

Council to Homeless Persons response to Social Housing Regulatory Review Consultation Paper 1:
Background and Scoping



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Introduction

Council to Homeless Persons (CHP) welcomes the opportunity to respond to the social housing regulatory review consultation paper 1: Background and scoping (the consultation paper).

The social housing regulatory review was announced alongside the Big Housing Build. This unprecedented financial outlay by a State Government on social housing, reflects its implicit desire to consistently achieve the positive outcomes the Government and community expects from social housing. To CHP, this means safely and stably housing those Victorians for whom the private rental market does not work. Foremost among these must be those experiencing homelessness.

In this submission we focus on the areas of the existing social housing regulatory system that we see as ripe for review. In some instances, it is already clear that those experiencing homelessness face barriers to accessing or sustaining social housing. In many others we call for a regulatory system that provides greater transparency in relation to the experience of the users of the system. This submission includes a mix of recommendations for change, and identification of areas for further consideration as part of the regulatory review.

Victoria's social housing system is changing, and is shifting towards provision by a range of providers. Regulation will play a crucial role in embedding in this system both fairness and simplicity for consumers. Regulation will also underpin ongoing meaningful housing access for those experiencing homelessness.

Recommendation 1: The social housing regulatory review should address barriers to accessing and maintaining social housing for people experiencing homelessness.

Recommendations

Recommendation 1: The social housing regulatory review should address barriers to accessing and maintaining social housing for people experiencing homelessness.

Recommendation 2: People should remain on the Victorian Housing Register until it can be verified that they no longer wish to be, or are no longer eligible.

Recommendation 3: Reform processes so that Victorian Housing Register applicants who decline housing offers, or are unable to accept a housing offer within the set timeframe are not relegated to the bottom of the list.

Recommendation 4: Consult further on appropriate models of, and implement, choice-based letting.

Recommendation 5: Require regular publication of data on social housing allocations, including by prioritisation category and sub-category, by each social housing provider and each DFFH local area office.

Recommendation 6: Consider whether the 75 per cent threshold for allocations to priority groups can be increased.

Recommendation 7: Review the systems under which a significant proportion **of Victoria's existing social housing stock is currently exempted from** participation in the Victorian Housing Register

Recommendation 8: Publication of allocations data outlined in recommendation 5 should include reporting on demographic characteristics.

Recommendation 9: Consider the financial viability of providing social housing for single people. This may include a single person household viability supplement.

Recommendation 10: Maintain the current percentage of income based rent system.

Recommendation 11: Implement regulatory systems that can promote youth-adapted models of social housing

Recommendation 12: Consider the need for greater support to be provided to social housing residents, while maintaining the separation of housing and support.

Recommendation 13: That social housing providers (and local area offices) be required to publicly report on evictions, including by VHR allocation category, and demographic cohort, in order to both identify and address issues in tenancy management locally and system-wide.

Recommendation 14: Consult further on minimum additional protections from evictions that social housing providers should incorporate into their evictions policies.

Recommendation 15: Consider social housing residents' right to safety, and mechanisms for asserting such a right.

Recommendation 16: Require all social housing properties to meet the *Residential Tenancies Act* minimum standards in full by a certain date, including a timetable and the need for government funding.

Recommendation 17: Embed a human rights approach to social housing by implementing recommendations 32, 33 and 34 of the *Parliamentary Inquiry into Homelessness*.

Recommendation 18: Implement a universal complaints and appeals process across social housing providers.

Recommendation 19: Embed the DFFH customer charter in regulation across the social housing system.

Recommendation 20: Develop a benchmark for an assessment method, which sets a ceiling on community housing rents.

Recommendation 21: **Do not pursue a 'single system of financial assistance'** where social housing is provided at market rates with rental assistance.

Recommendation 22: That any alternative **'single system of financial assistance'** be subject to consultation, retaining an option to recommend against such a system.

Recommendation 23: That the social housing regulatory review consider means for improving housing outcomes for those awaiting a social housing allocation.

Recommendation 24: Do not seek to increase turnover rates, or prevent people from aging in place.

Recommendation 25: Consider the goals of a regulatory system for social housing. Consider whether the NRSCH achieves said goals.

Recommendation 26: Increase the regulatory power of local government by establishing mandatory inclusionary zoning.

Who are the current and prospective tenants of social housing?

Council to Homeless Persons hopes that this review will investigate the potential for administrative changes that can improve access to social housing for Victorians who experience deep exclusion through their homelessness.

The operation of the Victorian Housing Register (VHR) must be an important aspect of this work. A social housing system that operates as housing of last resort, particularly for those experiencing homelessness, must explicitly recognise the circumstances that often accompany homelessness. It must embed an understanding of the impact of transience, the difficulty of maintaining contact with people experiencing homelessness, and the stark reality that at the moment a person's housing offer comes up, that person may not be in a position to accept it.

The operation of the VHR must work to maintain people on the Victorian Housing Register until it can be verified that they no longer wish to be, or are no longer eligible. The current system does not operate in this way, and this is inconsistent with the aims of Victoria's social housing system.

Currently, Victorians who are unable to be contacted may be removed from the Victorian Housing Register. While it is possible to appeal for a re-instatement, such appeals are time-limited, and inconsistently applied between government local area offices. This regularly results in the most vulnerable people, those for whom the system is most highly targeted, being moved to the end of the waiting list.

The regulatory review should also focus on the current practice of removing a person from the VHR priority list when they decline two offers of housing. The consultation paper, and indeed the review's terms of reference, have rightly identified resident voice as a priority for this review. The practice of removing a person's priority listing, and requiring them to wait years before they will again be offered social housing, as a response to declining only two offers the person has judged as unsuitable, is not consistent with the concept of resident voice. This current approach also fails to take into account the many people experiencing homelessness with particular needs around the type of housing and support they need that, if not met, will result in them returning to homelessness.

It is our hope that this review will consult further on, with a view to implementing a system of choice-based letting. However, whether or not such a system is

implemented, it is clear that the de-prioritisation of social housing applicants who decline two offers of housing must end.

Recommendation 2: People should remain on the Victorian Housing Register until it can be verified that they no longer wish to be, or are no longer eligible.

Recommendation 3: Reform processes so that Victorian Housing Register applicants who decline housing offers, or are unable to accept a housing offer within the set timeframe are not relegated to the bottom of the list.

Recommendation 4: Consult further on appropriate models of, and implement, choice-based letting.

Another matter which must be a high priority for the regulatory review is the process for housing allocations from the VHR. Currently, each social housing entity allocates social housing in accordance with its own allocations policy. These policies are required to be published by social housing entities. A review of such policies highlights an alarming difference between the allocations policies of the largest provider, the Department of Families, Fairness and Housing (DFFH), and those of many other providers. The DFFH allocations policies allocates “to the household on top of the list by effective date and category”.¹ But such a commitment was not included in the sample of allocations policies by other providers that CHP reviewed for this submission.

The VHR requires all social housing entities to offer at least 75 per cent of allocations of properties in scope for the VHR, to those in priority waiting groups. CHP recognises that social housing providers need some capacity to manage the mix of residents in housing complexes and communities. However, the absence of a requirement to allocate to households at the top of the list by effective date and category leaves open the possibility that individual providers will allocate properties to those on the VHR in prioritisation categories often associated with higher incomes – to the detriment of those in higher prioritisation categories. This not only disadvantages those in the “homeless with support” category when seeking social housing, but undermines the principles of the social housing system. The allocations system needs to shift the balance of emphasis to address this concern.

The regulatory review must seek to identify an appropriate balance between the need for social housing providers to carefully consider the needs of dense housing units when allocating properties to VHR applicants, and the need for social housing to house the most vulnerable. There will be instances where these two needs are in tension, such as where housing has been identified for particular cohorts, or where

an applicant's behaviours are likely to retraumatise existing residents. In order to ensure that the social housing system supports the most vulnerable in our community, allocations policies should reflect the principle that the person at the top of the waiting list be allocated the next available property, unless there is a compelling reason not to.

Recognising this tension will place a great deal of onus on social housing providers to use such a power sparingly. For this reason, it is essential that social housing providers report on allocations with significantly more granularity, in order to make transparent any distorted patterns of allocations.

Reporting of allocations, including by prioritisation category and sub-category, including by age, income level and type, category, gender and Indigenous or non-Indigenous status, should be regularly published and made publicly available, by each social housing provider – and in the case of the Department of Families, Fairness, and Housing, by each local area office.

Given that both public and community housing that is in scope currently achieve around 90 per cent of all allocations to households in priority groups, it would also be beneficial if the social housing regulatory review were to form a view on whether the 75 per cent threshold (for allocations to priority groups) can be increased.

Recommendation 5: Require regular publication of data on social housing allocations, including by prioritisation category and sub-category, by each social housing provider and each DFFH local area office.

Recommendation 6: Consider whether the 75 per cent threshold for allocations to priority groups can be increased.

In addition to changes to the Victorian Housing Register which could improve access to social housing for Victorians without a home, changes should further be explored to maximise the social housing properties offered through the Victorian Housing Register – and in particular, address the high proportion of social housing that is currently exempted from participation in the Victorian Housing Register.

A number of priorities should be included in such a review. Foremost among these is to ensure that all the housing provided through the Big Housing Build and the 10-year social and affordable housing strategy is included in the Victorian Housing Register. It is also necessary to review the systems under which a great proportion of Victoria's existing social housing stock, particularly community housing, is currently exempted from the Victorian Housing Register. Council to Homeless Persons believes that the goal of the social housing system should be to deliver the

greatest impact on homelessness and housing stress in the community, and consequently should maximise the number of properties that are available to highly vulnerable people on the lowest incomes. To this end, when the Government invests public money into social housing, that housing should remain visible via the accountability and transparency of the VHR.

Recommendation 7: Review the systems under which a significant proportion **of Victoria's existing social housing stock is currently exempted from** participation in the Victorian Housing Register

As recognised in the consultation paper, affordability issues do not affect all people equally. In addition to work recommended above to analyse and improve access to social housing by prioritization group, it is also important to analyse and improve access to social housing by demographic groups.

The pervasive low level of social housing in Victoria effects all people requiring access to social housing. There are also specific groups for whom access to social housing is particularly constrained, including single people on the lowest incomes and young people.

Providing quality housing for single people is more expensive relative to their income and hence the rent they pay, than it is for other household types. This presents a barrier for single person households in accessing social housing. Given that the greatest shortage of social housing is in the one-bedroom stock type, the regulatory review should investigate the financial viability of providing such housing. This may include proposing alternative funding models, such as a single person household viability supplement, to better meet this need. It should not include an exploration of charging a higher proportion of income as rent to single person households.

It is abundantly clear that the existing funding arrangements do not support the financial viability of providing social housing to young people (whose incomes are typically lower than older cohorts). Given that one in six people coming to a homelessness service is aged between 15-24 years, it is clear that this must be more clearly a priority population. The regulatory review must further recognise that a social housing model for young people will in many aspects differ from a model for older adults. The regulatory review should implement regulatory systems that can promote youth-adapted models of social housing, including giving consideration to medium term tenure models, alternative rent-setting arrangements, factors impacting on shared arrangements such as individual leases

and apportioned liability, and a higher level of subsidy to make the provision of social housing to young people financially viable.

The consultation paper notes that there is scope to improve the integration of support services with housing services. Council to Homeless Persons agrees, and recommends this as a further line of inquiry for the regulatory review. It is vital that a clear separation between the provision of housing and support is maintained whether across agencies or within an agency. Clients losing one must not consequently lose the other.

Recommendation 8: Publication of allocations data outlined in recommendation 5 should include reporting on demographic characteristics.

Recommendation 9: Consider the financial viability of providing social housing for single people. This may include a single person household viability supplement.

Recommendation 10: Maintain the current percentage of income based rent system.

Recommendation 11: Implement regulatory systems that can promote youth-adapted models of social housing

Recommendation 12: Consider the need for greater support to be provided to social housing residents, while maintaining the separation of housing and support.

Who are the providers of housing to current and prospective social housing tenants in Victoria?

As briefly mentioned earlier in this submission, a major priority for the regulatory review should be making sure that data pertinent to how different social housing operators are meeting their objectives is both collected and reported on transparently. As there is great practice variation between different local area offices at the Department of Families, Fairness and Housing, we recommend that in addition to reporting by each community housing organisation, that the reporting obligations recommended below also be extended to each local area office at DFFH.

In order to strengthen the transparency and integrity of the housing allocations system, detailed granular analyses of social housing allocations should be regularly published. This should include reporting by the different priority categorisation cohorts and sub-groups, as well as demographic groups, to demonstrate that all housing providers are providing access to social housing to those who are most vulnerable and on the lowest incomes, and to identify and address any systemic access issues for social housing applicants. At the time of writing, allocations are not currently reported at the level of sub-groups. This provides too little granularity for meaningful monitoring of distorted allocation patterns.

Enhanced reporting is required about both the number and cohorts of those who are evicted from social housing as well as those whose tenancies fail. This will allow for better monitoring, and assist both providers and DFFH to address both instances where individual providers are failing to adequately sustain tenancies, but will also draw attention to system-wide issues of tenancy sustainment for particular cohorts.

Recommendation 13: That social housing providers (and local area offices) be required to publicly report on evictions, including by VHR allocation category, and demographic cohort, in order to both identify and address issues in tenancy management locally and system-wide.

Further work is required to embed an “evictions as last resort” response across the social housing sector. If the social housing sector is to be the housing for those who have been unable to sustain private rentals, providers will need additional support. This will include access to workers providing support and providers developing additional skills and redeveloping processes to effectively sustain housing for people who present challenges. The goal must be to support people to retain housing, even where their challenges include breaches that the *Residential Tenancies Act* considers grounds for eviction. As with allocations, each social housing provider may have their own policy with regard to evictions. As part of the review, there would be merit in further consideration of the minimum additional protections from eviction that social housing providers should incorporate into their evictions policies. This too may benefit from inquiry into the better access to and integration of support services for social housing residents.

An important area for further exploration will be how tenants can assert their right to safety, particularly when it is the behaviour of other social tenants that makes them unsafe. This work may be informed by both the exploration of greater support to social housing residents recommended above, and the development of a consistent complaints mechanism recommended below.

The safety of social housing buildings is also in need of attention from the regulatory review. In particular, Victoria has introduced minimum standards for rental properties, focussing on basic safety inclusions. The *Residential Tenancies Act*, which brought in the minimum standards, provides for a staged introduction, with most standards deemed not to apply until a new tenancy commences. However, this fails to consider the unique circumstances of social housing, where tenancies typically last for a longer period of time, and indeed, where that is the objective of the system. It is not appropriate that long-term social housing residents should be subjected to dangerous safety standards which the law recognises as inadequate. Instead, a date should be set for all properties that have not been relet to be made compliant with the standards. Given the very low rental incomes of social housing providers, a timetable and funding commitment will be important.

Recommendation 14: Consult further on minimum additional protections from evictions that social housing providers should incorporate into their evictions policies.

Recommendation 15: Consider social housing residents’ right to safety, and mechanisms for asserting such a right.

Recommendation 16: Require all social housing properties to meet the *Residential Tenancies Act* minimum standards in full by a certain date, including a timetable and the need for government funding.

The regulatory review should consider pertinent recommendations of the recent *Parliamentary Inquiry into Homelessness*, specifically recommendations 32 – 34. These recommendations found that community housing providers should be recognised as public authorities for the purpose of the *Charter of Human Rights and Responsibilities Act*, that the Victorian Civil and Administrative Tribunal (VCAT) judge social housing evictions against the Charter of Human Rights, and that the right to housing be specifically included in the Charter.

Such measures could give VCAT greater purview to disallow evictions that meet only the thresholds of the *Residential Tenancies Act*, rather than the higher standard we must expect of social housing providers.

Recommendation 17: Embed a human rights approach to social housing by implementing recommendations 32, 33 and 34 of the *Parliamentary Inquiry into Homelessness*.

The regulatory review should also seek to implement a universally applicable complaints mechanism and appeal process across social housing providers. Currently, individual organisational mechanisms result in inconsistent treatment for residents of different social housing providers. Instead, a universally applied social housing complaints mechanism would allow tenants to assert their right to fair process.

CHP understands that DFFH is currently working on a customer charter, detailing the expectations that tenants of public housing may have of their landlord. The regulatory review should consider embedding this charter in regulation across the social housing system.

Recommendation 18: Implement a universal complaints and appeals process across social housing providers.

Recommendation 19: Embed the DFFH customer charter in regulation across the social housing system.

Another matter of concern which should be reviewed is the different methods used by social housing providers to calculate rents. While it is recognised that there is a different rent-setting approach for public and community housing, there needs to be more consistency across different community housing organisations, and a clear

benchmark for an assessment method, which sets a ceiling on community housing rents.

Recommendation 20: Develop a benchmark for an assessment method, which sets a ceiling on community housing rents.

The regulatory review should consider ways to implement choice-based letting, as recommended in the Productivity Commission's publication '*Reforms to Human Services*'. Another matter canvassed in this Productivity Commission report, and referred to in the consultation paper is the idea of a 'single system of financial assistance'. The proposal, in short, would be that rather than capping rental contributions at a proportion of a tenant's income for those in social housing, all people eligible for social housing, whether or not a social allocation had been made available, would pay a market rent for private or social properties, assisted by a financial assistance payment from the State Government.

This demand side approach to housing assistance fails to recognise the important role of social housing in enhancing the supply of low-cost rentals. Rather than increasing access to a likely inadequate subsidy to tenants, it would simply result in increased costs of rental housing in the market, at a significant benefit to private landlords, a significant cost to Government, and without the outcomes currently achieved by social housing.

Council to Homeless Persons also consulted people with an experience of homelessness about this type of proposal as part of preparing [our submission to the Reforms to Human Services](#) draft report. During consultation, this proposal was met with more outrage than any other policy proposal discussed in the past five years.

'Just say it: If you're homeless, we'll take you out back and shoot you. It's getting to that stage. The government won't take responsibility'

- John Kenney, Consumer / Advocate

There was a high level of concern that charging market rents will increase levels of homelessness. These comments also reflect the very significant value that people place on the security and affordability of the current social housing model.

'Try that and you'll have increased homelessness by ten within a week, in two weeks, times it by ten again'

- Christine Thirkell, Consumer / Advocate

The proposal also failed to meet people's expectations of fairness. One participant compared the proposal to major historical atrocities (quote not reproduced herein). As this proposal would, in effect, dismantle the social housing system and the enormous benefits it delivers, undermining rather than enhancing the supply of low-cost rentals, Council to Homeless Persons recommends this proposal not be pursued further.

This proposal also included an alternative means of expanding support for those on social housing waiting lists. This alternative would again utilise the private rental market, but in this instance, provide financial assistance to such a point that a tenant was paying a proportion of their income as rent. Such a proposal is less contentious, but would also be exceedingly expensive, and would not achieve an increase in supply of low-cost rental housing. Consideration would also have to be given to ensuring that the private rental market upheld the same transparency and high standards as is needed by social housing tenants and as we have called for from social landlords in this submission.

While the precise models proposed by the Productivity Commission would have a disastrous impact on the supply of low-cost housing to the highly vulnerable, the principle on which these recommendations were based is sound. It is true that a great proportion of people in the social housing system are not currently housed in public and community housing, but are awaiting an offer. That the housing needs of each individual household on the VHR are likely to go unmet for years requires further attention from this review.

The review should consider what duty to respond is owed to people on the Victorian Housing Register as they await a social housing allocation. Given that this cohort are identified, through their inclusion on the VHR, as needing greater protection than the *Residential Tenancies Act* provides, the regulatory review should consider means for improving housing outcomes for those awaiting an allocation.

Recommendation 21: **Do not pursue a 'single system of financial assistance'** where social housing is provided at market rates with rental assistance.

Recommendation 22: That any alternative '**single system of financial assistance**' be subject to consultation, retaining an option to recommend against such a system.

Recommendation 23: That the social housing regulatory review consider means for improving housing outcomes for those awaiting a social housing allocation.

The consultation paper further made mention of low turnover rates in social housing, and the desire of older tenants to age in place. We contend that these are positive features of the social housing system, and that there is little to be gained by exploring changes to address these features.

Recommendation 24: Do not seek to increase turnover rates, or prevent people from aging in place.

The Social Housing Regulatory Landscape

The consultation paper has indicated that the regulatory review will consider whether Victoria should join the National Regulatory System for Community Housing (NRSCH). This should include consideration of what a regulatory system should achieve, and whether the existing NRSCH does so. While there are reasonable arguments in favour of a uniform national system, the critical question will be whether this system, the NRSCH, achieves Victoria's regulatory goals. In the event that it does not, it may be of benefit to articulate what an acceptable national system might look like.

Recommendation 25: Consider the goals of a regulatory system for social housing. Consider whether the NRSCH achieves said goals.

The consultation paper makes reference to the limited powers of local government to administer affordable and social housing. While this is true, it need not be. Local government has long requested more powerful tools to promote housing affordability.² An opportunity exists to extend the role of local government in social housing beyond its existing roles in donating Council owned land, and service coordination. This should include through the creation of mandatory inclusionary zoning mechanisms.

Victoria currently has voluntary mechanisms in place for inclusionary zoning. Consistent with Australian³ and international evidence⁴ that shows that voluntary inclusionary zoning requirements are ineffective, Victoria's inclusionary zoning program has had negligible outcomes to date.⁵

Inclusionary zoning would allow governments to maintain comparative access to public and community housing in the face of population and housing growth. This too was a recommendation of the Parliamentary Inquiry into Homelessness⁶.

Recommendation 26: Increase the regulatory power of local government by establishing mandatory inclusionary zoning.

References

¹ Victorian Government Department of Health and Human Services, 2019, *Public Housing Allocations Operational Guideline*, p.7

² See for example: Municipal Association of Victoria, 2018, *Call to Parties*, p.9.

³ Gurran, N., Gilbert, C., Gibb, K., van den Nouwelant, R., James, A., and Phibbs, P., 2018, *Supporting affordable housing supply: inclusionary planning in new and renewing communities*, Australian Housing and Urban Research Institute, p.50.

⁴ Non-Profit Housing Association of Northern California, 2007, *Affordable by choice; Trends in California Inclusionary Housing Programs*, p.33

⁵ National Shelter, 2019, *Inclusionary Zoning Report*, p.17 available at <<http://shelter.org.au/site/wp-content/uploads/190325-Inclusionary-Zoning-Report-V6-Final.pdf>>

⁶ Recommendation 50, Parliament of Victoria Legislative Council Legal and Social Issues Committee, 2021, *Inquiry into homelessness in Victoria; Final report*, p.319