



**RESPONSE TO SOCIAL
HOUSING REGULATION
REVIEW CONSULTATION
PAPER 1**

**VICTORIAN PUBLIC
TENANTS
ASSOCIATION**

July 2021



Who We Are

The Victorian Public Tenants' Association (VPTA) is the voice of public housing in Victoria.

As the peak body representing existing public housing renters and those on the waitlist, our goal is to provide advice to renters, and to improve and expand the public housing system in Victoria. Although not formally part of our role, we also assist community housing renters where possible.

We believe all social housing renters deserve a representative voice, regardless of their specific tenure type.

While our work is in Victoria – we are the only peak body in Australia which exclusively represents public housing renters or people who live in social housing.

We undertake systemic advocacy and provide policy advice to the Victorian Department of Families, Fairness and Housing ('the Department'), undertake community engagement work and operate a free and confidential telephone advice service. In the 2020-21 financial year we assisted more than 500 residents and applicants with in-depth advice and assistance.

General Comments

We congratulate the Victorian Government for initiating this independent review, as well as for its historic investment in Victoria's social housing stock and willingness to commit to a decade long Social and Affordable Housing Strategy.

These are steps that the VPTA, along with our colleagues in the Victorian Housing Peaks Alliance, have been calling for, for many years. Most recently in the 2020 Report, *Make Social Housing Work: A Framework for Victoria's Public and Community Housing 2020 – 2030*. The announcement of the Big Housing Build, including the formation of Homes Victoria, this Regulatory Review of Social Housing and a long-term growth plan for social housing in Victoria are significant first steps.

We are ambitious for the outcome of this Review and for the final the 10 Year Social and Affordable Housing Strategy. It is the combination of these two processes that will determine whether the Big Housing Build effectively delivers for the Victorians who most urgently need access to a safe, secure, long term and affordable home, and whether social housing in Victoria really does 'work' for everyone in the coming years.

What issues does this paper raise that are relevant to reform of social housing regulation?

Data

The social housing and homelessness sector would greatly benefit from more detailed data, that is reported regularly and in a timely way.

Currently, data about social housing in Victoria, the people who live in it and the people who are waiting for assistance, is scarce and delayed.

The sources of information about social housing and housing assistance are:

- The Productivity Commission Report on Government Services.
 - Published annually.
 - Data broken down by State and Territory, but data between jurisdictions and tenure types is often not comparable.
 - Generally focused on operational concerns – such as expenditure, stock condition, number and type of allocations, underutilisation and overcrowding rates.
 - Includes community housing data, but generally not in a form that is easily comparable with public housing data or incomplete.
- The Australian Institute of Health and Welfare Housing Assistance in Australia data set.
 - Provides data about social housing households and movements, demographic data for social housing tenants by jurisdiction but without tenure breakdown, dwelling and occupancy details, suitability, and information about financial assistance.
 - Most tables provide data broken down either by tenure type, or jurisdiction – not both.
- The Department of Families, Fairness and Housing 'Housing Assistance: Additional Service Delivery' Report, which contributes to the Department's overall Annual Report.
 - Provides information primarily related to the stock portfolio owned by the Director of Housing, including break downs by dwelling type and location.
 - Includes a breakdown of main income type for residents of publicly owned and managed properties only.
 - Provides further details about notifiable incidents in publicly owned and managed properties.
- ABS data
 - Provides breakdown of public housing properties by suburb but does not include data about community housing stock.
- Victorian Budget Papers
 - Performance measures in Budget Paper 3 provide information about the number of Victorians assisted, average waiting times in the priority category and other specific programmatic considerations.
- Victorian Housing Register and Transfer List

- Released approximately each quarter.
- Provides the current number of Register of Interest and Priority Access applications from both new applicants and transfer applicants, broken down within the Department of Families, Fairness and Housings' existing divisions and areas.
- Does not include detail about allocations, including average waiting times.
- Does not include detail about the number of individuals waiting for a property, only the number of applications.
- Does not indicate whether there is any change in number of applications between quarters.
- Does not indicate what priority sub categories applications are in.
- Victorian Housing Registrar reports
 - Produces an annual Sector Performance Report which includes a profile of tenancies in the community housing sector, a summary of the sectors financial performance, and information about service delivery.
 - As of July 2021, the most recent Sector Performance Report available on the Registrar's website is for the 2018-19 financial year.
 - The Registrar also produces an annual Regulatory Update Report, which acts more as a report back to the sector of the Registrar's activities and strategic objectives.

Although this list looks long, the reality is that the community sector relies on anecdotal knowledge and their own client base to understand the social renter population. While it is possible to access information about the number of properties, their size and general location, as well as the number of people living in social housing and the number of applications on the waiting list, little else is known.

The type of information that services and Government needs for service design is less about the numbers and more about the renters themselves.

How many children are housed in overcrowded properties? What are the main languages being spoken in homes? How many social housing renters live with disability? Which priority category is seeing the most growth on the waitlist? How many people are exiting a social tenure in any given year, and why?

Having access to this information would allow services to better target materials, and service delivery to the cohorts that most need access to it.

As well as access to more fulsome, helpful information about social housing and the people who call it home, information should be made available temporally proximate to the time period that it refers to.

As it stands, the most important data source, the Report on Government Services, is released in January of each year, but its most recent data is usually at least six to 18 months old at the time of release.

This prevents quick, informed policy responses from Governments and timely action from services to emerging issues.

Addressing the lack of timely, person centred focus in data capture and reporting, also presents an opportunity to get greater benefit from the Victorian Housing Register.

Currently, the Victorian Housing Register Senior Leadership Group (of which the VPTA is a member) is provided with confidential information about the nature of applications on the waitlist and allocations from time to time.

Although this is valuable, it fails to harness the potential of a common waiting list.

For example, an applicant's journey is not tracked across a lifetime. Applicants could be tracked from initial application, through length of time to allocation to a long-term housing option and through other accommodation types – such as rooming houses, transitional accommodation and crisis accommodation. This would allow Government and services to get an overall sense of the level of precarity the most vulnerable Victorians are experiencing while they wait for a long-term home to become available, and what proportion of those people re-enter homelessness and apply for social housing again as a result of being unable to sustain their tenancy or unsuitability of short-term accommodation option. In short, this could provide evidence for where the 'gaps' are located in the existing safety net, and therefore allow them to be closed.

This is a missed opportunity.

Further, we understand that publicly accessible data about allocations from the Victorian Housing Register currently treats all allocations the same. Regardless of whether the allocation is made into a rooming house (an inherently short term style of accommodation) or a property that is capable of being someone's home. This has the potential to obscure the efficiency of the allocations system, and skew the average waiting time by considering an allocation into a short term, emergency style accommodation in the same manner as a long term housing allocation.

A well-resourced workforce

Social Landlord principles are key to sustaining social housing tenancies.

A common complaint among public housing renters is that it is very difficult to speak to, or see, your Housing Services Officer ('HSO'), and that when they can speak to their HSO, the staff member is often impatient, doesn't listen to what the renter is saying, or the renter feels that the issue is never resolved.

While the intention is for the Department to act as a Social Landlord, the day-to-day experience of renters often falls short of these standards.

It is the view of the VPTA that it is not possible for HSOs to fully apply the Social Landlord principles with their existing workload.

We understand that in June 2020, the Department employed 490 full time equivalent HSOs,¹ and in the 2018-19 financial year, there were 68,757 public housing households.² This means each HSO managed roughly 140 tenancies each.

Due to a consistent lack of growth in social housing stock and the resultant need for intense targeting of available properties to applicants with the greatest need, social housing renters today often need a higher level of assistance to sustain their tenancies and manage other complex problems that can impact on their housing security, than they did in previous decades.

Despite this, the number of HSOs and their workload has remained relatively unchanged. Housing Services Officers cannot reasonably be expected to be Social Landlords to 140 different households. The number of HSOs employed by the Department must grow to match the additional complexity of the role.

¹ Social Housing Regulation Review 'Social housing in Victoria, consultation paper 1, background and scoping paper', ('Social housing in Victoria'), 2021, pg 17.

² Ibid, pg 7

Is there any other background information that the Panel should consider that is relevant to social housing regulation?

Although they are separate, the Big Housing Build, the 10 Year Social and Affordable Housing Strategy and this Regulatory Review are inextricably linked.

The Big Housing Build is a bold and ambitious investment by the State Government. We do not deny this, but the 12,000 properties that this initiative will deliver does not come close to the number of properties the Victorian Housing Peaks have forecast our State needs.

In *Make Social Housing Work*, the Victorian Housing Peaks called for the Government to commit to the construction of 6,000 new properties every year, for 10 years. These properties should consist of publicly owned and managed housing, as well as community housing, and each year, 300 of the properties should be designated Aboriginal and Torres Strait Islander housing.³

We have estimated that around 100,000 individual Victorians are covered by an application for social housing. Each year, only a very small portion of applicants are able to be housed. It is clear that Victoria will need to continue building new social housing well beyond the lifespan of the Big Housing Build project in order to meet the overwhelming need.

Further, the VPTA have been very concerned by the shift away from publicly owned and managed housing stock that has been signalled by both the Big Housing Build and the 10 Year Social and Affordable Housing Strategy discussion paper, and the consequences of these decisions for future social housing renters.

Getting the best out of the Big Housing Build – bringing community housing policies in line with public housing policy settings

To deliver on a vision to house every Victorian – tenure type matters. This is because affordability of rent matters, the equity of allocations matters and security of tenure matters.

The discussion paper for the 10 Year Social and Affordable Housing Strategy identified community housing as being the focus and driver of future growth.⁴ Likewise, the Big Housing Build concentrates the management of new stock in the community housing industry, and does not grow publicly owned and managed stock at all.

We do not deny that there is an important place for community housing within Victoria's social housing provision. The problems Victoria faces with regard to

³ Housing Peaks Alliance, 'Make Social Housing Work: A Framework for Victoria's Public and Community Housing 2020 – 2030,' 2020, pg 6.

⁴ Homes Victoria, 'Establishing a 10-Year Strategy for Social and Affordable Housing', 2021, pg 12.

housing affordability, income inequality, homelessness, domestic abuse and mental health reform are too large for one tenure type to adequately address on its own.

However, we know that with current policy and regulatory settings the community housing industry is not equipped to house all people on the priority waiting list. The industry cannot maintain financial viability and house those who receive Australia's lowest, least adequate income support payments.

The undisputed need for these organisations to remain financially viable pushes rents up and permits an environment where providers have no choice but to be selective about who they choose to offer properties to.

The VPTA understands that, according to the *Community Housing Allocations Framework*, the community housing sector is only required to allocate 75 per cent of targeted dwellings to applicants from the priority section of the Victorian Housing Register – the people most in need of housing.

Targeted dwellings are generally understood to be those that the Department owns, or has made some investment in. However, it is unclear whether there is a single definition for 'targeted', or whether the definition of a 'targeted' dwelling is negotiated between each community housing provider and the Victorian Government.

The best indication of the true minimum number of community housing properties that must be allocated to applicants from the priority category of the VHR is taken from the Victorian Housing Registrar's 2018-19 Sector Performance Report.

As at 30 June 2019, the community housing sector managed 19,654 tenancies, of which, providers owned 10,156 properties (51.72 per cent), and managed 9,488 properties.⁵ If the proportion of managed properties is the same as the number of 'targeted' dwellings, then only 7,116 of all of the properties managed by the community housing industry are required to be allocated to Victorians most in need of housing, a paltry 36.2 per cent of the sector's overall stock profile.

In contrast, allocations to public housing are always made to the person with the greatest need who is suited to the property.

The Big Housing Build and the 10 Year Social and Affordable Housing Strategy are meant to be the first steps in addressing chronically long wait times for Victorians who need access to housing assistance. If they are to be successful, either a proportion of new properties need to be shifted to public ownership and management, or the *Community Housing Allocations Framework* needs to be updated to ensure equity of allocations across the two social housing tenure types.

Another key difference between publicly owned and managed housing and community housing, is in the calculation of rents.

In public housing, rent is set at a consistent formula across the entirety of the stock profile.

⁵Victorian Housing Registrar, 2018-19 Sector Performance Report, pages 10 – 11.

People who live in public housing pay a rebated rent or the market rent, whichever is lower. In effect, this means that rents are capped at 25 per cent of household income, a comfortable amount below the 30 per cent threshold beyond which people are generally considered to be experiencing housing stress.

In publicly owned and managed housing, rebated rents are calculated as follows:

25% of main income + 15% of child payments = rebated rent.

In this instance, the Department's Rent Setting and Rebate Operational Guidelines specifies precisely what is to be considered to be a main source of income, and explicitly excludes a number of commonly received supplementary income support payments, such as the Pension Supplement.⁶

In comparison, each community housing provider has their own rent setting calculation. These are not always available publicly, but a comparison between the common calculations that VPTA staff were able to find, suggested the most common are:

25% of main income + 15% of child payments + 100% of CRA = rebated rent

And

30% of main income + 15% of child payments + 100% of CRA = rebated rent

Further, there is inconsistency within the community housing industry between what payments providers consider to be assessable income for rent purposes, and this can include a broader set of income sources than the Department would consider to be assessable.

An internal comparison of rebated rents in public housing and in community housing completed by the VPTA found that the common belief that the only difference in rents between the two social tenure types was the value of the Commonwealth Rent Assistance payment is sometimes incorrect. Further, in some household types, families could be as much as \$1,680 a year better off if they lived in public housing.⁷

The rent that can be charged by a community housing provider also has a bearing on who that provider will make an offer of housing to.

Community housing providers rely heavily on rental income to maintain financial viability. As a result, many cannot afford to house too many renters who receive the lowest income support payments as once the rebated rent is calculated, the amount payable by the prospective renter would not be sufficient to cover the providers costs.

⁶ Department of Families, Fairness and Housing, 'Rent setting and rebate operational guidelines: assessable income', pg 19 – 21.

⁷ Victorian Public Tenants Association, 'Response to the 10 Year Social and Affordable Housing Strategy Discussion Paper,' March 2021, pg 5.

South Port Community Housing Group Inc based in St Kilda wrote in their submission to the Senate Inquiry into the Adequacy of Newstart (as the payment was then known):

“Our compassion can only last so long. We are established as ‘social businesses’. Our staff wages are paid by rent collected. The Newstart situation is affecting our sustainability and viability.”⁸

A further area in which community housing policies should be brought in line with those already in place in public housing, is with regard to security of tenure.

A piece of research from 2018 found that public housing is the most protective factor against homelessness, due to the superior security of tenure offered by this tenure type. The authors wrote:

“Importantly, we found public housing to be a very strong protective factor reducing homelessness. Public housing is particularly effective because it is affordable. It has also traditionally offered a long-term, secure housing option for those at the bottom of the housing market. This is because public housing leases provide the benefits of security of tenure commonly associated with home ownership. Community housing on the other hand appears not to offer the same level of protection. These findings emerge despite community housing being affordable, however security of tenure is weaker possibly because providers are more dependent on rent revenue and therefore less tolerant of rent arrears.”⁹

Data provided in the first consultation paper further supports this finding.

The paper states that in 2019, 7 per cent of renters in community housing exited due to eviction.¹⁰ In the most recent data year (2018-19), the industry overall had a tenancy sustainment rate of 89.39 per cent¹¹, which suggests that renters in community housing are significantly more likely to be evicted, than they are to choose to leave their property.

In 2019, the Director of Housing made applications to evict around 6 per cent of public housing renters, with most of the applications relating to rent arrears.¹² Although the outcome of each application is not known, it is the experience of the VPTA that rent arrears matters at the Tribunal are often resolved with the renter entering into a payment plan and remaining in their home.

The number of public housing exits for the year is not publicly available, however, due to the limited growth in the tenure type, it can be reasonably assumed to be close to the number of new households assisted, which for the year was 2,826.¹³

⁸ South Port Community Housing Group Inc, Submission to the *Inquiry into the adequacy of Newstart and related payments and alternative mechanisms to determine the level of income support payments in Australia*, pg 6.

⁹ Johnson G, Scutella R, Tseng Y and Wood G, ‘How do housing and labour markets affect individual homelessness?’, *Housing Studies*, 2018, <https://doi.org/10.1080/02673037.2018.1520819>.

¹⁰ Social Housing Regulation Review, ‘Social housing in Victoria’, pg 17.

¹¹ Victorian Housing Registrar, Sector Performance Report 2018-19, pg 22.

¹² Social Housing Regulation Review, ‘Social housing in Victoria’, pg 17.

¹³ Productivity Commission, Report on Government Services 2020, Table 18A.5.

This figure would equate to a tenancy sustainment rate of 95.62 per cent.¹⁴ The number of exits from public housing in this year includes exits due to eviction, but also to death and shifts to other tenure types, such as residential aged care.

If these assumption about public housing exits in the 2018-19 financial year are correct, it would follow that renters in community housing are significantly more likely than public housing renters to be evicted.

We would urge the Review Panel to consider regulatory options to achieve policy consistency and consistency in outcomes across the two social housing tenures, specifically with regard to;

- Ensuring equity of access through changes to allocations requirements,
- Ensuring affordability by creating a common rent setting mechanism across the community housing sector, and
- Maximising security of tenure in community housing and ensuring evictions are used as an avenue of last resort only.

A representative voice for all social housing renters

We applaud the Panel's focus on ensuring a strong and central voice for renters in social housing.

Victoria's unprecedented investment in the Big Housing Build will see the overall proportion of community housing increase to around 30 per cent of all social housing. With a wide variety of providers, each with their own policies and procedures – specialized representation of people who live in community housing will become more and more critical.

Despite growth in community housing, renters in this form of social housing continue to lack formal representation in the same way that public housing renters do. The VPTA is ideally positioned to take on this work.

Ensuring all social housing residents have a representative voice is an investment in the success of the Big Housing Build. Without strong, renter focused representation, there is a risk that two classes of social housing renters will emerge.

We strongly encourage the Panel to give this matter serious consideration throughout the review process.

¹⁴ Internal calculation based on the total number of public housing properties at 30 June 2019 of 64,428 as reported in the Productivity Commission, Report on Government Services 2020, Table 18A.3.

Consistency for complaints

Complaints between the two tenure types are handled inconsistently, with the complaints process in both public and community housing having room for improvement.

It is the experience of the VPTA that people who live in public housing are reluctant to make use of the official complaints channel made available to them by the Department due to a fear that making a complaint may negatively impact their housing security.

Although we do not consider that this fear is well founded, it is understandable when one considers the scarcity of social housing stock available, combined with common past experiences of trauma. These factors make it more likely that public housing renters may naturally feel apprehensive when dealing with Government departments.

Where the housing office or the Department has not resolved the complaint, people who live in public housing can seek assistance from the Victorian Ombudsman.

People who live in public housing also have the option of raising their concerns directly with the VPTA for assistance. Tenant Advocates at the VPTA also provide this service to callers who live in community housing where possible, though we receive no funding and have no formal authority to do so.

People who live in community housing are able to raise complaints directly with their provider. If the complaint is not resolved, the renter can raise the issue with the Victorian Housing Registrar for investigation.

People who live in community housing are generally not able to access support from the Ombudsman.

The VPTA encourages the Review Panel to consider ways in which the complaints process can be managed more consistently between public and community housing tenures.

The VPTA would be supportive of a central Housing Appeals function being created within Homes Victoria, that would be able to consider appeals about tenancy management decisions and complaints from renters in both public and community housing independently from the staff that renters deal with day to day, and with an option for complaints to be made anonymously.

We would further encourage the Review Panel to consider additional clarity around the role of the Victorian Ombudsman, and the Ombudsman's jurisdiction regarding community housing.

We are not of the view that social housing requires a dedicated Ombudsman at this point. The Victorian Ombudsman has a strong history for conducting thorough investigations into public housing matters and we believe this capacity should be extended to incorporate community housing.

A joint regulatory model

We are of the view that the existing community housing regulatory model could benefit from a stronger focus on renter outcomes.

We would support measures which increase transparency and public understanding about renter satisfaction, renter outcomes and tenancy sustainment across both social housing tenures. Information about renter outcomes across both social tenure types should be collected in a tenure blind manner (with questions posed to community and public renters being the same) and results for each tenure type should be publicly reported.

However, the VPTA is concerned about the prospect of existing financial regulation being extended to cover the public tenure.

To begin, the existing financial regulation is explicitly designed to regulate a private organisation that has a board-based governance structure. This is not relevant to the context of a government-managed service. Although Homes Victoria does have a board, the housing services operational work is located within the Department, and this workforce sits outside Homes Victoria. Further, government services are already subject to significant oversight – not only through the Parliament, but also through the Auditor-General. The financial management of public housing does not require additional scrutiny.

Additionally, the VPTA is concerned about the imposition of financial regulation creating a perverse incentive for the Department that could lead to a deterioration in renter outcomes.

One of the key reasons that public housing currently offers superior security of tenure is that the Department is able to work with renters to resolve issues like rent arrears and maintain tenancies over a longer time period than community housing providers can afford to do. Further, public housing tenancies are allocated to the person with greatest need, regardless of the amount of rebated rent that person will be paying. This means that public housing tends to house a greater proportion of Victorians, even though this creates an operating deficit.

Applying the same financial regulatory requirements to public housing has the potential to decrease the universality of the service, and negatively impact both current and future tenants, by incentivising the elevation of financial outcomes for the Departments and therefore shifting the focus away from person-centered outcomes, allocation based on greatest need, and Social Landlord tenancy management principles.

If the Review Panel is of the opinion that an additional layer of financial regulation must be applied to the public tenure, we would emphasise the importance of including a weighting mechanism that removes any perverse incentives that may apply on the side of the public tenure from the equation.

The VPTA will expand upon these points in response to future consultation papers.

Creating parity between private and social renters

The passage of the *Residential Tenancies Amendment Act 2018 (Vic)* ('the Act') was a significant day for all Victorians that rent their home, and the reforms introduced by this legislation will improve the quality of life for renters.

However, not all the reforms apply equally to all tenure types.

The transitional arrangements in place with regard to minimum standards, mandatory disclosures and modifications only apply to leases entered into on or after 29 March 2021.

Leases in social housing tend to be ongoing, and end when the property is exited. Very few people exit social housing each year. This means that many existing renters may never benefit from the full suite of additional rights and protections introduced by the Act.

We urge the panel to consider whether this issue can be cured through regulation, which may require social housing rental providers to comply with all relevant sections of the Act across their entire portfolio, regardless of tenancy commencement date.

Housing: A Human Right

We wholeheartedly agree with statements in the Consultation Paper that:

*"Safe and suitable housing is a basic human need without which Victorians cannot aspire to live stable productive lives, maintain or recover their physical and mental health, provide for themselves and their families and participate in their community."*¹⁵

And

*"Housing is more than just shelter; it is essential to the inherent dignity and well-being of the person."*¹⁶

To bring these statements to life, we believe that the right to housing must be added to the *Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic)* ('the Charter'), and that community housing providers be expressly included as 'public authorities' for the purposes of the Charter, as recommended by the Final Report of the Inquiry into Homelessness in Victoria.¹⁷

Further, future regulation should require certain decisions (particularly those regarding tenant exits) be accompanied by a Statement of Compatibility, evidencing that the provider has turned their mind to the human rights impacts of

¹⁵ Social Housing Regulation Review, 'Social housing in Victoria', pg 3.

¹⁶ Social Housing Regulation Review, 'Social housing in Victoria', pg 3.

¹⁷ Parliament of Victoria Legislative Council Legal and Social Issues Committee, 'Inquiry into Homelessness in Victoria – Final Report', March 2021, pg xxxv – xxxvi.

their decision on renters to be impacted, and to ensure all providers are actively complying with Charter obligations.

It is likely that providers would require additional resourcing to implement this change.

Conclusion

Thank you for providing an opportunity to respond to the first Consultation Paper.

We anticipate expanding upon the issues raised within this submission in further documents throughout the course of the Review.

Please do not hesitate to contact the VPTA should the Panel wish to discuss any of the matters contained within this document in further detail.