

21 October 2021

Social Housing Regulation Review

PO Box 55
East Melbourne 3002

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

Dear Professor Hayward,

Response to Consultation Paper 3 of the Review of Social Housing Regulation – Role of Regulation in Sector Accountability, Viability and Growth

We appreciate the opportunity to provide input into the growth and sustainability of the social housing system through the Social Housing Regulation Review. Inner Melbourne Community Legal represents renters in public and community housing and people at risk and experiencing homelessness, and our insights come from our experience in the legal system and the social challenges our clients face.

Inner Melbourne Community Legal made a full submission in response to Social Housing Regulation Review Consultation Paper 2 on 27 September 2021.

Given our resources, we were unable at the time to also address Consultation Paper 3, however we have a few key observations we wish to share with the Review Panel. Consistent with our submission, the role of regulation in the sector to provide accountability, viability and growth must be embedded in the outcomes for renters and their experience.

Interaction of contracts and regulation

The interaction of contracts and regulation is a good example of how the community housing system is still developing in Victoria. Contracts have been an important tool for government to ensure community housing organisations are able deliver safe, secure, and appropriate housing. For community housing organisations however, we can imagine having multiple contracts with Homes Victoria would make service delivery complex. As the system grows a far more effective way would be to ensure there is a minimum standard of policies and procedures governing the tenancy relationship, so governments can be confident that their investment will deliver the desired outcome, and community housing providers have a consistent standard to implement.

For example, a number of our clients living in the North Melbourne public housing estates were relocated as a consequence of the Public Housing Renewal Program. The Minister of Housing at the time, Minister Foley, committed to our clients and all public housing residents who were relocated that they would have a right to return without their rights diminished.¹

¹ Available in: Department of Health and Human Services submission No. 172, *Submission to the Legal and Social Issues Committee Inquiry into the Public Housing Renewal Program* (2019), 21.

To deliver on this commitment the Director of Housing signed a Deed Poll that included:

- “2. If you elect to return to a property in the redeveloped estate, your tenancy will continue to be governed by all generally applicable public housing policy or practice manuals published by the Director of Housing and current at that time, and your landlord will be a public authority for the purposes of the Charter of Human Rights and Responsibilities Act 2006 (Vic);
3. If you return to a property in the redeveloped estate, your rent will be calculated in accordance with the generally applicable rent calculation policies of the Director of Housing current at that time.”²

While we are not privy to the contractual arrangement with the community housing providers who will deliver the renewal programs, to deliver on this Deed would require commitment to implement the policies and procedures issued by the Director of Housing. For such requirements, it would be simpler if the renter’s rights were not required to be provided for in contractual arrangements (where one provider may have multiple and various obligation to renters in different developments) but existed in regulation the government and the sector could be confident of. Establishing consistent policies and accountability measures between public and community housing will simplify contracts and provide all parties with certainty over arrangements.

The conditions of this Deed Poll could be used in developing the Model Rules we propose in our submission.

As social housing renters have limited say over who their housing provider is, they need to be guaranteed a level of protection, service delivery and support, regardless of who their provider is. Community housing organisations can use the model rules as a floor in which they can build from. Having a set of model rules would provide community housing organisations and governments with certainty when entering into contracts, making the process more streamline and efficient.

For Profit Providers

The findings of the Royal Commission into Aged Care should act as a cautionary tale. Regulation of sector reliant on government funding to survive and provides a social mission requires leadership and cannot be left to the whims of a market.

Some of the key findings of Commissioner Briggs was that Government run sectors provided the best care, substantially better than both for-profit and not-for-profit providers.³ However, the care provided by private for-profit providers had ‘much worse quality outcomes’⁴ and the growth of private providers placed ‘further pressure on quality and safety in aged care’.⁵

² Homes Victoria, *Relocation for the Public Housing Renewal Program: operational guidelines*, (October 2018), Appendix 2. Available at https://providers.dffh.vic.gov.au/sites/default/files/2018-11/Relocations%20for%20the%20PHRP%20operational%20guidelines_Oct%202018.docx Accessed on: 5 October 2021.

³ *Royal Commission into Aged Care Quality and Safety* (Final Report Care Dignity and Respect: Summary and Recommendations, February 2021), Vol. 1, 70.

⁴ *Ibid* 50.

⁵ *Ibid*.

The Royal Commission hearings repeatedly found the issue of financial motivation and profits were put before the provision of care.⁶

The social housing system in Victoria can avoid going down the direction that Aged Care provision has in Australia. However, should the for-profit providers be permitted to enter the system the move would be difficult to undo. The outcomes for the provision of social housing would likely be that it would be more expensive and poorer quality.

Affordable housing

Social housing providers have an additional responsibility to deliver for vulnerable and complex renters. Victorian Housing Register is the government managed list to house people who the private rental market has failed, often who have complex needs and experience a range of disadvantage. The government supports social housing through direct and indirect funding. Particular rights and protections should be in place to ensure the providers are delivering: safe, secure, suitable and affordable homes. If governments start diverting funds away from social housing to other affordable housing schemes, the system will be further weakened and inadequate for meeting the needs of people on the housing priority wait list.

The *Housing Act 1983* (Vic) stipulates that housing should be ‘at a price within his or her means’.⁷ This is an important definition that contrasts to what is often defined as affordable housing. While affordable housing has a broad definition in the *Planning and Environment Act 1987* (Vic), covering housing for those with very low incomes to moderate incomes,⁸ the practical difference between affordable housing and social housing, is affordable housing is generally priced in relation to the market rate rather than the person’s individual ability to pay. For example, the *National Rental Affordability Scheme Regulations* requires that rent must be at least 20 per cent less than market rent.⁹ For most people on welfare payments a 20 per cent reduction of market rent remains manifestly unaffordable: e.g. the median rent for a single bedroom apartment in Melbourne is \$320,¹⁰ a 20 per cent reduction in rent would be \$248 a week. A single person on Job Seeker receives \$310.40 a week, so the average single bedroom apartment discounted as ‘affordable housing’ would be 80 per cent of the weekly income for a person living on Job Seeker. There should be clear distinction between investments in affordable housing and social housing, as only social housing investment will address the critical needs of people who are eligible or waiting on the Housing Register wait list.

Having social housing combined with affordable housing in the *Planning and Environment Act 1987* (Vic) in section 3AA, is problematic for inclusionary zoning mandates and agreements with building developers. There is a wide difference in the people who can afford to live in social housing and those in affordable, which means the terms do not serve the same needs. Councils use the *Planning and Environment Act* when negotiating agreements with the developer.¹¹ By combining affordable housing with social housing, the default will more likely be to supply affordable housing that provides a higher

⁶ Ibid.

⁷ *Housing Act 1983* (Vic) s.6(1)(a)

⁸ *Planning and Environment Act 1987* (Vic) s.3AA

⁹ *National Rental Affordability Scheme Regulations 2020* (Cth) s.12

¹⁰ Homes Victoria. ‘Rental Report Statistics – June quarter 2021’ (June 2021), 8. Accessed: < <https://www.dhhs.vic.gov.au/publications/rental-report> > 9 September 2021.

¹¹ See: Planning Victoria, *Sample: Affordable housing agreement under Section 173 of the Planning and Environment Act 1987*: available at: https://www.planning.vic.gov.au/_data/assets/pdf_file/0026/215297/Final-Example_Agreement.pdf Accessed: 14 September 2021.

revenue stream. We need to encourage more social housing, and this cannot be done when the line between affordable and social housing is blurred within legislation itself.

Undoubtedly there is a case for improving our rental system for everyone. Other countries have a culture of greater rights and protections for renters, which makes it comfortable and secure to rent. Australia's culture that prioritises property ownership, property investors, and relatively weak rights for renters, is a problem. Rent in Australia is widely unaffordable for many people on middle to low incomes. The State Government has recently undertaken the largest review of our residential tenancy laws in two-decades, with over 130 reforms.¹² Still there is more that can be done. Further Reviews into the tax and transfer system and incentives for investors to provide low cost housing and rent should be considered, but may be beyond the scope for this Review to consider.

Growth and providers diversity

What stood out in the Royal Commission into Aged Care was there was a correlation between the size of the organisation and the quality of care, with the smaller providers providing far better quality of care.¹³ In the research report into evictions at VCAT it was shown that some of the largest community housing organisations were the poorest performers.¹⁴ Commissioner Briggs was critical of the lack of government leadership in the aged care sector and the 'loss of focus on the sector's social 'mission' to provide high quality and safe care for older people'.¹⁵ She found that there should be active consideration of whether consolidation assists the social purpose and mission.¹⁶ While we do not oppose consolidation in itself, the warning in aged care sector demonstrates that without appropriate regulation that focuses on the delivery of the social mission, large providers if they perform poorly can have devastating consequences that become difficult to fix.

Summary

In summary, we have the following recommendations in relation to consultation paper 3:

1. Standard policies and procedures should be regulated for all social housing providers, to ensure consistency and provide greater efficiency and certainty for social housing contractual arrangements.
2. For profit social housing providers should not be permitted.
3. *Planning and Environment Act 1987* (Vic) section 3AA should be amended to provide clear distinction between social housing and affordable housing.

¹² *Residential Tenancies Amendment Act 2018* (Vic)

¹³ *Royal Commission into Aged Care Quality and Safety* (Final Report Care Dignity and Respect: Summary and Recommendations, February 2021), Vol. 1, 72.

¹⁴ Varrasso, Dino. *The Social Cost of Community Housing Growth: Evictions and allocations in Victorian Social Housing* (September 2021), 14-15.

¹⁵ *Royal Commission into Aged Care Quality and Safety* (Final Report Care Dignity and Respect: Summary and Recommendations, February 2021), Vol. 1, 26.

¹⁶ *Ibid*, 50.

4. Consolidation of community housing providers should only be undertaken when it can be demonstrated ability to deliver the social mission and purpose of social housing: the provision of safe, secure, suitable and affordable homes for Victorians in greatest need.

We look forward to continuing to work with the Review Panel as the interim report is drafted and recommendations developed.

Sincerely,

Damian Stock
Chief Executive Officer