

19 July 2021

Review Panel
Social Housing Regulatory Review
PO Box 55
East Melbourne 3002

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

Dear Review Panel

Joint community legal centre submission in response to Consultation Paper 1 of the Review of Social Housing Regulation.

We are a group of community legal centres that provide assistance to people with tenancy related legal needs. We predominantly work with tenants experiencing disadvantage. We practice across the housing landscape including private rental, public and community housing.

We welcome the opportunity to participate in this Review which comes at a critical juncture for social housing in Victoria.

We attach a response (including appendices) to the Panel's Consultation Paper 1 – Background and scoping paper.

We look forward to engaging further throughout the course of the Review.

Please direct any queries to [REDACTED]

Yours faithfully

Jennifer Beveridge
CEO
Tenants Victoria



Samantha Sowerwine
Head of Community Programs
Justice Connect – Homeless Law



Damian Stock
CEO

Inner Melbourne Community Legal



Alex Walters
Principal Managing Lawyer – Civil
and Human Rights Practice
Victorian Aboriginal Legal Service



**Victorian Aboriginal
Legal Service**

Jackie Galloway
CEO
Peninsula Community Legal Centre



Stephanie Price
Principal Lawyer
West Heidelberg Community Legal



Franky Baine
Managing Lawyer, Criminal, Outreach &
Generalist Services
Fitzroy Legal Service



Melissa Hardham
CEO
WEstjustice

WEstjustice

A fair regulatory system will deliver 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.

We commend the Panel's foregrounding of access to safe, suitable, and adequate housing as essential to "the inherent dignity and well-being of the person". In our view, the design and operation of a fair social housing regulatory system will be underpinned by this principle. To realise this principle, we suggest that a fair regulatory system must identify, concretely, what are the characteristics of adequate housing.

As the Panel notes, adequate housing is more than merely the provision of shelter. It is housing that is *safe* – of good physical quality, subject to responsive and scheduled maintenance, provides adequate space and privacy for occupants, *suitable* – well located and accessible, *secure* – ongoing tenure and absent forced moves, and it is *affordable* – rent is pegged to income, including any fluctuations, is less than 30% of general household income and rent calculation policies are consistent and transparent.

Whether community and public housing is subject to a joint or parallel regulatory model, a fair system is premised on an expectation that social housing arrangements will deliver these key renter outcomes.

Positioning positive renting outcomes as central to the regulatory system will ensure that government investment in community and public housing delivers strong social outcomes that support individuals and communities to thrive. The social and economic costs of homelessness and housing insecurity are well known. How we measure outcomes for renters must deliver on the aim of providing safe, secure, appropriate, and affordable homes.

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.

There is a paucity of publicly available data about the activities of social housing landlords, particularly as they relate to renter outcomes. The data that is available, does not readily allow for the type of comparative analysis needed to provide the basis for evidence-based recommendations about best practice regulation.

For instance, DFFH publishes a relatively rich dataset (current to 2018-19) about public and community housing stock numbers, waitlists, and some useful public housing tenant demographics (age, income source, rental rebate status). Yet, it publishes no data about tenant exits (eviction or other reason), repairs, appeals or complaints. On the other hand, the Housing Registrar publishes no data about tenant demographics (age, income, rental rebate status). It does, however, publish individual CHO self-reported data about rent arrears, complaints, and repair completion timeframes. It also publishes self-reported aggregated sector data about tenancy maintenance rates and evictions (as a proportion of exits). Aggregation of this data does not allow for the comparison of exit or eviction data between CHOs or indeed with DFFH data if this were obtained. We suggest that this is the very type of analysis that will provide the Panel with critical insights into the operation of the current regulatory landscape.

The challenges associated with using current data sets to make policy-based findings is highlighted at p.15 of the Consultation Paper 1. Here, VCAT application data is cited as evidence that the Director of Housing sought to evict around 6 percent of households in 2019. DFFH eviction data and VCAT warrant data would show that most of these applications did not result in eviction, and instead were resolved without termination of the tenancy. Similarly, relying on Housing Registrar data, a figure of 7 percent is cited as the proportion of community housing tenants evicted in 2019. In fact, though it is not very clearly expressed in the Housing Registrar's reports, this figure is likely to show that 7 percent of tenancy exits from community housing are the result of eviction. So, while on their face these two data measures look broadly comparable, they are not. Crucially, neither provide an interested inquirer with an answer to the question: how many, or what proportion, of tenants in community and public housing were evicted in 2019?

Given the significance of this Review, we believe it is important that the Panel gathers sufficient data to establish a clear understanding of how the current regulatory landscape operates in practice across and within different types of social housing. While each of our organisations can provide the Panel with insights based on practice experience, the Panel is uniquely placed to seek data from the Housing Registrar, VCAT and DFFH that can provide a whole of state picture of social housing regulation and practice.

We have **appended** a list of data that we suggest will provide key information about best practice frameworks to measure renter outcomes (Appendix 1). We acknowledge that the Panel may not be able to obtain all the data set out and indeed, that not all the suggested data is necessarily collected or easily retrievable by the relevant agencies. If this is found to be the case, this Review presents an opportunity to ensure that any future regulatory model/s are underpinned by open, accessible, and meaningful data. Renters, the public, Government and others should be able to see, in measurable terms, the outcomes being delivered across social housing and identify where there may be areas of concern.

There should be a clear and consistent standard of rights for everyone who lives in social housing.

With one Victorian Housing Register wait list, people can be housed in either public or community housing. A key principle should be to ensure that a person is not worse off, or left with fewer rights, based on the type of housing they are allocated. Currently there is no clear or consistent standard of rights.

As outlined in the **appended** paper, DFFH publishes a detailed operational manual, setting out the key protections available to public housing renters, which promotes transparency, accountability and enables renters and advocates to effectively engage with DFFH around expected standards within rental properties (Appendix 2). We believe this sets a benchmark for the standard of rights that all renters in social housing should expect.

By contrast, CHOs discharge a very similar housing function as DFFH, tend to have a mismatch of policies, some publicly available, others not, with no consistency for renters across the sector. Additionally, the policies tend not to be as prescriptive and detailed as the DFFH manual. In practice, this makes it challenging for CHO workers to make informed and consistent decisions as to their obligations and renter rights, and may improperly apply policies which do not offer enough guidance. An ill-informed decision by a housing worker can have significant life consequences for renters in social housing.

This “two-tier system” means there is often a lacuna in standards, accountability, and transparency in the administration of community housing tenancies. Case studies illustrative of this problem are included in the appended paper.

Creating sufficiently prescriptive, consistent and publicly available and enforceable policies for all residents in social housing will go a long way to guaranteeing standards and improving decision-making amongst providers and inform better renter outcomes.

The human rights of social housing renters must be enforceable through the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*.

The *Charter of Human Rights and Responsibility Act* (the Charter) provides an effective tool to ensure the human rights of renters in social housing are promoted and protected.

As a “public authority”, DFFH is bound by the Charter in its decision-making and cannot act in a way that is incompatible with human rights. This has ensured that human rights are embedded in publicly available policies and procedures of the DFFH.

Conversely, it remains unclear¹ as to whether the Charter applies to CHOs, notwithstanding that they are performing the same public function in the provision of social housing as DFFH. Some CHOs view themselves as bound by the Charter, but others do not. In practice, this has meant that though CHOs will often reference the importance of the Charter to their functions, many fail to consider Charter rights in their decision-making, particularly when it comes to consideration of protected characteristics. Even for CHOs that consider themselves bound by the Charter, there are often difficulties in the consistent application of Charter rights, and an inability to articulate how Charter considerations informed decision-making (as required). For renters, enforcement of those rights is a problem: Charter rights are a nullity without the ability to easily enforce them. As it stands, the enforcement of Charter rights must be brought through the Supreme Court, tethered to a judicial review ground.

To ensure equality in standards and rights for renters across the social housing sector, it is important that it is clear that the Charter applies to all providers. The review should consider what are the necessary changes the Victorian Government should make including, regulations that may prescribe CHOs as public authorities or amendments to the Charter, to ensure all social housing renters have its protection. The proposals should consider the implementation of the rights, such as ensuring all social housing providers produce public facing documents outlining how they make Charter-compliant decisions, how Charter rights are promoted, and most significantly, how to create better access to Charter rights enforcement.

The Review is an opportunity to improve protections for social housing renters.

The Review’s Terms of Reference ask that the Panel consider the “degree resident’s rights should be harmonised”. We believe that harmonisation should be a core objective of social housing regulation. Tied to this though, is our view that alignment must not be created through a diminution of existing rights. Particularly crucial is that the comprehensive set of rights and policies applicable to people living in public housing are not undermined for the goal of harmonisation. We want to put in place protections that enhance renter experiences and outcomes, informed by the principle of delivering safe, secure, appropriate, and affordable homes.

¹ See *Durney v Unison Housing* [2019] VSC 6.

Through this, we can ensure that Government investment delivers a return for all Victorians through an inclusive housing system, that allows us to care for our families, participate in our communities, and supports those of us experiencing health and social inequities, to thrive. These are core objectives by which the housing system, indeed our society, can be measured.