Response (PACER)
- City of Melbourne – Family Services
- Carlton Housing Estate – Carlton Neighbourhood Learning Centre
- North Melbourne Language & Learning
- Flagstaff Accommodation – The Salvation Army
- St Joseph’s Flexible Learning Centre – North Melbourne – Youth Plus.
- The River Nile School – North Melbourne

Our lawyers also provide a duty lawyer service twice per week in Family Violence Intervention Order matters at Melbourne Magistrates’ Court.

## Our work with people experiencing homelessness and living in social housing

People who are experiencing homelessness are highly vulnerable to experiencing adverse legal issues and are more prone to interaction with the legal system. The laws enforced in society often discriminate against, and target those who are experiencing homelessness. Knowing this, our services seek to reach individuals who are experiencing or are at risk of homelessness, with 38% of our clients for the 2020/21 financial year either at risk of or experiencing homelessness. IMCL aims to provide effective and timely legal assistance to people experiencing or facing homelessness due to eviction, as well as other social and health reasons. One in four of our clients lives in community housing (7%) or public housing (19%), with the majority of these being in public housing.

## Introduction

The Review of Social Housing Regulation arises as part of the Big Housing Build – a historic and much needed investment in social housing.

The investment solidifies a trend in government housing investment and initiatives for the last two-decades across Australia, that is the reliance on the not-for-profit system to deliver housing for those most in need. The 10 Year Social and Affordable Housing consultation flagged the direction:

“The future is one where community housing providers will play a central role in delivering growth, improving diversity and choice to the social housing system. The public housing system will remain a central part of the system, maintaining its current stock levels and benefiting from increased investment in renewal, upgrades and maintenance” *Establishing a 10-Year Strategy for Social and Affordable Housing: A discussion paper prepared for the Victorian community by the Victorian Government (Feb 2020) page 14*

This trend has accelerated with the Big Housing Build. If the Big Housing Build delivers 8200 new community housing homes, it will increase community housing stock by almost 50 per cent in only four years.<sup>1</sup>

The Government should be applauded for seeing the need to ensure that investment of this scale is matched by appropriate regulation. The Review into the Regulation of Social Housing comes at a critical time to shape our social housing system, putting in safeguards and protection to ensure it grows with integrity and compassion.

Designing the system is urgent. We are at a critical junction where the majority of housing is still public housing. Shifting the mix to large-scale growth of community housing will require greater alignments in the two housing models and equality for renters. Without planned growth in public housing, the model must enable community housing to fulfil the role that public housing does to house those on the lowest incomes and with the most complex needs-

Regulations need to be established to ensure housing providers are not forced into a race to the bottom. Where providers compete for resources and provide housing at the expense of the renters who they house.

The State Government has an ambitious agenda to tackle family violence and mental health, and without adequate social housing regulation both these programs will be undermined as people escaping violence or addressing their experience of mental ill health are exacerbated by homelessness and insecure housing.

- The Royal Commission into Family Violence: first pillar to recovery was a secure affordable home<sup>2</sup>
- The Royal Commission into Victoria's Mental Health system found that mental illness was compounded by housing instability.<sup>3</sup>

Having a home is a fundamental human right that underpins the economic and social health of our society. We cannot afford to get this wrong.

## Outline of submission:

This submission builds on our experience with providing legal advice and representation to people who live in social housing in Victoria or who use homelessness support services and outreach.

## RECOMMENDATIONS

### Renters' Voices Strengthened through Human Rights

1. That the Victorian Government amend Schedule 7 of the *Housing Act 1983* (Vic) (**Housing Act**) and the Registration Criteria for agencies, to require all agencies registered under the Housing Act to have a constitution and rules which include an acknowledgement of being bound by the *Charter*

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<sup>1</sup> The Premier stated 9300 new social housing homes would be built, including 1100 public housing homes. Consultation Paper One said there were 16,869 community housing properties in 2018-19. See Premier of Victoria, "Victoria's Big Housing Build" (Media Release, 15 November 2021): Social Housing Regulation Review, *Social Housing in Victoria: Consultation Paper 1 – Background and scoping* (2021), 7.

<sup>2</sup> State of Victoria, *Royal Commission into Family Violence: Summary and recommendations*, Parl Paper No 132 (2014–16), 29

<sup>3</sup> State of Victoria, *Royal Commission into Victoria's Mental Health System, Final Report: Summary and recommendations*, Parl Paper No. 202, (2018–21), 13

of *Human Rights and Responsibilities Act 2006* (**Charter**) and have a stated object and purpose to act compatibly with and promote human rights in their management of housing stock and residents.

2. That the Victorian Government amend s 81 of the Housing Act such that an application for registration under that provision includes a report on how the applying agency's policies provide for Charter-compatible decision making.
3. To empower social housing renters to know their rights: the Victorian Government amend section 93(1) of the Housing Act to include new performance standards that require all registered agencies to have public facing statements about their obligations under the Charter on their websites and tenancy agreements and have policies equivalent to DFFH that specifically embed Charter-compatible decision-making in all areas of tenancy management. These performance standards should be phrased as "mandatory requirements" rather than "indicators".
4. Amend s 39 of the Charter to provide VCAT with merits review and or collateral review jurisdiction on Charter grounds.
5. Amend s 141(1) of the Housing Act to give the Housing Registrar power to revoke or suspend an agency's registration under that Act for repeated breaches of the Charter.

### **Fair Allocation of Homes**

6. To increase transparency and accountability, all social housing providers should be required to publicly report on:
  - a) The Victorian Housing Register allocations made to each priority category;
  - b) The allocations from the Victorian Housing Register made to rooming houses;
  - c) The allocation of housing by income and form of welfare payment type;
  - d) To what extent the relevant provider satisfied Victorian Housing Register preferences through their allocations.
7. Ensure allocations from the Victorian Housing Register to rooming houses do not count as long-term housing, and people keep their place on the priority waitlist until long term housing is provided.

### **Transparency for Renters**

8. That the Victorian Ombudsman have clear jurisdiction to oversee community housing organisations: by amending the definition of 'agency' under s 2(1) of the *Ombudsman Act 1973* (Vic) to include any agency registered under s 84 of the Housing Act.

9. That decisions by public and community housing be made accessible under Freedom of Information provisions: amend the definition of ‘agency’ in section 5(1) of the *Freedom of Information Act 1982* (Vic) to include any agency registered under s 84 of the Housing Act.

### **Knowing Renters’ Rights – Access to Consistent and Transparent Model Rules**

10. That Model Rules be developed for the community housing sector that are of a standard equivalent to the tenancy management policies of Department of Families, Fairness and Housing (DFFH) including, but not limited to the key areas of temporary absence, disability modifications, internal appeals, rent setting, arrears and evictions.
11. These Model Rules should be the deemed policies of all registered housing associations and providers and should be required to be made publicly and readily available in a variety of formats.

### **Robust Accountability**

12. Establish the Social Housing Inspectorate to promote, monitor, and enforce compliance with social housing rules, regulation and laws.
13. That the Victorian Government amend legislation in order to:
  - a) Create a central Housing Appeals Office to oversee complaints of both public and community housing renters.
  - b) Require that the central Housing Appeals Office must provide a remedy to the renter if a complaint is upheld.
  - c) Enable both landlords and renters to apply to VCAT for merits review of decisions of a central Housing Appeals Office.
  - d) Should recommendation a) not be adopted, VCAT should be granted jurisdiction to hear applications regarding breaches of the Charter for community housing renters.

### **Renters’ choice in service provision – Independent integrated services**

14. Prevent conflict of interest and ensure vulnerable renters are protected by banning housing providers from providing support services directly to their renters, or housing providers mandating the use of a preferred support service provider.
15. Expand legal assistance provision beyond Tenancy Plus to provide early legal support for renters to prevent problems escalating and evictions into homelessness.

## Objectives and principles

The foundation of the social housing system must be enforceable rights that support the provision of safe, secure, appropriate and affordable homes for people in Victoria who need it.

This Review is an opportunity to shape the future of housing in Victoria – one that ensures tenants and their needs are at the centre of the design. The dynamics of the social housing mix is changing – from community housing that grew out of co-operatives and charities providing small-scale housing projects – it is now a growing large scale, complex industry, and the focus of the majority of Government’s current and future social housing spend.<sup>4</sup> We need a system that works for people.

One that does not provide housing – but homes. Homes that are healthy, free from pests and mould. Homes that meet disability requirements. A home where paying the rent does not mean skipping meals. A home where you can put down roots and become part of your local community.

## Objectives

*What should the social housing system aim to achieve?*

The objectives of the *Housing Act 1983* (Vic) (**Housing Act**) is to ensure every Victorian has a home that is priced within their means, ‘*by encouraging the provision*’ of public housing and the ‘participation’ of community housing providers to deliver housing that is:<sup>5</sup>

- Adequate and appropriate
- Well-maintained
- Suitable quality and location
- Affordable i.e. within a person’s means<sup>6</sup>
- With security and diversity of tenure<sup>7</sup>

Nothing within the objectives of the Housing Act considers the housing condition of those outside the system.<sup>8</sup> Rental conditions outside social housing are regulated through the *Residential Tenancies Act 1997* (Vic), which can and should be continually improved, particularly for people living in caravan parks, rooming houses and other shonky arrangements. But social housing is something different. Social housing is the housing we pay for as a society. It is the housing our government invests in.

What is critical, is that neither Victorian or Commonwealth government fund or support operations that do not meet a standard of living appropriate to ensure good mental and physical health. Funding should not go to operators that prey on the vulnerable and churn people through the system.

The government needs social housing to be well regulated and have appropriate safe guards, checks and balances so it can be confident in its investment. We are pleased the Social Housing Regulation

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<sup>4</sup> Homes Victoria. “Establishing a 10-year strategy for Social and Affordable Housing: Community Consultation Paper” (February 2021), 14.

<sup>5</sup> *Housing Act 1983* (Vic) s 1(a)

<sup>6</sup> *Ibid* s 1(a)

<sup>7</sup> *Ibid* s 1(f)

<sup>8</sup> Consultation Paper 2 could be misread to assume that this is what the Housing Act speaks to the adequacy of housing outside the system, instead it focuses on the regulation of the system. For example the consultation paper states: ‘meeting the objectives of the Housing Act requires both striving for long-term improvements and growth in social housing, as well as improving housing conditions for people whose housing providers are outside the system.’

Review is doing this investigation to ensure the social housing we invest in delivers for all of the Victorian community, particularly the social housing renters who call it home.

## Principles

With Community Housing Industry Association and the legal assistance sector including Victoria Legal Aid, Tenants Victoria, Justice Connect, West Heidelberg Community Legal Centre, WEstjustice, Peninsula Community Legal Centre and Inner Melbourne Community Legal agree on five key principles essential for the Social Housing Regulation Review to engage with:

1. That a fair 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. Every social housing renter allocated from the Victorian Housing Register should know and be able to exercise their rights.
4. All social housing renters' human rights are protected through the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.
5. No renter will be worse off as a consequence of the Review or the implementation of any of its recommendations.<sup>9</sup>

An overriding priority must be equity in the system, to ensure it treats renters fairly and equitably, no matter who the provider of their housing is.

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<sup>9</sup> Community Housing Industry Association, Tenants Victoria, Inner Melbourne Community Legal, Justice Connect, West Heidelberg Community Legal Centre, Victoria Legal Aid, WEstjustice, Peninsula Community Legal Centre "Housing for All Victorians: A Statement of Shared Principles" Joint submission to the Social Housing Regulations Review *Consultation Paper 1* (2021).

### 3. How is rental housing regulated (for current and prospective social housing tenants)?

#### Sustaining tenancies

Another way at looking at current regulation, is to ask what is that the system trying to achieve? And is it being met? If not, why not?

Community legal centres, Victoria Legal Aid and Community Housing Industry Association agree:

1. *That a fair 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.*<sup>10</sup>

Sustaining tenancies is critical. Supporting long-term, safe and affordable tenancies is not only good for renters – it has also been clearly linked to better wellbeing and health outcomes,<sup>11</sup> reducing health costs for the state.<sup>12</sup>

One of the objectives of the *Housing Act 1983* (Vic), which regulates the registration of community housing providers, is ‘to promote security... of tenure’.<sup>13</sup> The Performance Standards established by the Housing Act specifically require registered community housing providers to have policies that treat eviction as an outcome of last resort.<sup>14</sup> This is consistent with community housing providers obligations under ss 4(1)(c), 13(a) and 38(1) of the Charter to avoid acting in a way or making decisions that result in an arbitrary interference with tenants’ or residents’ homes and their right to housing.

This is particularly important because eviction carries more serious consequences for social housing renters than other renters – as social housing renters often find it more difficult to find alternative accommodation, they are more likely to end up homeless as a result of an eviction.<sup>15</sup>

However, there is not much data on social housing evictions. The Director of Housing does not publish data on evictions from public housing. The Housing Registrar data shows that around 7.5 per cent of

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<sup>10</sup> Community Housing Industry Association, Tenants Victoria, Inner Melbourne Community Legal, Justice Connect, West Heidelberg Community Legal Centre, Victoria Legal Aid, WEstjustice, Peninsula Community Legal Centre “*Housing for All Victorians: A Statement of Shared Principles*” Joint submission to the Social Housing Regulations Review *Consultation Paper 1* (2021).

<sup>11</sup> Shelley Mallet, Rebecca Bentley, Emma Baker, Kate Mason, Deborah Keys, Violet Kolar, Laurent Krnjacki, *Precarious Housing and Health Inequalities: What are the links? Summary Report* (August 2011) available at: [https://www.vichealth.vic.gov.au/~media/resourcecentre/publicationsandresources/health%20inequalities/precarious%20housing/precarious%20housing\\_summary%20report\\_web.pdf?la=en](https://www.vichealth.vic.gov.au/~media/resourcecentre/publicationsandresources/health%20inequalities/precarious%20housing/precarious%20housing_summary%20report_web.pdf?la=en)

<sup>12</sup> Estimated annual cost to government services of an individual experiencing homelessness is \$29,450 higher than for the rest of the Australian population. See Zaretsky K. et al, Australian Housing and Urban Research Institute (AHURI), *The cost of homelessness and the net benefit of homelessness programs: a national study*: AHURI Final Report No 205 (2013) 14 available at [https://www.ahuri.edu.au/\\_data/assets/pdf\\_file/0007/2032/AHURI\\_Final\\_Report\\_No218\\_The-cost-of-homelessness-and-the-netbenefit-of-homelessness-programs-a-national-study.pdf](https://www.ahuri.edu.au/_data/assets/pdf_file/0007/2032/AHURI_Final_Report_No218_The-cost-of-homelessness-and-the-netbenefit-of-homelessness-programs-a-national-study.pdf) .

<sup>13</sup> *Housing Act 1983* (Vic), section 6(1)(f).

<sup>14</sup> Housing Registrar, *Performance standards for registered housing agencies*, (July 2015), 3.

<sup>15</sup> See Justice Connect Homeless Law, *There’s No Place Like Home: Submission on the Security of Tenure Issues Paper* (December 2015) 21-27; Tenants Union of Victoria, *Response to Security of Tenure Issues Paper of the Residential Tenancies Act Review* (December 2015) 12-13; Victoria Legal Aid, *Residential Tenancies Act Review: Security of Tenure Submission* (31 December 2015) 8-10.

community housing exit are from eviction. However, eviction is defined as ‘a warrant of possession is issued (purchase of warrant) and the tenancy is subsequently terminated.’<sup>16</sup> In our experience many people believe they are evicted and leave housing when issued with a notice to vacate, before an application to VCAT or a warrant has been purchased.

Our colleagues at West Heidelberg Community Legal Centre’s analysis of VCAT records found:

“That long term community housing tenants were 3 to 5 times more likely to face eviction than public housing tenants, or 2 to 3 times more likely when rooming houses were excluded.”

Unison, one of Victoria’s largest community housing providers, found that almost half of their tenancies ended within 18 months.<sup>17</sup> Most of these exits (59 per cent) were from what it describes as “negative push factors” such as rent arrears or conflict with neighbours.<sup>18</sup> For some groups the exit numbers were higher: for people who had left prison (or other institutions) only 1 in 3 were still housed in 6 months, for those who had been homeless, half left their tenancy within 12 months.<sup>19</sup> Groups such as older people, or those who had lived in public or private housing prior, were more likely to sustain their tenancies. Further research by Unison showed that people with complex needs, those living in rooming houses, those who were young, or had just left prison, all had greater difficulty sustaining their tenancies.<sup>20</sup>

In order to achieve the objective of having eviction as the last resort, community housing providers may need additional support from government. A recent study found that 87 per cent of residents in public housing required active and ongoing support from a social worker.<sup>21</sup> These findings reflect that increasingly public housing is limited to people experiencing the most complex needs and disadvantage.<sup>22</sup> However, the combining of the Housing Register waiting list means people with increasingly complex needs and experiences of disadvantage also live in community housing. If almost half of these tenancies end within 18 months, the system will be in crisis.<sup>23</sup>

We need the system to work in helping people stay in their home. Our experience is that there is a clear difference in outcomes between those in public and community housing. The good news is, that we learn from what works in public housing to achieve positive renter outcomes across the social housing system.

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<sup>16</sup> Housing Registrar, *Housing Registrar – Performance Sector Report 2019-20* (August 2021), 15

<sup>17</sup> Guy Johnson, Susan McCallum, Juliet Watson. *Who stays, who leaves and why: Occupancy patterns at Unison Housing between 2014-2016* (Research Report No. 2, February 2019) 3.

<sup>18</sup> *Ibid* 4

<sup>19</sup> *Ibid* 24.

<sup>20</sup> Taylor, S. & Johnson, G. (2021) *Sustaining social housing: Profiles and patterns*. Melbourne: Unison Housing.

<sup>21</sup> Price, S & Millard, B (2018). *Improving housing and health outcomes: understanding and addressing barriers to VCAT attendance*. West Heidelberg, Victoria; West Heidelberg Community Legal, Banyule Community Health, 35

<sup>22</sup> Victorian Auditor General's Office, *Managing Victoria's Public Housing Stock* (June 2017) 11

<sup>23</sup> *Ibid* 4

## Comparing the legal needs of people living in public and community housing

Inner Melbourne Community Legal runs a weekly tenancy clinic as well as seeing people through our partnerships with homelessness support services, hospitals and other community health locations.

We see people who live in all living settings including, those without a home, in public housing, community housing and private rentals. For the clients in social housing, there are clear differences in the legal needs for those in community housing compared to those in public housing. As a generalist community legal centre that focusses on assisting people in housing insecurity, we are well placed to assess the variance in legal need across tenure type.

Out of the 195 people we assisted in the last year who lived in public and community housing, those living in community housing were almost three times more likely than those in public housing to see our lawyers in relation to a tenancy issue (28% compared to 10%). Of those we assisted with tenancy issues, those living in community housing were most likely to see us for issues relating to rent. For those in public housing the biggest tenancy issue for them was repairs.

| Reasons to seek legal advice  |  |
|---|--|
| Public Housing residents  | Community housing residents  |
| <ol style="list-style-type: none"> <li>1. Fines (20%)</li> <li>1. Family violence (20%)</li> <li>3. Government or local government by-laws (17%)</li> <li>4. Tenancy issues (10%)</li> <li>5. Child contact (6%)</li> </ol> | <ol style="list-style-type: none"> <li>1. Tenancy issues (28%)</li> <li>1. Fines (28%)</li> <li>3. Family Violence (18%)</li> <li>4. Acts intending to cause injury (10%)</li> <li>5. Child protection (5%)</li> </ol> |

| Tenancy issues<br>(*Percentage of total legal issues experienced by housing type)   |   |
|---|---|
| Public Housing residents  | Community housing residents   |
| <ol style="list-style-type: none"> <li>1. Tenancy other (7%)</li> <li>2. Repairs (3%)</li> <li>3. Rights and responsibilities (1%)</li> <li>4. Rent (&lt;1%)</li> <li>5. Tenancy security (&lt;1%)</li> </ol> | <ol style="list-style-type: none"> <li>1. Tenancy other (15%)</li> <li>2. Rent (6%)</li> <li>3. Repairs (4%)</li> <li>4. Tenancy termination by lessor (3%)</li> <li>5. Ending tenancy (2%)</li> <li>6. Rights and responsibilities (2%)</li> </ol> |

For our lawyers the most common complaints public housing tenants have is in relation to repairs. Victorian Auditor General has shed light on the poor state of maintenance and repair of public housing buildings.<sup>24</sup> Unfortunately, by not having significant maintenance budget for the aging stock the buildings become of a poor standard. The policy response to the neglect of the buildings has been a program of ‘renewal’, or knocking down and starting again often relying heavily on selling part of the land to facilitate this. The program of ‘renewal’ has impacted our North Melbourne public housing

<sup>24</sup> Office of the Victorian Auditor General, *Access to Public Housing*, Report 118 (2012); Office of the Victorian Auditor General, *Managing Victoria’s Public Housing*, Report 254 (2017).

estate residents, who were disappointed to lose their homes. What will be built in its place, will be a mix of predominately private homes (up to 235) and about a third community housing (135).<sup>25</sup> There is no plan for publicly owned and managed housing on the sites. There has been a commitment to all residents that they will be able to return to the estate with no reduction of their conditions: demonstrating the value in better alignment of public and community housing policies and procedures to long term stock management.<sup>26</sup> However, having proper ongoing funding put towards scheduled maintenance repairs would assist with quality of homes people live in, and prolong the life of buildings.

## 4. Improving regulation for community and public housing

There is now one Victorian Housing Register waiting list. A person can be housed in either public or community housing. Everyone on the Housing Register deserves a safe, suitable and affordable home, no matter what type of housing they are homed in.

Terms of reference two and three of the Review require a focus on the experience of social housing residents, the alignment of rights between public and community housing, and the best framework for achieving these rights:

2. Provide advice on the degree to which residents' rights should be harmonised under public and community housing models and options to ensure an effective and coherent complaints management and redress system across the social housing system.
3. Assess options for best practice frameworks that provide Victorians with easily understood and comparable information to assess the performance of social housing providers that support consumer choice and national level.<sup>27</sup>

### 4.1.1 Improving the focus on the renter experience and voice

The elevation of tenants' voice and empowerment requires, firstly, the human rights of renters to be recognised. The failure to consider tenant experience is currently most evident in those situations where a breach of a renter's human rights is allowed to occur. This is chiefly the result of the regulatory framework; there is a lack of clarity and consistency in the application of the *Charter of Human Rights and Responsibility Act 2006* (Vic) (**Charter**) in the social housing system. This, in turn, shapes day-to-day tenancy management practices.

A regulatory framework should centre tenants' voices in decision-making, requiring consideration of and compatibility with the tenant's human rights. As Consultation Paper 2 rightly asserts, the 'power imbalance between tenants and providers' can limit the ability to provide open and frank feedback.<sup>28</sup> Without first ensuring that tenants have the right to ensure that decisions about them and their

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<sup>25</sup> ArchitectureAu, *Designs revealed for North Melbourne Public Housing renewal* (Oct 2020) Available at:

<https://architectureau.com/articles/designs-revealed-for-north-melbourne-public-housing-renewal/> Accessed: 21 September 2021.

<sup>26</sup> Department of Health and Human Services. *Relocation for Public Housing Renewal Program: operational guidelines* (October 2018), Appendix 2 "Deed Poll".

<sup>27</sup> Social Housing Regulation Review, *Social Housing in Victoria: Consultation Paper 2 – Service Delivery and the Tenant Experience* (July 2021), Appendix A 'Terms of Reference: revised January 2021'.

<sup>28</sup> *Ibid*, 10.

homes consider them and their particular circumstances, a voice on a committee or board would be tokenistic.

To successfully shift the focus to tenants' experience, we must consider how the tenant can enforce their right to be heard and considered as an individual on decisions that impact them deeply, like eviction. Indeed, it is a legal obligation on functional public authorities that is regularly breached with considerable consequences for the individual.

#### **Charter to help avoid eviction – policy in practice**

Bianca had been homeless for 5 years before she moved into a community housing rooming home. She experienced post-traumatic stress disorder, anxiety and depression. Soon after she moved in, she had a verbal dispute with another resident, who called the police. The police attended and obtained an interim Personal Safety Intervention Order against Bianca, excluding her from the rooming house. Bianca disputed that she was the aggressor in the altercation and challenged the exclusionary condition of the intervention order – to instead negotiate safe contact conditions.

While this was going on, and on the very same day of the altercation, the community housing provider served Bianca with a Notice to Leave and applied for possession of the rented premises. Bianca came to Inner Melbourne Community Legal for help. We talked to the community housing provider and urged them to consider Bianca's rights under the Charter, including considering other options they could pursue over evicting Bianca into homelessness. Our lawyer encouraged the community housing provider to withdraw the Notice to Leave, or alternatively, that the housing provider transfer Bianca to a vacant room they had available in another rooming house. The community housing provider refused to consider Bianca's human rights and continued with their efforts to evict her at VCAT.

At the hearing, VCAT was satisfied that there was no ongoing danger at the rooming house caused by Bianca and dismissed the application for possession. By this stage she had been homeless for 69 days. Had the community housing provider properly considered Christine's human rights under the Charter, the grave impingement upon them might have been avoided.

Concerned about the process and to prevent it happening again, Inner Melbourne Community Legal lodged a complaint with the Housing Registrar arguing that the community housing provider had not taken reasonable steps to avoid evicting Bianca into homelessness. Despite VCAT finding in Bianca's favour, the Housing Registrar found that the community housing provider had not breached the Performance Standards or any other obligations under the Act.

#### Human Rights Charter application for all social housing residents

Community Housing Industry Association and the legal assistance sector agree on the following principle:

4. *All social housing renters' must have their human rights are protected through the Charter of Human Rights and Responsibilities Act 2006 (Vic).*<sup>29</sup>

The Charter protects 20 fundamental human rights.<sup>30</sup> It makes it unlawful for a public authority to fail to properly consider those human rights when making decisions, or act in a way that is incompatible with relevant human rights.<sup>31</sup> There are specific rights in relation to home and family:

Section 13(a) – A person has the right ‘not to have his or her privacy, family, home or correspondence unlawfully or arbitrarily interfered with’;

Section 17(1) – ‘Families are the fundamental group unit of society and are entitled to be protected by society and the State’; and

Section 17(2) – ‘Every child has the right, without discrimination, to such protection as is in his or her best interests and is needed by him or her by reason of being a child’.<sup>32</sup>

The Charter is more than a declaration of ideals; for people who rely on social housing the application of the Charter has made their tenancies more secure. A person’s individual situation and needs must be considered by the Department of Families, Fairness and Housing (DFFH) before processes to evict or deny provision of services. At the four-year review into the Charter, our colleagues at Homeless Law (then PILCH – Homeless Person’s Law Clinic) gave evidence that the Charter had prevented 42 people in their recent case load alone, from being evicted into homelessness.<sup>33</sup> The Parliamentary Inquiry found evidence of the Director of Housing changing its practices to more broadly interpret its policies, increase negotiated outcomes, and introduced human rights training.<sup>34</sup>

Further improvements were made after the Supreme Court case of *Burgess & Anor v Director of Housing & Anor* [2014] VSC 648 (**Burgess**). The Court found the decisions of the Director of Housing to give a notice to vacate and purchase a warrant of possession, engaged Ms. Burgess and her family’s human rights under the Charter.<sup>35</sup> By failing to properly to properly consider Ms Burgess’ human rights, the Director’s decisions were unlawful. The Court issued writs quashing the decision of the Director to purchase a warrant.<sup>36</sup>

After this decision, the Director of Housing policies and procedures were updated to ensure their compatibility with the Charter obligations, for example tenancy breaches, which were updated in September 2015.<sup>37</sup> Specific Charter provisions exist in most policies now, see for example rental arrears<sup>38</sup> and temporary absences.<sup>39</sup>

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<sup>29</sup> Community Housing Industry Association, Tenants Victoria, Inner Melbourne Community Legal, Justice Connect, West Heidelberg Community Legal Centre, Victoria Legal Aid, WEstjustice, Peninsula Community Legal Centre “*Housing for All Victorians: A Statement of Shared Principles*” Joint submission to the Social Housing Regulations Review *Consultation Paper 1* (2021).

<sup>30</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic)

<sup>31</sup> *Ibid*, s 38.

<sup>32</sup> *Ibid*, ss 13, 17.

<sup>33</sup> PILCH – Homeless Person’s Legal Clinic, *Charting the Right Course – Submission to the Inquiry into the Charter of Human Rights and Responsibilities* (June 2011) 1.

<sup>34</sup> Scrutiny of Acts and Regulation Committee, Parliament of Victoria, *Review of the Charter of Rights and Responsibilities Act 2006* (2011) 104.

<sup>35</sup> *Burgess & Anor v Director of Housing & Anor* [2014] VSC 648

<sup>36</sup> *Ibid*.

<sup>37</sup> Homes Victoria. [Tenancy Breaches Operational Guideline: Effective date July 2017](#) (April 2017) – the Human Rights Charter amendments were made in September 2015

<sup>38</sup> Homes Victoria. *Rental Arrears Operational Guidelines: Operation Date January 2020* (January 2020) 4.

<sup>39</sup> Homes Victoria. *Temporary Absence Operational Guidelines: Effective date September 2018* (September 2018) 7.

## Facts about *Burgess & Anor v Director of Housing & Anor* [2014] VSC 648

It is worth reflecting on the story behind the leading case *Burgess*. What would have happened if Ms Burgess had been evicted, if it was found that her rights under the Human Rights Charter were not a relevant consider?

When Ms Burgess' eviction notice was issued she was getting her life back on track. She had a history of trauma and substance abuse. She'd recently spent 10 months in prison for drug trafficking.

When she came out of prison she was recovering and had stopped using drugs. A condition of her parole was that she had regular and intensive screening for drug use and that she had a home with a fixed address. She was living with her teenaged child.

The Director of Housing sought to evict her on the grounds that illegal activity had taken place at her home (the trafficking that she had been in jail for).

Having a home was essential for Ms Burgess' recovery and parole. Without a home, she would not have met her parole requirements and have to return to jail. When she did get out she would likely be homeless (as more than half of all people who leave our prison system are)<sup>40</sup>. We know it is hard to recover when you are homeless, and a relapse would be likely. She would not be able to care for her son.

There would have been a huge personal cost if Ms Burgess was evicted. There would have also been a cost to the State: she would have breached her parole and returned to prison for cost of \$323.45 a day,<sup>41</sup> when she left she would have been homeless placing more pressure on health and justice system costing over \$30,000 additional a year,<sup>42</sup> and unable to care for her son pushing that cost onto the state as well.

Instead, the Director of Housing, had to consider Ms Burgess' human right. The Director needed to consider the full context of Ms Burgess' situation, including her current recovery from drug use and care of her son. By considering her unique situation a better decision is made, achieving not just a better outcome for Ms Burgess and her family, but for all Victorians in taking pressure off our health, justice and welfare system.

While some community housing providers acknowledge some of their responsibilities under the Charter, there remains inconsistency in how it is applied. *Metro-West v Sudi* Bell J found social housing involved the performance of functions of a 'public nature', noting that '[p]roviding social housing is a function of fundamental importance, which the government exercises on behalf of the community in the public interest' and that the Housing Act 'recognises the importance of housing as function of government'.<sup>43</sup>

<sup>40</sup> Australian Institute of Health and Welfare, *The health of Australia's prisoners 2018* (2018).

<sup>41</sup> Corrections Victoria, 'Corrections Statistics: Quick Reference': available at: < <https://www.corrections.vic.gov.au/prisons/corrections-statistics-quick-reference> > Accessed: 13 September 2021.

<sup>42</sup> Zaretzky K. et al, Australian Housing and Urban Research Institute (AHURI), *The cost of homelessness and the net benefit of homelessness programs: a national study: AHURI Final Report No 205* (2013) 14

<sup>43</sup> *Metro West v Sudi* [2009] VCAT 2025 [17] and [144]–[148].

However, in practice the application of the Charter remains inconsistent, and enforceability of the Charter rights is problematic. In the decision *Durney v Unison Housing* [2019] VSC 6 the Court expressed a strong reluctance to extend (non-Charter) public law remedies to private and not-for-profit entities. And in practice, not all community housing providers have embedded charter principles in their policies, procedures and training.

The Charter allows consideration of a person's human rights at the decision stage of an eviction, or other action. This means rather than being legalistic, the Charter, has helped people exercise their rights and keep matters out of Courts. Community lawyers talk with social housing providers about potential breaches of the Charter to help engage with the provider and resolve the situation before going to court, thereby preventing needless evictions. Our colleagues at Justice Connect Homeless Law show examples of 14 people, including 9 children, who were not evicted into homelessness by way of Charter negotiations prior to court.<sup>44</sup>

### **A stable home after 30 years of being homeless**

Brent suffered an acquired brain injury in a work accident when he was 16. He became homeless at that time, and remained so for 30 years. His psychosocial development was greatly limited by these life events, and he experiences a severe impulse control disorder.

After being placed in a stable ongoing housing, Brent was able to work with a disability care team to improve his health and wellbeing. However, problems began to arise with Brent's neighbours, who took issue with his propensity to have loud verbal outbursts in his home and backyard. His community housing provider obtained a possession order from VCAT in February 2020.

However, Inner Melbourne Community Legal negotiated with the community housing provider, highlighting the Charter obligations that it considered to be owed to Brent as a social landlord. The community housing provider did not continue with the eviction.

Similar problems arose again in February 2021, and again the community housing provider was successful in obtaining a possession order from VCAT for nuisance. Again, Inner Melbourne Community Legal negotiated with the rental provider on the basis that Brent's rights under the Charter should not be interfered with unless it was absolutely necessary to do so. The provider showed restraint in declining to purchase a warrant, and allowed Brent further opportunity to show behavioural improvements through his work with his care team.

The tenancy continues today, and is the longest period that Brent has ever enjoyed in stable home since he first became homeless as a child. Were it not for Brent's community housing provider agreeing that they were bound by the Charter, and that their decisions ought to be made consistently with it insofar as that was possible, Brent would have either been made homeless, or forced to take the highly unlikely option of pursuing these arguments in the Supreme Court of Victoria.

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<sup>44</sup> Justice Connect Homeless Law, Submission 79 to the Scrutiny of Acts and Regulation Committee, Parliament of Victoria, *2015 Review of the Human Rights and Responsibility Act*, 'Charting a Stronger Course: Submission to the Eight Year Charter Review', June 2015, Annexure, 33. Available at < <https://justiceconnect.org.au/wp-content/uploads/2018/08/Charting-a-Stronger-Course-June-2015.pdf> > Accessed: 11 September 2021.

The recent Parliamentary Inquiry into Homelessness recommended that community housing providers be recognised as public authorities under the Charter, to ensure community housing tenants have their human rights considered in tenancy matters.<sup>45</sup>

To provide certainty for people living in community housing and providers, legislative change should be made to ensure that it is clear that the Charter applies to community housing providers.

## Human Rights complaints at VCAT – more accessible and low-cost

Currently, if a tenant thinks their human rights have been breached, they would have to take the matter to the Supreme Court.<sup>46</sup> It could not be heard in the Victorian Civil and Administrative Tribunal (VCAT).

To ensure simplicity, promote pre-court negotiation and resolution, and access to justice, the Charter considerations should be able to be heard at VCAT. This is a recommendation of the 2015 Review into the Charter of Human Rights,<sup>47</sup> which the government marked for further consideration.<sup>48</sup> It was also a recommendation of the Parliamentary Inquiry into Homelessness.<sup>49</sup>

The Review found the benefit of VCAT being able to address Charter claims include that it is low-cost, experienced in such claims, already conducts merits-review for various government decisions, conducts alternative dispute resolution and mediation, and would fit well within its Human Rights Division.<sup>50</sup>

Community housing organisations have also raised concerns about the potential cost of Supreme Court proceedings.<sup>51</sup> Community Housing Federation of Victoria (now CHIA) proposed in the 2015 review of the Human Rights Charter that greater clarity be provided over whether community housing were public authorities, and that VCAT be granted powers to hear Human Rights Charter breach applications.<sup>52</sup>

For a person in social housing, taking their complaint to the highest court in Victoria is prohibitively expensive and risky; without access to justice, justice is denied. Knowing the costs and difficulties in pursuing a breach in human rights, presents a further power imbalance between housing provider and renter. The reluctance to negotiation given the high bar to pursue an application in the Supreme Court was found in *Burgess* where Macaulay J quoted the letters from the Director of Housing, one of which concluded:

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<sup>45</sup> Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Homelessness: Final Report* (2021), 199, Recommendation 132.

<sup>46</sup> *Director of Housing v Sudi* [2011] VSCA 266

<sup>47</sup> Michael Brett Young, [From Committee to Culture: The 2015 Review of the Human Rights and Responsibility Charter: Summary Report](#) (September 2015): Recommendation 27(a)

<sup>48</sup> Attorney-General, Scrutiny of Acts and Regulation Committee, Parliament of Victoria, *2015 Review of the Charter of Human Rights and Responsibilities Act*, 'Government Response' Available at < <https://www.justice.vic.gov.au/government-response-to-the-2015-review-of-the-charter-of-human-rights-and-responsibilities-act> > Accessed: 11 September 2021.

<sup>49</sup> Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Homelessness: Final Report* (2021), Recommendation 33.

<sup>50</sup> See Michael Brett Young, [From Committee to Culture: The 2015 Review of the Human Rights and Responsibility Charter](#) (September 2015): 128-129

<sup>51</sup> Community Housing Federation of Victoria, Submission 25 to Scrutiny of Acts and Regulation Committee, Parliament of Victoria, *2015 Review of the Charter of Human Rights and Responsibilities Act*, June 2015, 6.

<sup>52</sup> *Ibid*, 10-11

‘... your client has not issued, or even foreshadowed issuing, proceedings in the correct forum to agitate these issues, the Director does not propose to otherwise respond to your allegations at this time.’<sup>53</sup>

Since *Burgess* the Housing Appeals Office considers complaints on Charter grounds for public housing renters. Alignment of this function to provide access to the Housing Appeals Office for community housing renters, would further promote a low-cost and less legalistic model. If the Housing Registrar continues to be the body for community housing renter complaints, the Housing Registrar should be given authority to consider complaints on Human Rights Charter grounds, with the power for such decisions to be referred to VCAT for merits review.

### Tenant voice and empowerment through human rights: Responding to questions 5-9

A current challenge in the regulatory framework is for tenant’s voices being heard in relation to decisions made about their tenancies is that any breach of the Charter must be made in the Supreme Court. If all social housing renters could instead access the Housing Appeals Office (as public housing tenants currently can) as well as having breaches of their rights under the Charter be reviewed on their merits at VCAT, the utility of these protections would be greatly enhanced, as would the space for tenant voice to be heard.

Being effectively able to exercise your rights encourages negotiations and discussion before problems escalated. This is a practical and meaningful way to ensure tenants’ voices are more easily heard in decision-making, create fairer outcomes and better tenant experience without going to court.

Introduction of procedural steps within the Director of Housing’s policy and procedure manuals that ensured compliance with the Charter did not cause difficulties for Housing Support Officers, nor did it lead to an avalanche of litigation. Rather it achieved the purpose of the Charter in ensuring that a decision-maker properly assessed the impact of the decision on the particular individual, and, as far as possible, acted compatibly with the human rights that were engaged by the decision.

Social housing renters should not have to assess the performance of their providers, they should be able to rely on it being of a sufficient standard. Information that would be useful for renters is their entitlement to have their human rights considered in all decision-making related to their tenancy. This could be provided through tenancy agreements, policies and procedures with easy to understand explanation of a renter’s rights, the processes providers must follow in order to act compatibly with Charter rights, and how residents can exercise them. Such policies with the Human Rights Charter embedded in them exist in public housing and could form the model policy for consistency across social housing providers.

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<sup>53</sup> *Burgess & Anor v Director of Housing & Anor* [2014] VSC 648 [49], [240]

Our recommendations are developed from the Tenants Working Group – for more detailed analysis see our [Joint Community Legal Centre Submission Appendix 2: Community Housing Paper](#)<sup>54</sup>

### Recommendations – Renters’ Voices Strengthened through Human Rights

1. That the Victorian Government amend Schedule 7 of the *Housing Act 1983* (Vic) (**Housing Act**) and the Registration Criteria for agencies, to require all agencies registered under the Housing Act to have a constitution and rules which include an acknowledgement of being bound by the *Charter of Human Rights and Responsibilities Act 2006* (**Charter**) and have a stated object and purpose to act compatibly with and promote human rights in their management of housing stock and residents.
2. That the Victorian Government amend s 81 of the Housing Act such that an application for registration under that provision includes a report on how the applying agency’s policies provide for Charter-compatible decision making.
3. To empower social housing renters to know their rights: the Victorian Government amend section 93(1) of the Housing Act to include new performance standards that require all registered agencies to have public facing statements about their obligations under the Charter on their websites and tenancy agreements and have policies equivalent to DFFH that specifically embed Charter-compatible decision-making in all areas of tenancy management. These performance standards should be phrased as “mandatory requirements” rather than “indicators”.
4. Amend s 39 of the Charter to provide VCAT with merits review and or collateral review jurisdiction on Charter grounds.
5. Amend s 141(1) of the Housing Act to give the Housing Registrar power to revoke or suspend an agency’s registration under that Act for repeated breaches of the Charter.

#### 4.1.2 Housing allocation – *Question 10, 12*

The shift towards a system reliant on community housing requires proper interrogation of housing allocation. Currently community housing must take 75 per cent of their *targeted* housing allocation from the Victorian Housing Register waitlist. As the consultation paper notes, unlike public housing which must take the person at the top of the list, community housing providers can choose who they take from the waitlist.

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<sup>54</sup> Joint Community Legal Centre submission number 5 to *Review of Social Housing Regulation: Consultation paper 1* (July 2021), Appendix 2.

Reports on the practice of allocation have been researched by Housing for the Aged Action Group<sup>55</sup> and Unison housing<sup>56</sup>. Both reports note the increased revenue from Disability Pension compared to Newstart/Job Seeker is attractive to community housing providers. When community housing providers seek out those on higher incomes it has consequences for the allocations to public housing. The Victorian Auditor General noted the increased allocation of people with complex needs and low income has diminished the revenue of public housing.<sup>57</sup>

The Consultation Paper notes the finding of the Homelessness Inquiry that the focus on the priority applicants with lower incomes and higher needs places financial pressure on community housing providers.<sup>58</sup> This led the Homelessness Inquiry to conclude:

The Committee is aware that both public and community housing play important roles in housing Victorians who are at risk of, or experiencing, homelessness. However, continued supply of sustainable public housing is necessary to complement the diverse types of community housing available to those on the Victorian Housing Register.<sup>59</sup>

However, this Review needs to consider the policy landscape we are in. The role of public housing is diminishing. With community housing being the predominant form of social housing growth in Victoria,<sup>60</sup> our social housing regulations cannot rely on the capacity of public housing to house all those who experience complex needs and receive the lowest incomes. As such, housing allocation must be done fairly across the system; it cannot be done in a way that excludes those on the lowest incomes or most complex needs. If the model cannot afford to house those on the lowest incomes and with the most complex needs it is not fit for purpose and needs to be fixed.

To ensure fairer allocation, more transparency is needed. Easily accessible information should be available on how much of each community housing provider is 'targeted allocation', how much funding is directly received from government, and government announcements should specify what sort of housing is being funded.

The Victorian Register waitlist is divided into the priority access categories, including: emergency management; priority transfer; homelessness, at risk of homelessness, and family violence; supported housing for people with disabilities; special housing needs; special housing needs aged over 55. How much is each provider allocating from each access list? How many are on what type of income support?

Allocation from the waitlist to the first person who matches the housing type (which may be for some providers specifically missioned with housing older people, people escaping family violence, people leaving prison etc) should be assumed and an explanation should be given for when this is not being done.

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<sup>55</sup> Hurren, Claire. Housing for the Aged Action Group, *Public housing and community housing: comparing the rights and experiences of older tenants* (November 2020) 17-23

<sup>56</sup> Taylor, Sarah. Johnson, Guy. Unison Housing, *Sustaining Social Housing: profiles and patterns* (May 2021) 24-25.

<sup>57</sup> Victorian Auditor General's Office, *Managing Victoria's Public Housing* (June 2017) 11.

<sup>58</sup> Social Housing Regulation Review, *Social Housing in Victoria: Consultation Paper 2 – Service Delivery and the Tenant Experience* (July 2021), 12, from Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Homelessness: Final Report* (2021), 278-280

<sup>59</sup> Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Homelessness: Final Report* (2021), 278.

<sup>60</sup> Homes Victoria, *Establishing a 10-Year Strategy for Social and Affordable Housing: A discussion paper prepared for the Victorian community by the Victorian Government* (Feb 2020), 14.

Processes like using rooming houses to ‘screen’ people for long term housing,<sup>61</sup> and use of group interviews,<sup>62</sup> are deeply concerning. Everyone deserves a permanent home, providing insecure housing to trial “good” tenants is discriminatory and harmful to residents’ mental health.<sup>63</sup>

Rooming houses are classified as a form of homelessness by the by the Australian Bureau of Statistics.<sup>64</sup> Allocations to rooming houses from Victorian Register waitlist should not be counted as long term housing. People who are housed in rooming houses should not lose their place on the waitlist, this is a particular issue for people who are on the waitlist due to homelessness, or those at risk of homelessness.

### Fair Allocation of Homes

6. To increase transparency and accountability, all social housing providers should be required to publicly report on:
  - a) The Victorian Housing Register allocations made to each priority category;
  - b) The allocations from the Victorian Housing Register made to rooming houses;
  - c) The allocation of housing by income and form of welfare payment type;
  - d) To what extent the relevant provider satisfied Victorian Housing Register preferences through their allocations.
7. Ensure allocations from the Victorian Housing Register to rooming houses do not count as long-term housing, and people keep their place on the priority waitlist until long term housing is provided.

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<sup>61</sup> Unison reports, “Another factor (for why people who previously lived in rooming houses are better able to sustain tenancies) is that Unison screens its Rooming House residents who want to move into their Long-Term housing, selecting those that they feel will do best.” See Taylor, Sarah. Johnson, Guy. Unison Housing, *Sustaining Social Housing: profiles and patterns* (May 2021) 21.

<sup>62</sup> Hurren, Claire. Housing for the Aged Action Group, *Public housing and community housing: comparing the rights and experiences of older tenants* (November 2020) 17-23

<sup>63</sup> The impact on the mental health of residents and the feeling of hopelessness of living in rooming houses is well-documented in: Northern and Western Homelessness Networks *A crisis in Crisis; the Appalling State of Emergency Accommodation in Melbourne’s North and West* (2019): Available at <<http://www.nwhn.net.au/Crisis-in-Crisis.aspx> > Accessed: 18 September 2021.

<sup>64</sup> Australian Bureau of Statistics, 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>

#### 4.1.3 Culturally appropriate housing – *Question 13-14*

Culturally appropriate housing is necessary to meet the needs of diverse communities. Ensuring the Charter applies to all social housing providers would support and improve consideration of people’s cultural and religious needs.<sup>65</sup> Housing Officers should be well-trained in cultural competency and themselves be reflective of diverse communities and cultures of the people who they house.

In Australia, we live on Aboriginal and Torres Strait Islander Peoples’ lands that were forcibly taken. Aboriginal and Torre Strait Islander people have special and deep relationship with the land, colonial provision of housing has too often been inadequate, substandard and detrimental to the health of its people. Inner Melbourne Community Legal supports Aboriginal peoples’ right to self-determination and encourage the Review to consult closely with our colleagues at Victorian Aboriginal Legal Services on the best way to support Aboriginal renters in social housing. We understand there is a specific paper on Aboriginal Housing and we intend to respond with the community legal sector to this.

Over the last few decades there have been homes transferred to Aboriginal Housing Providers. We are concerned about the quality of stock that has been transferred and the failure to provide adequate funding to support the maintenance cost of old stock. Aboriginal people should not be discriminated against in the provision of safe, secure, suitable and affordable homes.

#### 4.1.4 Performance reporting and availability of data – *Questions 15-16*

The difficulties with this Review is the lack of available data, particularly on key measures such as tenancy allocation and evictions.

Community Housing Industry Association and the legal assistance sector agree:

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.*<sup>66</sup>

Tenant choice is a fallacy when there is a chronic shortage of social housing and high need. Nonetheless, social housing renters benefit from collection of accurate data across public and community housing: greater transparency leads to more accountability. To ensure accountability, the data needs to be publicly available and there should be consequences for organisations that do not meet the required standard.

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<sup>65</sup> *Charter of Rights and Responsibilities Act 2006* (Vic) ss 14, 19.

<sup>66</sup> Community Housing Industry Association, Tenants Victoria, Inner Melbourne Community Legal, Justice Connect, West Heidelberg Community Legal Centre, Victoria Legal Aid, WEstjustice, Peninsula Community Legal Centre “*Housing for All Victorians: A Statement of Shared Principles*” Joint submission to the Social Housing Regulations Review *Consultation Paper 1* (2021).

#### 4.1.5 Data to demonstrate achieving tenant outcomes – *Questions 17-18*

What do we want our social housing system to achieve? How can we measure these renter outcomes?

At the moment, government expenditure on housing is not contingent on ensuring positive renter outcomes. Those receiving investment of government money should be able to demonstrate that safe, secure, appropriate and affordable homes are being delivered and maintained.

Community housing providers are required to survey their renters to evidence tenant satisfaction in relation to repairs, and engagement with their tenants. This only asks a minimum question. There is little public information about what questions are asked, how the surveys are conducted, and how the answers are analysed. The Director of Housing has begun surveying public housing tenants too. The trickiest thing is how do you ensure you engage everyone – including those most disadvantaged? How do you ensure you are reaching people who struggle with complex lives, disengaged and arguably more than anyone need the system to be responsive and understand their needs?

Australian Institute of Health and Welfare found in consumer surveys community housing renters were more satisfied than public housing renters: 80 per cent compared to 74 per cent.<sup>67</sup> However, they found that satisfaction was closely linked to the condition of the home, that satisfaction fell as structural problems increased. This would align with the Victorian survey results, as public housing stock in Victoria is generally older and has not had the investment required for old stock.<sup>68</sup>

For an outcome measurement a variety of ways of collecting information should be considered. This should include renter surveys, as well as targeted quantitative surveys of renters leaving a tenancy or who have a dispute with their provider. Records should be kept, collected and analysed from DFFH, community housing providers, Housing Registrar and VCAT.

Action needs to be taken when public and community housing providers fail to meet the standard. Key objectives, indicators and measures should include (many of these data points are already being collected):

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<sup>67</sup> Australian Institute of Health and Welfare. *National Social Housing Survey 2018: Key results*. Cat. no. HOU 311. Canberra: AIHW (2019) iv.

<sup>68</sup> Victorian Auditor General's Office, *Managing Victoria's Public Housing* (June 2017).

| Objectives                 | Key indicators                                  | Measures   |
|----------------------------|---|--|
| Prevention of homelessness | Tenancies are sustained                         | <p>Data publicly reported on:</p> <ul style="list-style-type: none"> <li>a) where the person went after social housing e.g. public housing, community housing, private rental homelessness</li> <li>b) did the tenancy end by landlord initiative or tenant ended</li> <li>c) why the tenancy ended: arrears, anti-social behaviour, alternative housing found etc.</li> </ul> <p>Surveys conducted of proportion of exits to ensure tenant-led practice of continual improvement of provision of housing</p>                |
|                            | Evictions are prevented                         | <p>Data is publicly reported on by service provider:</p> <ul style="list-style-type: none"> <li>a) Number of notices to vacate served:</li> <li>b) Number of applications to VCAT for an Order of Possession</li> <li>c) Number of applications to VCAT (a) for and (b) execution of warrant of Possession</li> <li>d) Number of and reason for tenant exit</li> <li>e) Number of Breaches of Duty Notices issued to tenants</li> <li>f) Number of applications for Compliance or Compensation order made to VCAT</li> </ul> |
|                            | People are housed in secure long-term tenancies | <p>Data is publicly reported on:</p> <ul style="list-style-type: none"> <li>a) Number of allocations from the Victorian Housing Register to rooming houses</li> </ul>  |

|                                  |   |   |
|----------------------------------|---|---|
|                                  |   | <ul style="list-style-type: none"> <li>b) Period of time person spends in transitional or emergency housing</li> <li>c) Number of fixed term leases used</li> </ul>   |
| Adequate and appropriate housing | Everyone who needs social housing has an affordable home  | Low numbers of people on the Victorian Housing Register wait-list   |
|                                  | People with low or complex needs are not discriminated against  | Data is publicly reported on by service on allocations from the Victorian Housing Register by: <ul style="list-style-type: none"> <li>a) Priority access category</li> <li>b) Income source</li> <li>c) Family type</li> <li>d) Aboriginal and Torres Strait Islander identity</li> </ul> |
|                                  | People are living in housing that meets their ability and access needs  | Data is publicly reported on number of disability-related housing modification requests made (including the number of successful applications, the average spend and median spend)  |
|                                  | The homes people live in are appropriate for them   | Data is publicly reported on request for transfers: <ul style="list-style-type: none"> <li>a) how long an applicant has waited for transfer;</li> <li>b) the reason for the transfer request i.e. personal safety, overcrowding, uninhabitable housing, mould, pest issues etc</li> </ul> |
| Affordable                       | Rent is within a household's means  | Data publicly reported on proportion of tenants paying <25%, between 25.01% and 30%, >30% of their household income on rent; paying market rent   |
|                                  | Service fees are low and reflect a service tenant benefits from (e.g. when water of unit cannot be individually calculated) | <p>Tenant receives itemised service fee</p> <p>Data is publicly reported on:</p> <ul style="list-style-type: none"> <li>a) proportion of tenants who pay a service fee</li> </ul>   |

|                               |  |   |
|-------------------------------|--|---|
|                               |  | b) the size of the service fee as a percentage of household income  |
|                               | Rent is adjusted in timely manner when income changes. | Data is publicly reported on complaints about rent setting: housing officers or housing providers who have numerous complaints are audited to ensure rent is being charged fairly. Additionally, tenants can request a rent setting audit of a housing officer or provider.   |
| Well-maintained               | Regular maintenance occurs                             | Inspections undertaken and reported on every 5 or 10 years or more or less frequently depending on the age of the stock.<br><br>When properties are transferred, a schedule of expected programmed maintenance is agreed with the housing provider at time of transfer with evidence from housing provider about a plan for its completion. |
|                               | Repairs are conducted in timely manner                 | Number of repair request made to the housing provider and time taken to resolve<br><br>Number of urgent and non-urgent repair requests applications made to VCAT  |
|                               | Tenants are satisfied with repairs                     | Tenant surveys are conducted after repairs and findings publicly reported.  |
| Suitable quality and location | Quality build and construction                         | Relevant building standards met and exceeded  |
|                               | Energy and environment standards met                   | New builds are "7 star" rated in the Nationwide Housing Energy Rating Scheme  |

|  |                    |   |
|--|--------------------|---|
|  | Close to amenities | <p>A dwelling amenity rating could be created, looking at whether the dwelling 20-minute walk<sup>69</sup> to amenities including:</p> <ul style="list-style-type: none"> <li>a) public transport,</li> <li>b) Health care services – GP, maternal child health service, mental health support</li> <li>c) supermarkets</li> <li>d) state schools that have higher than State average results</li> <li>e) Green spaces and parks</li> </ul> |
|--|--------------------|---|

Without mechanisms to support social housing providers to deliver and measure better renter outcomes, it is unlikely that they will do so. Consistent and transparent policy and procedures will be critically important to achieve the objectives of preventing homelessness and providing adequate, affordable, well-maintained, suitable housing.

Furthermore, the results of the data need to be considered in context. For example, the Unison report on sustaining tenancies pointed to the fact that some cohorts are more difficult to sustain than others.<sup>70</sup> By having data across the social housing system, we will be able to better understand the housing needs of people living in social housing, and adjust policy and funding levers to better achieve positive outcomes.

#### 4.1.6 Regulation

Consultation Paper Two’s statement that ‘while community housing providers are required to submit performance data to the regulator, Homes Victoria is largely responsible for regulating itself’ is confounding. Homes Victoria is a government agency; as such, it has all the accountability and oversight of a government entity, including being answerable to our elected members of Parliament. Its decisions and management can be overseen internally by the Housing Appeals Office, and externally by Victorian Ombudsman, and the Victorian Auditor General, as well as judicial oversight. Each decision must be made with the human rights of the renter in mind (its obligations under *Charter of Human Rights and Responsibilities Act*) and can be subject to *Freedom of Information Act 1982* (Vic) request, or a person can request written reasons for the decision through *Administration Law Act 1978* (Vic). Registered community housing organisations, on the other hand, are overseen by the Housing Registrar and individuals can take disputes to VCAT like other tenants under the *Residential Tenancies Act 1997* (Vic). In some instances, community housing providers uphold the

<sup>69</sup> 20 minute neighbourhood, is where the amenities are within a 20 minute walk of your home. This is consistent with the Victorian Government’s *Plan Melbourne 2017-2050* – see: <https://www.planning.vic.gov.au/policy-and-strategy/planning-for-melbourne/plan-melbourne> Accessed 15 September 2021

<sup>70</sup> Taylor, S. & Johnson, G. (2021) *Sustaining social housing: Profiles and patterns*. Melbourne: Unison Housing.

obligation to act consistently with the Charter, however their legal requirement to do so could be clearer.

While there could be more performance reporting on tenant experiences in public housing, reporting is not the same thing as regulation. The performance data that Community Housing Providers are required to submit to the Housing Registrar are self-assessment reports.<sup>71</sup>

There are undoubtedly greater risks for community housing compared to public housing: the financial risk of collapse, taking on too much debt, or poor governance is heightened. On these measures it appears the Housing Registrar has been an effective body. However, it would be inappropriate for the same financial regulatory oversight to be provided to the Director of Housing, which has a different risk profile, public sector governance structures (that caps salaries and rules around expenditure), and capacity to be investigated by Independent Broad-Based Anti-Corruption Commission.

However, there are some functions that community housing undertakes that are similar to a government agency. As discussed, it can receive direct and indirect government funding and it performs a function similar to a public authority in the provision of housing. Given the function and the substantial government investment, self-regulation of community housing, as raised in question 22, seems to be an inadequate approach to ensure the investment is well-spent. It would be appropriate if it was subject to the transparency and accountability required for public agency: being subject to Freedom of Information laws and the jurisdiction of the Victorian Ombudsman in the investigation of complaints.

#### Recommendations: Transparency for Renters

8. That the Victorian Ombudsman have clear jurisdiction to oversee community housing organisations: by amending the definition of ‘agency’ under s 2(1) of the *Ombudsman Act 1973* (Vic) to include any agency registered under s 84 of the Housing Act.
9. That decisions by public and community housing be made accessible under Freedom of Information provisions: amend the definition of ‘agency’ in section 5(1) of the *Freedom of Information Act 1982* (Vic) to include any agency registered under s 84 of the Housing Act.

#### 4.1.7 Scope of professionalisation – Questions 26-28

We support the increased professionalisation of housing officers; they perform a vital role in supporting people’s tenancies. Case-loads, experience and training have been identified as critical

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<sup>71</sup> Housing Registrar, *Guidance Note: Self-assessment of performance standards against business plans and Performance Standards* (August 2020)

elements in this process.<sup>72</sup> The high turnover of staff is worrying and indicates the system under pressure and housing officers are not being adequately supported to do their jobs.

People are attracted to working in social housing in order to make a difference. Training in Human Rights Charter, and clear policies and procedures would support housing officers to do their job well and result in better outcomes for social housing residents. Training has to be accounted for within the job, rather than an add-on that places greater pressure on case-load and other workers being conducted.

While better support and training should reduce turnover, it is also critical to have clear written policies and procedures where there is high turnover, as institutional knowledge and experience has less time to develop.

Clear and consistent policies and procedures would support housing officers in difficult and complex situations. By having policies that provide support early rather than a process of relying on VCAT for compliance orders or eviction processes, not only will it make the system less legalistic, but it will stop problems from escalating. De-escalating situations and resolving issues before they get out of hand makes the job of housing officers easier and more rewarding.

In this regard, housing officers who work in community housing could benefit from policies and procedures that sit in line with public housing policies, which have been developed over many years to provide clarity to complex scenarios. It would also mean greater equity in the provision of services and support between public and community housing. Some practical examples for housing officers are:

- Discretion of the housing staff is often relied on, considered are often on a ‘case-by-case basis’, providing little or no guidance for how the decision may be fairly and appropriately made;<sup>73</sup>
- The DFFH anti-social behaviour policy is 26 pages long and outlines when and how a housing officers can intervene to de-escalate the situations, the support services available, and not rely on VCAT procedures;

Community housing policies vary, providing less guidance and support to workers. For example, one such community housing provider outlines no support services or intervention process to address challenging behaviour besides holding a meeting if it is a renter to renter conflict, while the rest of the policy outlines the Breach of Duty process to take matters to VCAT.<sup>74</sup> Such a policy provides minimal support to housing officers with their daily work.

- For hoarding and squalor issues public housing officers have policies that provide access to specialised services through the Support for High-risk Tenancies program to address hoarding as

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<sup>72</sup> Social Housing Regulation Review, *Social Housing in Victoria: Consultation Paper 2 – Service Delivery and the Tenant Experience* (July 2021), 18.

<sup>73</sup> See disability modifications in: Housing Choices, *Making Changes to Your Home* < <https://www.housingchoices.org.au/residents/victoria/making-changes-to-your-home> > Accessed: 18 September 2021.

<sup>74</sup> Unison Housing, *Anti-social and Breach Policy*, May 2021. Available at < <https://unison.org.au/cms/uploads/docs/anti-social-behaviours-and-breaching-policy.pdf> > Accessed: 18 September 2021.

a mental health problem, such supportive policies and programs are not as readily available to support community housing officers who face similar.<sup>75</sup>

During the hard-lockdown of the public housing estates in our community in July 2020, we saw the impact of inadequate skills and experience of DFFH staff with culturally and linguistically diverse communities.<sup>76</sup> Given the diverse backgrounds and ability needs of those who rely on social housing, ensuring that people who work for social housing providers are not only trained in cultural competency, but also are reflective of the communities themselves should be encouraged.

It should be stressed that professionalisation of the housing support workforce will be hampered by poor workforce planning. Addressing the turnover and case load issues identified above requires consideration of industrial and funding conditions in the housing sector, and how they hamper recruitment and retention. Underfunding within specialist homelessness services makes it very difficult to attract and retain experienced staff as they seek work in more highly remunerated sections of the community services sector.

The work carried out in housing support work is increasingly complex, compounded by the impact of changes in other areas of the community sector, such as the implementation of the NDIS. As a service purchaser, governments do not play a sufficiently active role in ensuring that funded service providers adhere to industrial standards in their workplaces. In this instance the impact is that some workers are being underpaid by way of being under classified for work that is increasingly complex, such as intensive care management roles with long term homeless populations. This is also a workforce with ongoing occupational health and safety concerns, including the compounding impacts of vicarious trauma from witnessing lack of housing and demand levels.

Further, that the widely held view across the sector is that state government funding for specialist homelessness services is much lower than for other comparable government funded services. Indeed, it seems that there is up to a 32 per cent variation in the lowest and highest input price for labour, or for full time equivalent staff members (FTE), in a government service contract for specialist homelessness services as compared with other community sector programs. This is alongside the issues around funding cycle length, which drive an increasing amount of fixed term and other insecure work in housing and homelessness, and indeed across the community sector.

Measures to address these issues should include obligations for funded service providers:

- A requirement to engage employees as on-going staff rather than fixed term, other than for genuine fixed term staff leave replacements.
- A requirement on all funded services to meet sector wide standards of training and access to supervision, to ensure consistency across the sector.
- Standardisation of industrial conditions – such as access to family violence leave, flexible working arrangements, benchmarking of classifications across the sector.
- Longer funding cycles for service providers – minimum five years.

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<sup>75</sup> Department of Health and Human Services, *Tenancy Plus – Tenancy Support Program: Operational Guidelines* (June 2019), 5.

<sup>76</sup> Victorian Ombudsman, *Investigation into the detention and treatment of public housing residents arising from a COVID-19 'hard lockdown' in July 2020* (December 2020), Recommendation 8.

#### **4.1.8 The National Regulatory System for Community Housing – Questions 29-30**

We have read our colleagues at Tenants Victoria’s submission on the National Regulatory System and agree with their commentary and recommendation for Victoria not to join the National Regulatory System.

For profit providers should not be able to register as social housing providers. We have an existing for-profit housing model that locks thousands of Victorians out of housing; the private rental market. A continuation of the model into social housing would be costly on the state and disastrous for social housing renters.

## 4.2 Greater equity in the service and standard delivery – Consistent Policies and Procedures

### Why social tenant is not an objective for *this* Review

The focus on the Social Housing Regulation Review should be on those organisations which will benefit from the Government’s investment in the Big Housing Build and registered community housing providers who perform similar function to government in housing people from the Victorian Housing Register waitlist.

Social housing is defined as public housing and community housing.<sup>77</sup> Consultation Paper Two questions whether the system should cater for a new entity the ‘social tenant’: a person who is eligible for social housing who is renting outside the system.

The use of the term social tenant may be useful for looking at the unmet need in the system. However, it conflates the issue of inadequate supply of affordable housing with the rights and protections for social housing renters. The issues for those outside of the system must be to grow the system rather than lowering the standards for those in social housing.

The Social Housing Regulation Review occurs in the context of the Big Housing Build, providing significant investment and support for community housing providers with the aim of providing secure long-term housing for Victorians in need. Appropriate policies, procedures and accountability mechanisms to promote positive renter outcomes must be put in place. Otherwise we will have a social housing system ill equipped to meet the needs of our state. Without secure, safe, appropriate homes people will cycle in and out of homelessness: with all the associated personal, social and economic costs.<sup>78</sup>

The Social Housing Regulation Review has an opportunity to ensure the settings, rights and protections in social housing are suitable to deliver good tenant outcomes whether a person is in community or public housing.

Concerns with the social tenant being prioritised in this Review:

- **‘Social tenant’ is outside the scope of the Social Housing Regulation Review.** The Terms of References of the Review provide that it will ‘assess the settings for regulation that best support the long-term interests of *social housing residents* and their community’ (emphasis added) with terms of reference 1-3 addressing issue of ‘resident voice and outcomes’. This paper predominately looks at these terms of reference and should focus on social housing residents, not those outside the system which are not mentioned in the Terms of References and should be considered outside the scope of this Review.

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<sup>77</sup> Social Housing Regulation Review, *Social Housing in Victoria: Consultation Paper 1 – Background and scoping* (2021) 5-6.

<sup>78</sup> Estimated annual cost to government services of an individual experiencing homelessness is \$29,450 higher than for the rest of the Australian population. See Zaretsky K. et al, Australian Housing and Urban Research Institute (AHURI), The cost of homelessness and the net benefit of homelessness programs: a national study: AHURI Final Report No 205 (2013) 14 available at [https://www.ahuri.edu.au/\\_\\_data/assets/pdf\\_file/0007/2032/AHURI\\_Final\\_Report\\_No218\\_The-cost-of-homelessness-and-the-netbenefit-of-homelessness-programs-a-national-study.pdf](https://www.ahuri.edu.au/__data/assets/pdf_file/0007/2032/AHURI_Final_Report_No218_The-cost-of-homelessness-and-the-netbenefit-of-homelessness-programs-a-national-study.pdf).

- **Regulation should be addressed at a system wide level not attached to an individual.** The concept that the regulation follows the person rather than the provider downplays the significant government investment in social housing, and the function of public and community housing to support those who are locked out of the private rental market. Additionally, for regulation to follow certain individuals, and not others, opens up the possibility for discrimination. One of the critical problems in our current housing system is high levels of discrimination,<sup>79</sup> having a social tenant would only exacerbate this. To improve rights for people outside the social housing system requires improving rights for all renters not just social tenants.
- **People housed from the Housing Register Waitlist should be entitled to same rights and conditions whether they are housed in community or public housing.** The consultation paper states: “equity, such that people in the same circumstances receive similar services, rights and protections, irrespective of their housing provider”.<sup>80</sup> This is a critical principle. The ‘same circumstances’ should consider social housing residents: that is, people living in either community or public housing. Whether a person from the Victorian Housing Register waitlist is housed in community housing or public housing they should receive ‘similar services, rights and protections’. Currently there is a wide gap in provisions.

#### Social tenant in the Scottish Model

Our colleagues at Tenants Victoria have considered the Scottish model in more detail, and we support their conclusions. It is worth noting that the Consultation Paper 2 proffer the Scottish Social Housing Charter as providing protection for ‘social tenants’.<sup>81</sup> However, it seems that while the Scottish Housing Regulator looks after ‘the interests of people who are may become homeless, tenants of social landlords or users of services that social landlords provide’, a ‘social landlord’ under the Charter is only a council or a registered not-for-profit landlord.

Social Housing in Scotland makes up 23% of all housing and is well supported by successive governments. Victoria’s current proportion of social housing is 3.5% of all dwellings. Clearly, we are not close to providing housing for all people deserving of social housing and attempting to regulate private providers is manifestly out of scope and only diminishes the investigation to the inequities within our current social housing system.

#### Consistent policies and procedures – *Questions 35-37*

The standards for public housing renters and community housing renters are spelt out in housing providers policies and procedures. The Review Panel should look closely at the policies and

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<sup>79</sup> Maalsen, S., Wolifson, P., Rogers, D., Nelson, J. and Buckle, C. (2021) Understanding discrimination effects in private rental housing, AHURI Final Report No. 363, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/finalreports/363>; and, Victorian Equal Opportunity and Human Rights Commission, *Locked Out: Discrimination in Victoria’s Private Rental Market* (2012)

<sup>80</sup>Social Housing Regulation Review, *Social Housing in Victoria: Consultation Paper 2 – Service Delivery and the Tenant Experience* (July 2021), 6.

<sup>81</sup> Ibid, 4.2.2

procedures of housing providers in order to address Term of Reference two: “the degree to which residents’ rights should be harmonised under public and community housing models”,<sup>82</sup> and the Review principle that “equity, such that people in the same circumstances receive similar services, rights and protections, irrespective of their housing provider”.<sup>83</sup>

Whether a person on the Victorian Housing Register waitlist is offered a home managed by public or community housing provider is beyond their control. Yet, the rights that you are entitled to in public housing are significantly higher than those in community housing.

To achieve genuine fairness in the social housing system, it is important the Review investigates the policies and procedures, as it is these that set the standards for renters.

***As we submitted in relation to Consultation Paper 1: Community Legal Centres Joint submission, submission 5, Social Housing Regulation Review, 9 July 2021 – Appendix 2:***

### Protecting tenant rights through consistent social housing policies

Homes Victoria publishes a detailed Tenancy Management Manual (Manual) online.<sup>84</sup> The Manual sets out the rights, responsibilities and protections public housing residents have. The Housing Officer needs to follow the procedures specified in the Manual, which ensures all residents are treated fairly. If a resident is not happy with how their issue has been handled, they can take a complaint to the Housing Appeals Office and the Victorian Ombudsman.

The Manual contains important operational guidelines which establish, in practice, the key protections available to public housing tenants including, for example in areas such as disability modifications, temporary absence, tenant breaches, arrears, eviction and decision review. The Manual facilitates consistent decision-making by DFFH workers across the state and its public availability provides a level of transparency, promotes accountability and appropriately equips tenants, and their advocates, to engage with DFFH about tenancy issues as they arise.

Community housing providers, on the other hand, have individual policy frameworks, which provide varying degrees of protection and security for tenants. While there is significant variation within the community housing sector, community housing policies generally contain fewer and weaker protections for tenants than comparable DFFH policies, particularly in the important areas below.

Community housing providers are performing a similar, if not identical, function to DFFH. It is our view that without steps to align the policies applicable to community and public housing

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<sup>82</sup> Ibid Appendix A ‘Terms of Reference’, dotpoint 2.

<sup>83</sup> Social Housing Regulation Review, *Social Housing in Victoria: Consultation Paper 2 – Service Delivery and the Tenant Experience* (July 2021), 6

<sup>84</sup> Department of Families, Fairness and Housing, *Tenancy Management Manual*, Available at < <https://providers.dffh.vic.gov.au/tenancy-management-manual> > Accessed at: 20 September 2021

tenants, we risk the entrenchment of a two-tiered model of social housing provision. Ultimately, as the second tier grows in number, the result will be a material erosion of housing security for Victoria's most vulnerable tenants.

### The need for model rules

To ensure consistency and transparency of decision-making across the social housing sector, we recommend the adoption of Model Rules for community housing providers. These should be drafted in consultation with tenants and the tenancy advocate and legal assistance sectors.

The Model Rules should contain detailed tenancy management policies and operational guidelines across all key tenancy management areas. They should include the adoption, at a minimum, of the following critical policies that currently apply to public housing tenancies:

- ▼ **Temporary absence policy** – community housing providers should recognise that tenants or residents may be absent from their property for periods of time and accept periods of temporary absence of up to 6 months if special circumstances are approved. This may require a funding arrangement with DFFH to subsidise rent during the temporary absence.
- ▼ **Disability modifications policy** – community housing providers should undertake minor 'reasonable adjustment' modifications where there is a report recommending these be made from a treating health professional.
- ▼ **Internal appeals policy** – Community housing residents should have access to an avenue for genuine internal review of decisions. Such a process must recognise the procedural fairness obligations of a community housing providers and require that a provider not take action that would extinguish a tenant's complaint remedies before the review is determined.
- ▼ **Rent setting policy** – Rent should be limited to 25% of household income (plus 100% Commonwealth Rent Assistance). community housing providers policies must also establish clear processes for a tenant to have their rent reduced where household income is reduced.
- ▼ **Arrears policy** – Repayment plans for rental arrears should be limited to a percentage of the weekly household income and community housing providers should only proceed to eviction as a mechanism of last resort.
- ▼ **Evictions policy** – Eviction should be used only as a mechanism of last resort. In circumstances of forced transfer, right of return should be allowed where it is available, and permanent and appropriate relocation offers should be made.

These Model Rules should be the deemed policies of all registered housing associations and providers and should be made publicly available, ensuring that tenants and those who assist them (including the legal assistance sector) have certainty about the management of community housing providers tenancies.

Within such an approach, there could be scope to permit individual community housing providers to apply to the Housing Registrar or other relevant regulating agency or department for a varied application of the Model Rules where a provider-specific requirement for this can be established. Where such a variation is granted, the amended policy or policies, and the basis for the variation request, should also be required to be made publicly available.<sup>85</sup>

## Inequality of rights and quality of policies

We would encourage the Review to look at the DFFH Manual and community housing policies and procedures side-by-side, in order to appreciate the impact of the inconsistent approaches and lack of detail many community housing policies contain. [Appendix A](#) contains an independent analysis of the policies done by a research student in preparation for the submission. The analysis shows community housing renters have less comprehensive rights to rely on, with a wide variation from one provider to another.

Below are some examples of the differences in rights and quality of the policies and procedures.

### Examples of difference in rights between social housing tenants

#### Rent setting

Affordable rents are key reason for government intervention in the housing market. Rent arrears and calculations are the single biggest identified reason people living in community housing seek legal assistance at Inner Melbourne Community Legal. Less than one per cent of public housing residents see us for assistance over their rents.

Public housing residents are charged 25 per cent of their income in rent, for community housing residents it can be between 25-30 per cent. However, it is how income is calculated that makes the significant difference. For a Mum fleeing family violence with her four-year old child, ending up in community housing could cost her an additional \$450 to \$1500 a year in rent compared to public housing.<sup>86</sup>

Rent setting policies are not just the percentage of income, but how household income is measured, how responsive the policy is to changes in household incomes, and whether service fees are charged.

#### **Costly service fees**

When John sought Inner Melbourne Community Legal's assistance, he was in receipt of a Centrelink disability support pension of \$428.85 per week. Though a condition of

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<sup>85</sup> Joint Community Legal Centre submission number 5 to *Review of Social Housing Regulation: Consultation paper 1* (July 2021), Appendix 2.

<sup>86</sup> Victorian Public Housing Association, submission to Homes Victoria, *Ten Year Social and Affordable Housing Strategy*, March 2021, 5.

John's community housing residency established that rents are set "no higher than 75% of market rent, up to a maximum of 30% of income", he was being charged \$216.15 per week – almost 50% of his income.

The amount included service charges of \$45.00, though this was not explained, and a breakdown of the service charge was not offered. John found the bundling up of rent charges and service charges to be confusing.

Inner Melbourne Community Legal requested, on his behalf, that the charges be separated in line with the *Residential Tenancies Act* and the rent setting policy of the community housing provider (as his current charge was technically more than 30% of his income). This would mean John and other residents could more easily understand how much rent they were being charged, whether it was being properly calculated, and to ensure they understood the amount of service charges and when they were being increased.

We also requested a breakdown of the service charge so that John could ensure that the charge was based on actual costs and know what those costs were. It was not until a complaint was made to the Housing Registrar and VCAT proceedings concluded that the community housing provider agreed to change its practice.

While the Consultation Paper Two suggests rent policies are outside the scope of the Review,<sup>87</sup> the Context of the Review, provides, 'Renewed regulation can support an integrated social and affordable housing system that.... Provides a supply of dwelling with rents that are affordable...'.<sup>88</sup>

The social housing regulation system must be appropriately focused on whether it is achieving the outcome of affordable rents, that is rents within a person's means – without hidden additional costs – should be key outcome measurement of successful social housing system.

A model rule is an effective way to set a standard for rent calculation and arrears, and how and when services fees should apply.

### Temporary Absence

Renters sometimes need to be absent from their homes, whether it is to seek rehabilitation, medical treatment or time in prison. Temporary absence policies are good public policy: they allow people to seek the medical treatment they need without risking losing their home, and allow renters who go to prison for short periods a home when they get out, significantly reducing the changes of recidivism.<sup>89</sup> On top of the personal consequences this has for a person, already in enduring difficult

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<sup>87</sup> Social Housing Regulation Review, *Social Housing in Victoria: Consultation Paper 2 – Service Delivery and the Tenant Experience* (July 2021), 20.

<sup>88</sup> Ibid, 'Context for the Review', 30.

<sup>89</sup> Martin, C., Reeve, R., McCausland, R., Baldry, E., Burton, P., White, R. and Thomas, S. (2021) Exiting prison with complex support needs: the role of housing assistance, AHURI Final Report No. 361, Australian Housing and Urban Research Institute Limited, Melbourne, <https://www.ahuri.edu.au/research/final-reports/361>,

circumstances, the additional cost on our health and welfare system of homelessness is upwards of \$29,450 a year.<sup>90</sup>

As a means of avoiding the social and financial detriment, public housing residents are permitted to have 6 months temporary absence at a reduced rent of \$15 month (or if there are other tenants at the property, calculating the rent from the remaining tenants only), with the capacity to extend leave for a further 6 months.

Out of the four largest community housing providers in our catchment:<sup>91</sup>

- One does not provide any temporary absence provisions (and goes further to say that 'renters are required to have an income to remain eligible'; a person in prison loses their Centrelink income, which would make them ineligible for housing from this provider<sup>92</sup>);
- Two provide for temporary absences of up to 13 weeks with no extension; and
- One provides the equivalent 6 months temporary absence with the capacity for extension in 'extremely exceptional circumstances'.

Where a temporary absence policy exists, rent is reduced to 25 per cent of the rent payable. For a single person on a disability pension who would usually pay 25 per cent of their income in rent, this is \$30 per week, double what a public housing resident pays.<sup>93</sup> There is nothing in the policies as to what happens to service fees during the period, or how the rent of other residents living at the property is calculated or impacted.

The consequence of the inconsistent policies has real outcomes for our clients. Depending on whether you are in public housing, or which community housing you live in, can mean the difference of a stable home to return to after a difficult life experience, or eviction into homelessness.

## Examples of difference in quality of policies for social housing tenants

### Disability modification

When a resident's needs change because they are aging, other health reasons or disability, modifications to a home make them safer and more comfortable to live in. If disability modifications are not made, people with disabilities have few avenues to turn to. The fact that they are housed makes them ineligible for the priority waitlist. People with disabilities may be left living in unsuitable housing to avoid homelessness.

A heavy fire door needs to be opened each time Jonathan enters or leaves his apartment, it is hard for Jonathan\* to do from his wheelchair. He cannot access the cupboards in his kitchen,

<sup>90</sup> Estimated annual cost to government services of an individual experiencing homelessness is \$29,450 higher than for the rest of the Australian population. See Zaretsky K. et al, Australian Housing and Urban Research Institute (AHURI), *The cost of homelessness and the net benefit of homelessness programs: a national study: AHURI Final Report No 205* (2013) 14

<sup>91</sup> See Housing First, [Financial Hardship and Temporary Absence Policy](#) (July 2021); Housing Choices, [Financial Hardship and Temporary Absence Policy](#) (June 2021); YWCA [Temporary Absence Policy](#) (March 2021)

<sup>92</sup> Unison Housing, *Rent Policy* (May 2021) [3.11] Available at: [https://unison.org.au/cms\\_uploads/docs/rent-policy.pdf](https://unison.org.au/cms_uploads/docs/rent-policy.pdf) Accessed: 18 September 2021.

<sup>93</sup> Calculation is based on Disability Support Pension for single person assuming the maximum pension supplement and energy supplement: \$476.35 per week. Rent calculated at 25% of this income is \$119.09: the temporary absence amount is 25% of this at: \$29.77. There is nothing in the policy as to what happens to service fees during the period, or how other residents living at the property's rent is calculated or impacted.

everyday tasks are difficult and unsafe. Jonathan's occupational therapist recommended alterations be made to his home to assist him with everyday living.

Jonathan lives in community housing specially targeted at assisting people with disabilities to maintain their home. Despite this, his request for modifications have been refused. His community housing provider insists modifications must be paid for through National Disability Insurance Scheme (NDIS). Jonathon does not receive NDIS support (there is some hope he might recover and without a permanent disability he does not qualify for NDIS).

The application of this policy seems inconsistent with the community housing provider's performance standard "...facilitating access to support for social housing applicants and tenants with complex needs."<sup>94</sup> So his lawyer made a complaint to the Housing Registrar. The Housing Registrar found the community housing provider acted consistently with their policy and met the relevant Performance Standard.

There are no other options of appeal for Jonathon. He continues to live in the house unmodified. Everyday tasks for him are more difficult and unsafe. Given he has a home, Jonathan is no longer on the priority waitlist. He would not be able to find or afford alternative housing.

The Department's Tenancy Manual policies in relation to special accommodation requirements: clearly outlines who the policy applies to, when modifications will be made, and how the process will be documented. The detail of the policy includes: relevant Charter considerations, the application process and required documentation, type of modification and examples (minor, major and full modification), process for which housing officer makes the assessment, installation of modification, NDIS, qualifying conditions and geographical locations for cooling, definition of health practitioners. Key principles of policy includes: considering individual needs, fair and transparent decision making and maximising efficient use of money, including use of NDIS where appropriate.

The standards between community housing providers vary widely, which means some people have access to housing that is modified to meet their needs, and others are left unable to modify their property or left to pay for it themselves. Take for example the largest community housing providers in our catchment: generally, the policies are half as long, less detailed and without clear information about how requests will be handled and what to do if a renter is unsatisfied with the outcome. The Charter is referred to by just one of these providers, but only to list the Charter as a further reference.

**Housing Choices:** outlines all requests will be made on a case-by case basis. Specifying that request must specify the 'urgency of the modification, the type of modifications required and how they will be funded if the request is for Housing Choices Australia to complete the work'.<sup>95</sup> They list a range of what the Manual would classify as minor modifications that are

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<sup>94</sup> Housing Registrar, *Performance Standards for Registered Housing Agencies* (Report, Department of Treasury and Finance, 1 July 2014) 3 <<http://www.housingregistrar.vic.gov.au/Publications/Performance-standards-and-evidence-guidelines>>.

<sup>95</sup> Housing Choices, *Making Changes to Your Home* <<https://www.housingchoices.org.au/residents/victoria/making-changes-to-your-home>> Accessed: 18 September 2021.

'likely to be approved', such as grab rails, door handle locations, wheelchair charging stations, heating/cooling.<sup>96</sup>

**Housing First:** Policy is three pages long and refer to renters' rights under the *Residential Tenancies Act*. Clearly defines what is a disability and that Housing First cannot refuse request for disability modification. While each matter will be considered on a 'case-by-case' basis, the policy sets out the considerations: property attributes, cost and suitability of alternatives, current and future needs of household and future applicants, funding sources available. The Charter is referred to in 'related information' list.<sup>97</sup>

**Unison:** A three page policy, outlines that a person needs permission for modifications and that they may be able to access a payment plan to make the modifications. However, a payment plan is only available 'where a modification is necessary for health and other reasons, if other funding such as NDIS and support grants have been exhausted, and tenant is not in rental arrears and transfer is not an option'.<sup>98</sup> Any changes made to the property must be reinstated at the renter's cost at the end of tenancy. Process to appeal decision is set out in the policy. It appears renters are expected to pay for all modifications, this is not clear in this policy but implied by the payment plan option. The previous policy (in place until July 2021) stated: 'Tenants will bear the cost of all Alterations and Modifications both Essential and Non-essential works prior to commencing'.<sup>99</sup>

**YWCA** Responding to modification requests YWCA seeks to balance to priorities: 'responding to a tenant's changing housing needs is part of sustaining their tenancy' and financial and contractual limitation of managing properties. Considerations for approving request: documented – supported by professional opinion, necessary to sustaining the tenancy, feasibility, reasonable – taking into account asset management plan and costs. Outlines process for considering alternatives if the request is rejected, including the tenant pays or finds alternative funding source. The policy steps out the process for the housing officer, and clearly states the Housing Operational Manager is responsible for the policy. The Human Rights Charter is not referred to, nor a process of appealing the decision.<sup>100</sup>

Social Housing Residents should have an expectation that their home will be able to meet their needs, allow them to age in place or support them if disability occurs.

For a person in one social housing home to receive the disability modification they need, and for another not to, or to be required to pay for it through a payment plan, is inequitable. And amongst the housing providers there is an inequity too: those that support their renters well may have greater financial burden, making them less able to effectively manage their stock. Community housing providers should have a level-playing field, and not be compelled to cut-corners on renters'

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<sup>96</sup> Housing Choices, *Making Changes to Your Home* < <https://www.housingchoices.org.au/residents/victoria/making-changes-to-your-home> > Accessed: 18 September 2021.

<sup>97</sup> Housing First *Modification Policy* (July 2021) < [https://www.housingfirst.org.au/images/policy\\_documents/Modifications-Policy.pdf](https://www.housingfirst.org.au/images/policy_documents/Modifications-Policy.pdf) > Accessed: 18 September 2021

<sup>98</sup> Unison Housing, *Renter Changes to a Property Policy* (July 2021). Available at < [https://unison.org.au/cms\\_uploads/docs/renter-changes-to-a-property-policy.pdf](https://unison.org.au/cms_uploads/docs/renter-changes-to-a-property-policy.pdf) > Accessed: 18 September 2021.

<sup>99</sup> Unison Housing, *Alteration and Modification Policy* (July 2020)

<sup>100</sup> YWCA National Housing, *HOT31 Modification Request Policy*. Available at < <https://www.ywcahousing.org.au/wp-content/uploads/2019/12/HOT31-Modified-Housing-Requests.pdf> > Accessed : 18 September 2021.

rights. If individual providers cannot support disability modification because of financial limitations, a funding or grants system should be developed.

### Anti-social behaviour

One of the ways the various community housing policies can be compared is by looking at the depth, precision, and consideration of human rights.<sup>101</sup>

Neighbour disputes are complex. People with experiences of mental ill health can exhibit behaviours that are difficult to live near: loud talking or music, substance dependency, hoarding.

Eviction due to anti-social behaviour (through process of breach of duty notice and compliance order)<sup>102</sup> is not uncommon and often linked to experiences of mental ill health. Well considered 'good neighbour' policies have significant role in sustaining complex tenancies and avoiding evictions into homelessness. Once a person is homeless again, the costs on the mental health and justice system amplify.

|   | <b>DFFH</b>                                  | <b>Unison</b>                        | <b>Housing First</b>                  | <b>Housing Choices</b>                          | <b>YWCA Housing</b>                 |
|---|--|--------------------------------------|---------------------------------------|---|-------------------------------------|
| Neighbourly Behaviour Policy, Anti-Social Behaviour Policy or Tenancy Breaches Policy | Yes<br>26 pages<br>Updated July 2017         | Yes<br>3 pages<br>Updated April 2019 | Yes<br>3 pages<br>Updated May 2019    | Yes (webpage only)<br>2 pages<br>Unknown update | Yes<br>4 pages<br>Updated June 2021 |
| Defines anti-social behaviour   | Yes - cites <i>Residential Tenancies Act</i> | No                                   | Yes                                   | Yes   | Yes                                 |
| Examples of anti-social behaviour   | 8  | 0                                    | 8                                     | 6   | 10                                  |
| Procedure clearly explains steps tenant manager will take in case of tenant breach    | Yes  | Yes                                  | No                                    | No  | High-level principles               |
| Procedure clearly explains how human rights are considered                            | Yes  | No                                   | No - but mentions Human Rights Impact | No  | No                                  |

<sup>101</sup> [Appendix A](#)

<sup>102</sup> See *Residential Tenancies Act 1997* (Vic) ss 208-209.

|                           |    |   |            |   |   |
|---------------------------|----|---|------------|---|---|
|                           |    |   | Assessment |   |   |
| Reference to human rights | 50 | 2 | 5          | 0 | 6 |

## Publicly available policies and procedures

The *Performance Standards for Registered Housing Agencies* (Performance Standards) require that community housing providers make their policies readily available in a range of formats.<sup>103</sup> It is a breach of the Housing Act for community housing providers to fail to comply with these Performance Standards.<sup>104</sup>

It was not until the Housing Registrar issued a Guidance Note on 11 February 2019, to all registered agencies requiring them to make available and publish policies in key areas of tenancy management and rent calculation, including evictions, rent setting, repairs and arrears management, that policies became more readily available.<sup>105</sup> The current Performance Standards have been in place since 1 July 2014, yet it was only five years on that this standard was implemented.<sup>106</sup>

However, access to policies and procedures still remains an issue for our community lawyers when representing renters. In preparation for this submission, the researcher who prepared the policy comparisons in [Appendix A](#) contacted two community housing organisations in our neighbourhood, requesting details of their procedures: she received no reply to her emails and got nowhere during follow up phone calls. When a Freedom of Information Request was made to the Housing Registrar relation to policies from the community housing organisations, the responses were:

- procedures were on the website, which they are not, or the documents are internal only and not submitted to the Housing Registrar; and,
- they were in the process of reviewing the policies that were requested, and so had taken them off of their website while under review, the policies were uploaded in response to the FOI request.<sup>107</sup>

Community housing renters should be able to easily access the policies and procedures that relate to their tenancies.

<sup>103</sup> Indicator '1.1 The registered agency makes information about its tenancy management policies and procedures available in a variety of formats.' Ibid, 3.

<sup>104</sup> Ibid.

<sup>105</sup> Housing Registrar, *Guidance: Agency Publication of Key/Online Policies* (Guidance Note, 11 February 2019) <<http://www.housingregistrar.vic.gov.au/How-we-regulate/Guidelines-for-agencies>>.

<sup>106</sup> Housing Registrar, *Performance Standards for Registered Housing Agencies* (Report, Department of Treasury and Finance, 1 July 2014) 1.

<sup>107</sup> [Appendix A](#)

## Practical reason for model policies

Having model policies would make it easier for social housing renters to know and be able to exercise their rights. This is a key principle Community Housing Industry Association and legal assistance sector seek to achieve from this Review:

3. *Every social housing renter allocated from the Victorian Housing Register should know and be able to exercise their rights.*<sup>108</sup>

Model policies would establish a standard across social housing to ensure all providers are on an even playing field, and that social housing renters standards are not undermined for a financial return.

Moreover, having consistent standard policies would assist community housing providers so they do not all individually need to allocate resources to develop and maintain policies. This is clearly a requirement that many providers struggle to adequately meet. This is evidence by policies being poorly written and constructed or with simple errors. For example:

*Alternation and Modification Policy* (amended July 2021): Despite saying in pinpoint, 3.1 that tenants are able to make some modifications to their property without approval. Pinpoint 3.6 states: “An alteration to a property, fixture or fitting without written permission breaches the RTA [*Residential Tenancies Act 1997*] and action can be taken in the Victorian Civil and Administrative Tribunal (VCAT), to request at that the tenant remove the alternation, repair any goods damaged by the removal of the alteration or to terminate the tenancy.”

If a housing officer was to follow this policy, they could easily be misled about their responsibilities as social housing landlords and the provisions of the *Residential Tenancies Act 1997* (Vic) which allows renters to make permitted modifications to residential properties without written request.<sup>109</sup> If the modifications are not permitted, the relevant action could be a Breach of Duty notice, which could put the renter on the path to eviction.<sup>110</sup> However, the tone of this policy in elevating the process to terminating the tenancy does not appear consistent with the Performance Standard that eviction be an option of last resort.<sup>111</sup>

## Recommendations: Knowing Renters’ Rights – Access to Consistent and Transparent Model Rules

10. That Model Rules be developed for the community housing sector that are of a standard equivalent to the tenancy management policies of Department of Families, Fairness and Housing (DFFH) including, but not limited to the key areas of temporary absence, disability modifications, internal appeals, rent setting, arrears and evictions.

<sup>108</sup> Community Housing Industry Association, Tenants Victoria, Inner Melbourne Community Legal, Justice Connect, West Heidelberg Community Legal Centre, Victoria Legal Aid, WEstjustice, Peninsula Community Legal Centre “*Housing for All Victorians: A Statement of Shared Principles*” Joint submission to the Social Housing Regulations Review *Consultation Paper 1* (2021).

<sup>109</sup> *Residential Tenancies Act 1997* (Vic) s 64.

<sup>110</sup> *Ibid*, Part 5.

<sup>111</sup> Housing Registrar, *Performance Standards for Registered Housing Agencies* (Report, Department of Treasury and Finance, 1 July 2014) 3 <<http://www.housingregistrar.vic.gov.au/Publications/Performance-standards-and-evidence-guidelines>>.

11. These Model Rules should be the deemed policies of all registered housing associations and providers and should be required to be made publicly and readily available in a variety of formats.

### 4.3 An improved system for dispute resolution – Questions 39-40

An effective dispute resolution body requires enforceable rights: a precursor for any of dispute resolution body to be effective is that there are sufficient rights and protections that allow disputes to be resolved.

Problems with the current system:

- Social housing renters require legal assistance to effectively exercise their rights;
- Housing Registrar is ineffective in resolving community housing renters' disputes;
- VCAT does not have jurisdiction to investigate Human Rights Charter consideration;
- Victorian Ombudsman's jurisdiction to investigate community housing providers is unclear;

#### Comparing the dispute resolution

##### Public housing

Public housing tenancies are governed by a strong regulatory framework. Decisions of Department of Fairness, Families and Housing (DFFH) are made according to detailed, publicly-available policies that outline how management decisions should be made. This supports housing staff at all levels to make fair and consistent decisions. These policies make it easier to resolve disputes.

If a renter is not satisfied with the Department's decision, she:

- (1) Makes an internal complaint with the Local Housing Officer: a Tier 1 Complaint.<sup>112</sup> The Tier 1 Complaint must be completed within 10 business days.<sup>113</sup>
- (2) Unsuccessful complaints escalate to Tier 2 Complaint to Housing Appeals Office,<sup>114</sup> which is independent to the Local Housing Office.<sup>115</sup> The Housing Appeals Office looks at the decision of the Local Housing Office level and is able to remake the decision on the merits of the case.<sup>116</sup>
- (3) If still not satisfied with the response the renter can:
  - a. Appeal to Supreme Court for judicial review of the decision,<sup>117</sup>

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<sup>112</sup> Department of Families, Fairness and Housing, *Business Practice Manual – Housing Appeals* (May 2017), 10.

<sup>113</sup> Ibid, 12-13. Sometimes the Tier 1 decision maker will request additional documents from the complainant or others, which will result in an extension of time being requested by Tier 1 decision maker to the Manager of Housing Appeals (MHA) for consideration, and this may also result in an extension of time on the 10 business day response time.

<sup>114</sup> Ibid 10, 13.

<sup>115</sup> Ibid 12.

<sup>116</sup> Department of Health and Human Services. *Business Practice Manual – Housing Appeals* (Victorian Government, May 2017) [14]

<sup>117</sup> *Burgess & Anor v Director of Housing & Anor* [2014] VSC 648.

- b. Make a complaint to the Victorian Equal Opportunity and Human Rights Commission<sup>118</sup>
- c. Make a complaint to the Victorian Ombudsman.<sup>119</sup>

At each stage, the decision-making process and the decision maker are subject to the *Freedom of Information Act 1982* (Vic) (**FOI Act**). For the renter this allows them to know how and why the decision has been made.

While in practice tenants may not go to the Housing Appeals Office directly themselves, the Housing Appeals Office plays a significant role in promoting better decision-making processes at the Local Housing Office.

To improve the process, as discussed above, allowing merits review of the Housing Appeals Office in VCAT would go a long way to promoting a low-cost, consistent decision making. Currently, Housing Appeals Office decisions, including those involving the Charter, must be appealed in the Supreme Court.

The Victorian Ombudsman can be an effective body to complain to in order to achieve systemic change for public housing renters. For example, having a maintenance debt previously prevented a person from receiving further housing offers. Maintenance debts can be incurred from the cost of damage to property, cleaning, or removal goods left behind. That such debt prevented a renter from receiving an offer of housing was inordinately harsh, particularly when the debt incurred was not the renter's fault. Renters who fled family violence, whose place was damaged by a former partner or by squatters while it was empty were all unfairly impacted.<sup>120</sup> They would have to accept responsibility for the damage done to the property and start paying it back before an offer of housing could be made.<sup>121</sup> After the Victorian Ombudsman report *Investigation of Management Claims against Public Housing Tenants*,<sup>122</sup> the Department implemented key recommendations made by the Ombudsman, significantly stopping the practice of requiring payment, or payment plan of the maintenance debt in dispute, prior to an offer of housing.<sup>123</sup> Additionally, the Department improved policies' compliance with Human Rights Charter<sup>124</sup> and model litigation practices.<sup>125</sup>

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<sup>118</sup> Department of Families, Fairness and Housing, [Business Practice Manual – Housing Appeals](#) (May 2017), 10.

<sup>119</sup> For an example of this see Complainant A in the Victorian Ombudsman's [Investigation into the management of maintenance claims against public housing tenants](#) (October 2017) 6, 11-12.

<sup>120</sup> See Case-studies Tenant A, Tenant B, Victorian Ombudsman, *Investigation of Management Claims against Public Housing Tenants* (October 2017), 5, 11, 34.

<sup>121</sup> See Case-study Tenant C Victorian Ombudsman, *Investigation of Management Claims against Public Housing Tenants* (October 2017), 72 [331-334]

<sup>122</sup> Victorian Ombudsman, *Investigation of Management Claims against Public Housing Tenants* (October 2017).

<sup>123</sup> *Ibid*, Recommendation 2, 91.

<sup>124</sup> *Ibid*, Recommendation 1, 91.

<sup>125</sup> *Ibid*, Recommendation 6, 91.

## Housing Registrar

For renters in community housing the Housing Registrar is largely ineffective. Section 97 of the Housing Act allows a renter to make a complaint to the Housing Registrar about a decision of a community housing provider “on matters relating to rental housing”.<sup>126</sup> However, the Housing Registrar interprets this jurisdiction narrowly. Inner Melbourne Community Legal has attempted to engage the Housing Registrar in renter complaints and have found they either find there is no issue with the interpretation of the policy (see Jonathan’s story above), or that they do not have jurisdiction.

The jurisdiction issue arises, as s 96(2) provides that the Housing Registrar does not have power to deal with complaint that can be resolved by VCAT under the Residential Tenancies Act. Given that ss 452 and 472 broadly describe that VCAT can hear any dispute in relation to a residential tenancy agreement, which means there is not much ‘relating to rental houses’<sup>127</sup> within the scope. Community legal centres have put the position that the Housing Act would anticipate that there was some work for s 97 to do. However, Housing Registrar insistence on a narrow reading of their role, has meant that the complaint mechanism is rarely used by community housing renters.

### Difficulties engaging the Housing Registrar on systemic issue

John’s case is outlined above. He was an Inner Melbourne Community Legal (IMCL) client who was seeking clarification of his rent calculation and changes to the practice of bundling the rent amount with services charges, to bring it in line with his community housing provider’s policy and the Residential Tenancies Act. When IMCL brought a complaint regarding John’s matter to the Housing Registrar, it was reluctant to intervene. Though it acknowledged the bundling practice was not appropriate and contrary to the provider’s rent calculation policy, it declined to compel the community housing provider to alter its rent invoices.

Inner Melbourne Community Legal was forced to apply to VCAT to have it determine the matter, which was settled in John’s favour. However, the community housing provider still refused to alter its rent invoices for other renters (who had also contacted IMCL for assistance in the matter). Unlike VCAT, which can only determine a matter before it, the Housing Registrar could have played a role to systemically change the provider’s practices for all renters.

The Housing Registrar eventually facilitated a meeting with all parties present and pressured the community housing provider to act in good faith and in line with the VCAT settlement. After some months, and an extensive use of IMCL’s resources, the community housing provider altered its practice to all renters in the building where John lived. Had the Housing Registrar taken a more interventionist approach to this matter, a far earlier and more efficient resolution might have been achieved.

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<sup>126</sup> *Housing Act 1983 (Vic)* s 97.

<sup>127</sup> *Ibid* s 96(2)

Whether Housing Registrar is the correct body to resolve community housing renter complaints is worth considering. There is an inherent conflict in the Housing Registrar's remit. The Housing Registrar includes its purpose is to:

- 'Provide strong prudential oversight of government investment in the community housing sector' and ensure community housing assets stay in the sector
- 'Promote market confidence' in the sector
- Take a 'risk-based approach to undertake regulatory engagement'<sup>128</sup>

This is alongside addressing community housing renters' rights and community housing providers adherences to performance standards, such as eviction as a last resort.

Financial management will at times be in conflict with renters' rights. For example, supporting renters to stay in their homes may be an economically poor decision, if it exposes a provider to further rental arrears. Similarly, tolerating issues around poor renter behaviour might not accord with promoting 'market confidence'. The body that oversees financial, asset and risk management should not be the same body that resolves renters' disputes; such a regulator is not impartial or independent in matters of renters' rights.

## Housing Ombudsman vs Strengthening VCAT

The Victorian Ombudsman has shed light on public housing management practices, achieving real change for tenants.<sup>129</sup> The model works best when addressing systemic issues, rather than individual complaints. We believe access to the Victorian Ombudsman should be extended to community housing renters.

For a renter focused model however, the creation of a new Social Housing Ombudsman would shift focus away from the renter onto the system. Dealing with government administration, and ensuring oversight of industries are what an Ombudsman (when resourced and given sufficient powers) is effective at.<sup>130</sup> Social housing renters need this and more, they require enforceable rights to assist them address the power imbalance between renter and landlord. An Ombudsman office is not a regulator or advocate.<sup>131</sup>

An Ombudsman takes the initial complaint and ensure the laws have been upheld, or provides recommendations for where the laws could be improved. When the Fair Work Ombudsman litigates underpayment of wages claims, they are not litigating for worker who was underpaid, but rather against the company for failure to comply with the workplace laws.<sup>132</sup> The worker may benefit from a

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<sup>128</sup> See Housing Registrar website *The Role of The Housing Registrar*. Available at <<https://www.vic.gov.au/Role-of-the-Housing-Registrar>> Accessed on: 21 September 2021.

<sup>129</sup> See Case-studies Tenant A, Tenant B, Victorian Ombudsman, *Investigation of Management Claims against Public Housing Tenants* (October 2017).

<sup>130</sup> See Types of Ombudsman Offices, Australian and New Zealand Ombudsman Association, *Essential Criteria For Describing A Body As An Ombudsman* Available at <[http://www.anzoa.com.au/assets/anzoa-policy-statement\\_ombudsman\\_essential-criteria.pdf](http://www.anzoa.com.au/assets/anzoa-policy-statement_ombudsman_essential-criteria.pdf)> Accessed: 9 September 2021.

<sup>131</sup> Ibid.

<sup>132</sup> Fair Work Ombudsman, *Compliance and Enforcement Policy* (July 2020), 10.

compensation order; however, the purpose of the litigation is to promote compliance with Commonwealth workplace laws.

We believe a rights-based approach, or as the Review puts it, a tenant-focus approach is preferable as the primary means for resolving disputes. Consist with a rights-based approach is to allow the tenant to be part of the process, provide instruction, and have a say in whether the outcome is acceptable. To achieve this, VCAT should have an expanded role, with improved access. The role would be expanded as already discussed: allowing for merit-review and to adjudicate breaches of the Human Rights Charter.

If there were to be a Social Housing Ombudsman it should have the powers to: investigate individual complaints and power to make a binding order and provide a remedy to the renter.

### **Social Housing Inspectorate**

The power imbalance between renters and landlords is pronounced, particularly for social housing renters who have languished on a waiting list for a long time and know they cannot afford to rent in the private market. To make a complaint is difficult, and many rarely risk disrupting the relationship they have with housing managers to do so. The reservations are heightened when you have already been pushed to the margins if you are from a culturally and linguistically diverse background, have experience of mental ill health, have been criminalised, experienced trauma and poverty.

The system should not put the onus on social housing renters to speak up.

Inner Melbourne Community Legal has partnerships and relationships with many health and homelessness support services. Many tell us about the difficulties their clients face with their community housing landlords. Yet, few felt able to make a submission or public statement to this Review. The relationship between service providers and housing providers is a necessity for services supporting people at risk of, or experiencing homelessness. Additionally, support services have told us they would not like to speak up for fear the people they support in community housing might be identified and harassed.

Proper dispute resolution systems need to understand the power imbalance and complicated network of service reliance. There must be an inspectorate that runs self-initiated investigations of social housing providers and allows people to make anonymous tip-offs. An inspectorate must have powers to issue enforceable orders to remedy situations for renters. Their role would be to promote and monitor compliance of the rules, regulations and laws in regards to social housing organisations.

Currently non-monetary orders from VCAT can only be enforced in the Supreme Court,<sup>133</sup> and monetary orders in the Magistrates' Court.<sup>134</sup> Simplifying the enforcement of VCAT orders was a recommendation from the Access to Justice Review that is still to be implemented.<sup>135</sup> Having a Social Housing Inspectorate that is able to enforce non-monetary orders would be a more efficient and low-cost method of enforcement than taking cases to the Supreme Court.

The Social Housing Inspectorate would expand on the inspectorate functions of the Housing Registrar and Consumer Affairs Victoria, putting the functions in one agency and with powers to investigate both community and public housing.

## Mediation

Following conversations with the Department of Justice and Community Safety, work is being done by community legal centres on assessing and providing alternative dispute resolution options for residential tenancies. While mediation in the area of residential tenancies is an oft-visited policy area, there is renewed interest following the hastily assembled Residential Tenancies Dispute Resolution Service to support the COVID-19 renters' eviction moratorium. Given the power imbalance between renters and landlords caution is needed before introducing a mediation scheme.

For social housing renters there could be some advantage in allowing renters to raise issues with their housing management in a mediated space. This may prevent matters unnecessarily escalating. However, the renter must want to engage with the landlord in mediation. Parties should not be forced, whether directly or indirectly to engage in mediation. Renters should have someone with them who is able to advocate for them, ideally legal assistance, during the mediation process. Mediation should always be an optional alternative, with renters unprejudiced from enforcing their rights through formal dispute resolution in the event it is unsuccessful. There are a range of dispute topics that would be suitable to voluntary mediation prior to being heard at VCAT.

Key considerations are:

- That mediator is skilled in recognising and understanding the impact of power imbalance inherent in the renter/landlord dynamic and any vulnerability the renter has;
- The mediator should be well-trained in the Human Rights Charter and the special duties Social Housing Landlords have to support and sustain tenancies;
- That both parties should voluntarily agree to participate in mediation;
- Mediation should be limited to certain matters such as repairs, compensation, bonds, and arrears (at the early stage only);

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<sup>133</sup> *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 122.

<sup>134</sup> Provided cost are within the jurisdictional limit of the Magistrates' Court which is currently \$100,000. *Victorian Civil and Administrative Tribunal Act 1998* (Vic) s 121.

<sup>135</sup> Department of Justice and Regulation, *Access to Justice: Report and Recommendations Volume 1* (2016), Recommendation 5.9, 288. The recommendation was agreed to in Attorney General, *Government Response to Access to Justice Review*, available at < <https://s3.amazonaws.com/hdp.au.prod.app.vic-engage.files/1214/9542/9362/AccessToJusticeGovtResponse201705.pdf> > Accessed: 18 September 2021.

- Mediation should not be used in eviction matters;
- Behavioural matters or neighbourhood disputes may benefit from mediation, this should be trialled first to ensure all participants feel supported and heard. Voluntary participation in these matters would be critical for successful mediation and should not occur without renters having an advocate to support them;
- Ability to opt-out of mediation and proceed to VCAT without prejudice to either party.

Given the power imbalance between renters and landlords it would be important to trial a mediation program to ensure it does not further entrench the power imbalance social housing renters experience. Legal representation should be available to renters prior and during the mediation session. Clear records of decisions should be kept.

### **One system for social housing renters' complaints – Questions 45-46**

Streamlining the system for social housing renters complaints, would create greater equity, assist renter access and be more efficient.

Putting tenants at the centre requires a rights based approach, rather than top-down systemic overview. To make the system as easy as possible without mistaking simplicity for reduction of rights is critical.

There could be benefit for social housing renters in a single social housing renters complaints body (which is separate from the Housing Registrar's financial oversight), pulling the following dispute resolution elements together:

- Housing Appeals Office for public and community housing tenants;
- Social Housing Inspectorate
- Mediation Service
- Expanded role for VCAT to conduct merit review of Housing Appeal Office decisions (or should a combined Housing Appeals Office not be created, to hear application of Human Right Charter breaches)

A Housing Tribunal could be established within VCAT (or on its own), expanding the function of the current VCAT Residential Tenancies List. Matters would be appealable to the Supreme Court.

## Housing Tribunal

### Tribunal

- Disputes under *Residential Tenancies Act 1997* (Vic)
- Merits review of Housing Appeal Office decisions
- Jurisdiction to determine Human Rights Charter matters

### Social Housing Inspectorate

- Power to self-initiate investigate social housing providers, make and enforce orders
- Provide education and training resource on compliance
- Renters can make anonymous complaint

### Housing Appeals Office

- Appeal of decisions made under public and community housing policies and procedures
- Consider breaches of Human Rights Charter

### Mediation

- Mediation where voluntarily agreed to by both parties.
- Decisions are clearly documented
- Ability to opt-out of mediation and proceed to VCAT without prejudice to either party

### Recommendation: Robust Accountability

12. Establish the Social Housing Inspectorate to promote, monitor, and enforce compliance with social housing rules, regulation and laws.
13. That the Victorian Government amend legislation in order to:
  - a) Create a central Housing Appeals Office to oversee complaints of both public and community housing tenants.
  - b) Require that the central Housing Appeals Office must provide a remedy to the tenant if a complaint is upheld.
  - c) Enable both landlords and renters to apply to VCAT for merits review of decisions of a central Housing Appeals Office.
  - d) Should recommendation a) not be adopted, VCAT should be granted jurisdiction to hear applications regarding breaches of Human Rights Charter for community housing renters

## 4.4 Independence in integrated services

### Independent support services – *Questions 42, 44*

Integrated services to support renters sustain their tenancies has benefits for social housing renters and the wider community. As Council of Homelessness Persons pointed out Tenancy Plus cost \$2000 per renter in a program has demonstrated high sustainment of tenancies: the cost of crisis accommodation for a person evicted into homelessness is \$34,000 a year.<sup>136</sup> Integration must not come at the expense of independence.

Housing First is a ‘well established’ best practice for ending homelessness as the Consultation Paper puts it.<sup>137</sup> It should not be forgotten that a ‘critical element’ of the Housing First model, is separation of housing and support services.<sup>138</sup> The separation element is crucial because if a person has trouble in one area (say mental health) it does not cause problem in another area (the loss of their home), or vice versa.<sup>139</sup>

We are concerned to hear reports of housing providers registering as NDIS support providers, or home care packages being buddled up in housing provision. Recent news report showed the predatory behaviour of “pop-up” accommodation that is providing Support Residential Services and NDIS service provision.<sup>140</sup>

Social Housing renters should not be forced, or compelled, into using the services provided by their housing provider. We believe there should be a clear separation between housing and support services, the same provider should not be able to provide both to one person. Consumer choice is a key element of NDIS, denying that choice to move providers, or even criticise the service you are being provided for fear of reprisals from your landlord, is unacceptable. The practice should be banned before it becomes widespread.

### Independent advocacy – *Questions 41, 43*

Providing early legal assistance to renters is critical in sustaining tenancies, addressing urgent repairs and ensuring the cost of rent is within a person’s means.

The Tenancy Plus program provides support and where tenancies are at risk of eviction, however it does not provide any legal assistance nor does it have capacity to assist with issues such as rent setting, repairs and other tenancy rights.<sup>141</sup>

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<sup>136</sup> Productivity Commission, *Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services*, Report No. 85, Canberra (2017) 233.

<sup>137</sup> Social Housing Regulation Review, *Social Housing in Victoria: Consultation Paper 2 – Service Delivery and the Tenant Experience* (July 2021), 26.

<sup>138</sup> Johnson, G. et al. *Policy shift or program drift? Implementing Housing First in Australia*, AHURI Final Report No.184. Melbourne: Australian Housing and Urban Research Institute (2012), 6.

<sup>139</sup> Ibid, 6

<sup>140</sup> Royce Miller, Jewels Topsfield, [“Ugly turf war as service providers tussle over NDIS clients with disabilities”](#) *The Age* (20 September 2021)

<sup>141</sup> Department of Health and Human Services, *Tenancy Plus – Tenancy Support Program Operational Guidelines* (October 2019, See prioritisation triggers/guidance, 3.

Inner Melbourne Community Legal assists social housing renters at our tenancy clinic and through our outreaches with homelessness support services, and integrated services with schools and hospitals. The support we provide is holistic, as rarely does a person have one legal issue, but complex mix of issues which a critical component of integrated support services people rely on to sustain their tenancies. Services like Inner Melbourne Community Legal tenancy clinic are not provided through specific funding to assist people in social housing. Providing more support and advocacy for social housing renters would create a more robust and accountable system, helping renters' voices to be heard, sustain tenancies and ensures people thrive.

**Recommendation: Renters' choice in service provision – Independent integrated services**

14. Prevent conflict of interest and ensure vulnerable renters are protected by banning housing providers from providing support services directly to their renters, or housing providers mandating the use of a preferred support service provider.
15. Expand legal assistance provision beyond Tenancy Plus to provide early legal support for renters to prevent problems escalating and evictions into homelessness.