

Joint legal assistance sector response to the Interim Report of the Social Housing Regulation Review

25 February 2022



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Thank you for the opportunity to respond to the Social Housing Regulation Review Interim Report.

About our services

This is a joint submission of the following legal assistance services:

Inner Melbourne Community Legal

Inner Melbourne Community Legal is an independent community legal centre working for social purpose in the inner Melbourne area. We assist people experiencing chronic disadvantage (such as homelessness, mental illness or low literacy) who are more likely to experience a cluster of legal and non-legal issues. We provide free legal help in partnership with other community organisations that are committed to improving community health and well-being, including in the area of tenancy law and housing.

Justice Connect Homeless Law

Justice Connect Homeless Law (Justice Connect) is Victoria's specialist free legal service for people experiencing or at risk of homelessness. Justice Connect staff work closely with pro bono lawyers to provide intensive legal representation (including ongoing casework, negotiations, court and tribunal appearances and advice) to homeless or at risk Victorians. Since 2001, Justice Connect has been outreach-based and client-centred, and from 2010 we have added depth to our practice by integrating staff social workers, allowing us to holistically address clients' legal and non-legal needs under one roof.

Peninsula Community Legal Centre

Peninsula Community Legal Centre Inc. (PCLC) is an independent, not-for-profit organisation that has been providing free legal services to vulnerable and disadvantaged people in Melbourne's outer south-east since 1977. In addition to its general legal services, the Centre operates specialist programs in family violence, family law, fines, rooming house and tenancy. Our priorities include people on low income, people with disabilities, those experiencing family violence, elder abuse, homelessness and other vulnerable groups.

Tenants Victoria

Tenants Victoria is the peak body for Victorian renters and the rental-law specialist community legal centre in Victoria. Our vision is a safe, secure, and affordable home for every Victorian renter in a fair housing system. We provide information and referrals, legal advice, casework support, representation and financial counselling support to renters, each year assisting over 10,000 individual renters. We also provide rental law advice, support, and training to tenancy and community sector workers, and advocate to make laws fairer for Victorian renters. Our website is a critical self-help tool for renters and their advocates and provides much-needed information to renters about their rights. In the year 2020-21, it received more than 1.76 million views.

Victorian Aboriginal Legal Service

The Victorian Aboriginal Legal Service (VALS) is an Aboriginal Community Controlled Organisation (ACCO). VALS was established in 1973 to provide culturally safe legal and community justice services to Aboriginal and/or Torres Strait Islander people across Victoria. VALS' vision is to ensure that Aboriginal people in Victoria are treated equally before the law; our human rights are respected; and we have the choice to live a life of the quality we wish.

Victoria Legal Aid

Victoria Legal Aid helps people with legal problems involving family breakdown, child protection, family violence, criminal matters, social security, mental health, discrimination, guardianship and administration, fines, immigration, tenancy and debt. Our clients are often people who are socially and economically disadvantaged, people with disability or experiencing mental health issues, children, people from culturally and linguistically diverse backgrounds and those who live in remote areas. During 2020–21 we helped 74,670 unique clients. Our work in residential tenancy is focused on tenants facing disadvantage, marginalisation and risk of homelessness.

West Heidelberg Community Legal

West Heidelberg Community Legal (WHCL) is a community legal centre that provides free legal services to vulnerable and disadvantaged people in the City of Banyule. Our services are targeted to those least able to access legal assistance, including those experiencing poverty, chronic illness, mental health issues and disability and those who are from a refugee background. WHCL operates as a unique fully integrated health-justice partnership with Banyule Community Health (BCH). WHCL and BCH are founded on an acute understanding of the inseparable link between good health, social inclusion and secure, affordable and appropriate housing. This underpinning is evident across BCH's programs, and in particular WHCL, which has considerable experience in the provision of tenancy and housing-related services.

WEstjustice

WEstjustice is a community legal centre servicing the Western suburbs of Melbourne, across the local government areas of Maribyrnong, Hobsons Bay and Wyndham. Our tenancy program reaches further into the additional local government areas of Melbourne and Moonee Valley. We work in partnership with our local communities to design and deliver services that are integrated into the places our clients already go. We provide free legal advice, representation, education, community development, advocacy and policy across four impact areas: family violence and family law, youth, culturally and linguistically diverse (CALD) communities, and people facing economic injustice.

Youthlaw

Youthlaw is Victoria's state-wide free community legal centre for young people under 25 years of age. Youthlaw works to address the legal issues facing young people through legal services, advocacy, law reform and preventative education programs, within a human rights and social justice framework. Youthlaw is based in Carlton and works closely with Frontyard Youth Services.

Contact point for enquiries

Please direct any queries in relation to this submission to Jennifer Beveridge, CEO, by email to jennifer.beveridge@tenantsvic.org.au or Agata Wierzbowski, Director of Client Services, by email to agata.wierzbowski@tenantsvic.org.au.

Summary of our recommendations

We jointly recommend:

1. That section 330A of the *Residential Tenancies Act 1997 (Vic)* should be amended to add new criteria for consideration in the ‘reasonable and proportionate test’, as follows:

Where the residential rental provider is a social housing provider, the Tribunal must consider the following:

- i. The specific obligations of the social housing provider under the *Housing Act 1983 (Vic)*, performance standards, any service charter, and its own policies;
 - ii. Whether the housing provider has made all reasonable efforts to transfer, relocate or otherwise secure alternative accommodation for the renter; and
 - iii. Whether the order is sought as a genuine avenue of last resort.
2. In order for tenancy sustainment to be embedded in the social housing regulatory framework, we support the following range of initiatives:
 - a. Requiring more effective and consistent tenancy sustainment policies across the whole social housing sector, drawing on best practice models, such as those that:
 - i. Embed an understanding of the role and responsibilities of the social landlord in policy content, including by meaningfully and concretely incorporating a focus on early intervention, problem-solving, support and referral;
 - ii. Are sufficiently detailed to support housing workers to make consistent, transparent and appropriately documented decisions based on relevant considerations, including the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*;
 - b. Mandating improved and consistent processes for addressing rental arrears across the social housing sector, drawing on the Department of Fairness, Families and Housing (DFFH) rent-arrears management policies as an example of best practice;
 - c. Better coordination and facilitation of transferring people into appropriate housing with adequate support services;
 - d. Supporting the housing workforce to identify and refer renters for support.
3. In order to meaningfully clarify that the Charter applies to all social housing renters, the Victorian Government should:

- a. Make legislative amendments to expressly include community housing providers that are registered under section 84 of the *Housing Act 1983 (Vic)* as ‘public authorities’ for the purposes of the Charter;
 - b. Include compliance with the Charter as an enforceable performance standard for all social housing providers;
 - a. Ensure VCAT has jurisdiction to consider Charter compliance.
4. In order to embed the interests of current, future and prospective renters in law, the Victorian Government should make legislative amendments to include the right to housing in the Charter.
5. The proposed service charter should be sufficiently particularised and enforceable by individual renters, and introduce a set of mandatory and enforceable benchmark policies for all social housing providers in at least the following key areas:
 - a. Sustaining housing;
 - b. Access to temporary absence;
 - c. Rental arrears;
 - d. Rent setting and review;
 - e. Disability and family violence modification;
 - f. Reviewable complaints process;
 - g. Maintenance and repairs.
6. In order to ensure equal renter access to information across the social housing landscape, amendments to the definition of ‘agency’ in the *Freedom of Information Act 1982 (Vic)* to include any agency registered under section 84 of the *Housing Act 1983 (Vic)*.
7. That the new social housing dispute resolution body takes the form of either:
 - a. A new entity, such as a Social Housing Ombudsman or Commissioner; or
 - b. Clarifying that the Victorian Ombudsman’s jurisdiction is expanded to include an expanded social-housing complaints-handling function.
8. That this body aligns with the following principles:
 - a. It is a single-entry point for all social housing complaints escalated beyond the internal complaints process;
 - b. One consistent external dispute resolution process is introduced for all social housing renters, which does not diminish current renters’, and in particular public housing renters’, rights;
 - c. The dispute resolution body’s jurisdiction covers as wide a range of disputes as possible, and exclusions from its jurisdiction are minimal;

- d. The body is independent, including being an independent body separate from government departments that play a role in funding social housing;
 - e. It is guided by a clear purpose related to dispute resolution, for example to provide a ‘fair, independent and effective dispute resolution service for renters and rental providers’;
 - f. It has in place a robust information sharing mechanism with the regulator;
 - g. It can make binding decisions, in a manner similar to the Australian Financial Complaints Authority (AFCA) in that:
 - i. If the renter agrees to a proposed determination of the scheme within 30 days of the determination being proposed, the determination will then be made and binding upon both rental provider and renter;
 - ii. If the renter does not agree, the body would not make a determination, and the renter or rental provider would be free to pursue remedy before VCAT;
 - h. If (g) is not available, all parties would be able to apply for merits review of any binding order made by the scheme to VCAT.
9. The Victorian Government should provide additional and adequate funding to legal assistance services to support the anticipated growth in the number of social housing renters, to support their participation in the proposed dispute resolution process, and to sustain the strength of the regulatory framework by supporting renters to raise meritorious complaints against housing providers in cases of regulatory non-compliance.
10. The Victorian Government should fund free and high-quality education of different forms (including in-person training and training tailored to particular rental provider groups) for rental providers and property managers, which includes the following content:
- a. Legal obligations in relation to:
 - i. Their basic duties and obligations as rental providers;
 - ii. Minimum standards, maintenance and repairs;
 - iii. Payment of compensation, when and where required;
 - iv. Family and personal violence, including modifications;
 - v. The process of advertising for renters, and establishment of a new rental agreement;
 - vi. Rights of entry, and how to provide adequate notice;
 - vii. The process of ending a tenancy;
 - b. What is family violence, and how to support someone who is experiencing family violence;
 - c. What is trauma, and how to work with someone who has experienced trauma.

Introduction

The length and density of the Social Housing Regulation Review (SHRR) Interim Report demonstrates the breadth and complexity with which the Review Panel has had to grapple in this review. We congratulate the Panel on a comprehensive, detailed and considered response to its Terms of Reference, and to its openness to new approaches, and willingness to survey international best practice, in particular Scotland, in informing its recommendations.

As set out below, we welcome a number of the key system reforms identified by the SHRR Interim Report. In this submission, we provide further feedback on how to implement these important reforms to ensure Victorians have access to safe, affordable and secure housing.

No evictions into homelessness

Sustaining tenancies

Tenancy sustainment is a key component of any social housing regulatory framework. We welcome the explicit recognition of the need for a stronger standard in sustaining tenancies, including a ‘no evictions into homelessness’ policy. The social housing system provides a critical safety net to stop people ending up in the homelessness services system.

In order for tenancy sustainment to be embedded in the social housing regulatory framework, we propose a range of initiatives across laws, regulation and policies, including:

- Stronger and more consistent tenancy sustainment policies, including mandating improved processes for addressing rental arrears (see below);
- Better coordination and facilitation of transferring people into appropriate housing with adequate support services;
- Legislative change to the *Residential Tenancies Act* (see below);
- Improving access to integrated legal services (see below);
- Supporting the housing workforce to identify and refer renters for support;
- Stronger and more consistent tenancy sustainment policies.

The Panel has noted that there is a wide variance in approaches to sustaining tenancies in social housing and particularly in the community housing sector. Achieving consistency must be an aim of any reform. Within the current social housing landscape, best practice for a tenancy sustainment model is the DFFH Public Housing Policy and Practice Manuals¹.

Some community housing providers’ policies share elements with DFFH operational guidelines, suggesting that the community housing model can well sustain an approach more protective of renter security. Examples of good practice within the sector should be used as a basis to develop a model of tenancy sustainment or end of tenancy policy which is equivalent to that applicable in public housing. Adoption of this policy should become part of the relevant performance standard and any tenancy

¹ Public housing policy and practice manuals - DFFH Service Providers

failures caused by provider-initiated action (i.e., eviction) reported annually to the Housing Registrar, which would benchmark these results.

Specific elements associated with better outcomes for renter housing security are ‘tenancy sustainment’ or ‘end of tenancy’ policies that:

- Embed an understanding of the role and responsibilities of the social landlord in policy content, including by meaningfully and concretely incorporating a focus on early intervention, problem-solving, support and referral;
- Are sufficiently detailed to support housing workers to make consistent, transparent and appropriately documented decisions based on relevant considerations, including the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

Legislative change to the *Residential Tenancies Act*

Currently, the ‘reasonable and proportionate’ test, introduced by the *Residential Tenancies Amendment Act 2018* (Vic), is silent on social housing providers’ particular responsibility to pursue eviction only as a last resort. Eviction is, ultimately, a legal process. Amending the ‘reasonable and proportionate’ test to require consideration of whether a social housing provider has met the standards expected of a socially responsible landlord (as defined either by case law, regulation, or performance standards) ensures that these expectations are given substantive legal weight.

We therefore recommend that section 330A of the *Residential Tenancies Act 1997* (Vic) should be amended to add new criteria for consideration where the rental provider is a social housing provider, as follows:

- The specific obligations of the social housing provider, under the *Housing Act*, performance standards, and its own policies;
- Whether the housing provider has made all reasonable efforts to transfer, relocate or otherwise secure alternative accommodation for the renter;
- Whether the order is sought as an avenue of last resort.

Mandating improved processes for addressing rental arrears

While the evidence shows that social housing tenancies end for a range of reasons, 2 key tendencies are highlighted by the evidence cited by the Panel in its Interim Report. The first is that community housing renters are more likely to experience eviction (understood as a forced move connected to a legal process initiated by a landlord) than public housing renters. The second is that the majority (an overwhelming majority when rooming houses are excluded) of these evictions are related to rental arrears.

This evidence clearly suggests that improving processes for addressing rental arrears in the community housing sector could significantly reduce the number of tenancies failing due to eviction. It should also mitigate one of the key concerns raised by the Panel about the cost to those impacted by anti-social behaviour and neighbour disputes being a potential ‘trade-off’ for fewer evictions. In fact, these issues appear only to be an operative factor in a very small minority of evictions. However, in such cases, in which issues related to renter conduct are relevant, it remains an obligation of a social housing provider to consider and pursue all reasonable avenues to avoid evicting renters. There are best practice examples of this approach – see Jenny’s story below.

Jenny's story:

Jenny has a history of family violence and homelessness. She was housed in an apartment with her current partner as part of the Homelessness 2 Housing program, a Victorian Government response to the COVID-19 pandemic.

Her apartment was positioned amongst privately owned and occupied or let apartments. Soon after moving in, the community housing rental provider began receiving complaints about excessive noise coming from the apartment and common areas. This included behaviour like shouting and moving shopping trolleys up and down the driveway in the middle of the night.

Jenny didn't deny the allegations and agreed to a compliance order by VCAT upon the community housing rental provider's application. Negotiations occurred between the client's lawyer, housing support worker and community housing manager to try to achieve a solution to the situation. Unfortunately, complaints continued to be received and an application was made to VCAT seeking possession of the rented premises. However, Jenny was agreeable to being transferred to another home and the community housing provider identified a vacancy in a more appropriate home under its management. Both parties agreed to a transfer of tenancy, and the client has since indicated that she is much happier in her new home.

It is also the case that DFFH, which has best-practice rent-arrears management policies, annually collects a higher proportion of rent due than is the average across the community housing sector². Again, this should mitigate any concern that a potential 'trade-off' for a reduced reliance on eviction in managing arrears in the community housing sector will negatively impact providers' ability to collect rents. In any event, rent collection percentages in both public and community housing show that outstanding arrears are vanishingly small, and should not represent a significant financial burden on providers.

Recommendations

1. That section 330A of the *Residential Tenancies Act 1997* (Vic) should be amended to add a new criterion for consideration in the 'reasonable and proportionate test', as follows:

Where the residential rental provider is a social housing provider, the Tribunal must take not consideration the following:

- i. The specific obligations of the social housing provider under the Housing Act, performance standards, any service charter, and its own policies;
- ii. Whether the housing provider has made all reasonable efforts to transfer, relocate or otherwise secure alternative accommodation for the renter; and
- iii. Whether the order is sought as a genuine avenue of last resort.

² The public housing rent collected percentage was 99.7% in 2015-16 (the last time this figure was publicly reported by the Productivity Commission). The community housing sector average rent collected percentage was 98.7% in 2020-21 according to the Housing Registrar. See: <https://www.pc.gov.au/research/ongoing/report-on-government-services/2017/housing-and-homelessness/housing>

2. In order for tenancy sustainment to be embedded in the social housing regulatory framework, we support the following range of initiatives:
 - a. Requiring more effective and consistent tenancy sustainment policies across the whole social housing sector, drawing on best practice models, such as those that:
 - i. Embed an understanding of the role and responsibilities of the social landlord in policy content, including by meaningfully and concretely incorporating a focus on early intervention, problem-solving, support and referral;
 - ii. Are sufficiently detailed to support housing workers to make consistent, transparent and appropriately documented decisions based on relevant considerations, including the *Charter of Human Rights and Responsibilities Act 2006* (Vic);
 - b. Mandating improved and consistent processes for addressing rental arrears across the social housing sector, drawing on the DFFH rent-arrears management policies as an example of best practice;
 - c. Better coordination and facilitation of transferring people into appropriate housing with adequate support services;
 - d. Supporting the housing workforce to identify and refer renters for support.

Renters at the centre

We warmly welcome the Panel's Proposal 1.3 to clarify that the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Charter) applies to registered housing agencies. This is a critical component of ensuring renters' rights are protected in the social housing system. This has been a recommendation from the legal assistance sector for a number of years to ensure that community housing renters' Charter rights are explicitly recognised.

In response to the Panel's question 1.3 in relation to practical implementations from such an action, we submit that in order for the Charter to be meaningful in protecting renter rights, it will need to be operationalised through consistent and enforceable policies and accountability mechanisms, better training and support of housing provider staff to make Charter-compliant decisions and ensuring that VCAT has jurisdiction to consider Charter compliance.

We support the objective of putting renters at the centre of the social housing system. However, we query whether the proposed change to the objects of the *Housing Act 1983* (Vic) is the best way to achieve this. The current objects include 'to ensure that every person in Victoria has adequate and appropriate housing at a price within his or her means'.³ To alter the wording to 'protect and safeguard the interests of current, prospective and future tenants'⁴ could unintentionally require the interests of future or prospective tenants to be balanced against the needs of current renters, or vice versa. This approach risks putting different groups of renters' interests in conflict, or competition, with each other.

³ *Housing Act 1983* (Vic) s 6.1(a)

⁴ Interim report 1.1, 12.

We understand the intention of the Panel is to ensure the objective of social housing regulation encourages an approach that supports growth of the social housing sector, while making renters' interests central, and to ensure the government of the day is accountable for meeting this objective through providing detail in documents 'such as an annual statement of ministerial priorities and other guidance material'.⁵ We support this principled position to create a sustainable growth strategy to meet the housing needs of renters. Further we believe this position requires bolder and more substantive action that recognises housing is a universal human right. For this reason, it is our submission that the Panel should recommend the creation of the right to housing in the Charter⁶. This would make a clear statement that the current, and future, governments are committed to, and will develop, strategies to work towards the objective that every Victorian has a place to call home.

Finally, we support an equality of treatment

Recommendations

3. In order to meaningfully clarify that the Charter applies to all social housing renters, the Victorian Government should:
 - a. Make legislative amendments to expressly include community housing providers that are registered under section 84 of the *Housing Act* as 'public authorities' for the purposes of the Charter;
 - b. Include compliance with the Charter as an enforceable performance standard for all social housing providers;
 - c. Ensure VCAT has jurisdiction to consider Charter compliance;
4. In order to embed the interests of current, future and prospective renters in law, the Victorian Government should make legislative amendments to include the right to housing in the Charter.

Enforceability and consistency of service standards

We strongly support the need for consistency in service standards across public and community housing to ensure equity and transparency for renters regardless of their rental provider. We note as per our feedback below and in our previous submissions to the Review that consistent benchmark policies and explicit protection of renters' rights are critical to ensure consistency across public and community housing, and that these rules should be of a standard equivalent to the tenancy management policies of public housing. As the Panel sets out at page 29 of its Interim Report, it is unclear what some of the performance standards mean in practice, and '[t]here may be scope to provide greater guidance and support to implement this standard'. Required benchmark policies in key areas would provide such guidance. We note that our colleagues at the Victorian Council of Social

⁵ Interim report, 12.

⁶ See Hon. Kevin Bell, "Homelessness as Human Right Issue" (Editorial) Available at: <https://www.monash.edu/research/better-governance-and-policy/policy-insights/housing-and-homelessness/homelessness-as-a-human-rights-issue> Accessed: 11 Feb 2022

Services (VCOSS) made a recommendation along similar lines to the Panel in response to Consultation Papers 2 and 3.⁷

While we are cautiously supportive of the proposal to implement a common service charter, this must not come in place of a minimum set of benchmark policies for all social housing providers in a number of key areas, as set out in our recommendation below. As we read the Panel's current Proposal 1.2 in relation to the service charter, the charter would not be directly enforceable by individual renters, and therefore could not be relied upon in a dispute between renters and their housing providers about key aspects of their housing, such as repairs, rent-setting, debts or eviction. This would risk the charter operating in a similar way to the current performance standards – having limited impact in cases where a housing provider presents as unwilling to comply with its legal and standard requirements. In these circumstances there is a need for clear and consistent minimum set of renter rights and the ability to enforce those rights through appropriate and accessible dispute-resolution mechanisms. There should be a willingness to see a service charter matched with accountable and consistent service delivery.

The review of public sector maintenance contracts is particularly welcome, and we strongly support the proposal for maintenance to be provided in-house to address ongoing issues with the maintenance of social housing (Proposal 5.3). We are also highly supportive of the recommendation in Proposal 5.1 that the *Residential Tenancies Act* minimum standards apply to all rental properties after January 2024. In addition to this recommendation, people living in social housing should have access to clear and comprehensive maintenance policies that ensure a consistent standard between public and community housing, where no renter is worse off.

Another important element of establishing consistency, and equality, of rights between public and community housing renters, is to ensure that these two groups of renters have equal access to information held about them by their housing provider under the *Freedom of Information Act 1982* (Vic). This is essential for transparency and accountability within the housing system. Obtaining such information can provide invaluable insight on the operation of a housing provider, as well as any areas of non-compliance. Currently, community housing organisations are not included in the definition of 'agency' in the *Freedom of Information Act 1982* (Vic), and we submit this needs to be amended to include any agency registered under section 84 of the *Housing Act 1983* (Vic).

Finally, we support the proposal that all social housing providers to undertake disability modifications (Proposal 5.7) and ensuring appropriate funding streams are made available for these modifications, noting that currently the system is creating confusion and backlog due to funding eligibility through NDIS and other schemes. We propose this should be extended to family violence modifications.

Recommendations

5. The proposed service charter should be sufficiently particularised and enforceable by individual renters, and introduce a set of mandatory and enforceable benchmark policies for all social housing providers in at least the following key areas:
 - a. Sustaining housing;

⁷ 'A contemporary social housing regulatory framework for Victoria: VCOSS Submission to the Social Housing Regulation Review – Consultation Papers 2 & 3' (September 2021), recommendation 6, page 6.

- b. Access to temporary absence;
 - c. Rental arrears;
 - d. Rent setting and review;
 - e. Disability and family violence modification;
 - f. Reviewable complaints process;
 - g. Maintenance and repairs.
6. In order to ensure equal renter access to information across the social housing landscape, amendments to the definition of ‘agency’ in the *Freedom of Information Act 1982* (Vic) to include any agency registered under section 84 of the *Housing Act 1983* (Vic).

Renter empowerment

Embedding renter involvement in policy and regulatory development and decision-making is key. However, renter empowerment does not equate to greater renter rights, and it is critical that renter rights are embedded in order to ensure that any involvement in policies, processes and decision-making are meaningful and not tokenistic.

Therefore, it is important that the proposed service charter and any associated benchmark policies and procedures should be developed in consultation with renters and their representatives. Placing renters at the centre of the decisions that are made about them is critical, and appropriately remunerated participation should be included at the individual housing agency and estate level. Genuine renter consultation should be required for all policy amendments and updates.

A dedicated representative and advocacy body to cover both public and community housing renters is welcome. We support the Panel’s proposal that the current Victorian Public Tenancy Association be expanded and funded to include community housing renters.

Better dispute resolution mechanisms

We welcome the Panel’s proposal at part 6 of the Interim Report to create a single independent complaints handling body to oversee complaints of both public and community housing renters, including ensuring a single entry-point to help renters navigate complaints and disputes. What is critical for the success of such a reform is that the single complaints body:

- Is independent, including being an independent body separate from government departments that play a role in funding social housing;
- Results in a streamlining and simplification of the current plethora of complaints processes available to social housing renters, while not diminishing current renters’ rights;
- Covers as broad a range of disputes as possible, to remove the confusion relating to the exclusions on the jurisdiction of the Housing Appeals Office⁸ and the Housing Registrar⁹;

⁸ Appeal a decision | [Housing.vic.gov.au](https://www.housing.vic.gov.au)

⁹ Housing Act 1983, section 96(2).

- Is guided by a clear purpose related to dispute resolution, for example to provide a ‘fair, independent and effective dispute resolution service for renters and rental providers’;
- Has in place a robust information-sharing mechanism with the regulator, as proposed by the Panel in Proposal 6.3. To expand upon this, given the complaints body’s optimal positioning to identify systemic issues in relation to renters’ rights, it should be able to may make recommendations to the regulator for investigation and response;
- Has a fast-track process for low-value, single-issue disputes, in particular bond matters;
- Can make binding decisions, in a manner similar to the ACFA in that:
 - In order to address the issue of the power imbalance between the renter and rental provider:
 - If the renter agrees to a proposed determination by the scheme within 30 days of a determination being made, the determination would then be made and binding upon both rental provider and renter;
 - If the renter does not agree, the body would not make a determination, and the renter or rental provider would be free to pursue remedy before VCAT;
 - If the above is not available, all parties would be able to apply for merits review of any binding order made by the scheme to VCAT.

For the above reasons, our preferred options for the proposed dispute resolution body are as follows:

- A new entity, such as a Social Housing Ombudsman or Commissioner; or
- Clarifying that the Victorian Ombudsman’s jurisdiction is expanded to include an expanded social-housing complaints-handling function as set out above.

Should such a new body be introduced, all renters appearing before it should have access to independent, funded legal support with the aim of sustaining tenancies, resolving disputes early and promoting better practices within social housing agencies and as part of a complainant-centred complaints model.

In relation to neighbourhood disputes, we respond with cautious interest to the proposal of a restorative justice model to resolve such disputes. Any such model must be trauma-informed and have cultural appropriateness at its core.

Recommendations

7. That the new social housing dispute resolution body takes the form of either:
 - a. A new entity, such as a Social Housing Ombudsman or Commissioner; or
 - b. Clarifying that the Victorian Ombudsman’s jurisdiction is expanded to include an expanded social housing complaints handling function.
8. That this body aligns with the following principles:
 - a. It is a single-entry point for all social housing complaints escalated beyond the internal complaints process;
 - b. One consistent external dispute resolution process is introduced for all social housing renters, which does not diminish current renters’, and in particular public housing renters’, rights;

- c. The dispute resolution body's jurisdiction covers as wide a range of disputes as possible, and exclusions from its jurisdiction are minimal;
- d. The body is independent, including being an independent body separate from government departments that play a role in funding social housing;
- e. It is guided by a clear purpose related to dispute resolution, for example to provide a 'fair, independent and effective dispute resolution service for renters and rental providers';
- f. It has in place a robust information sharing mechanism with the regulator;
- g. It can make binding decisions, in a manner similar to the AFCA in that:
 - i. If the renter agrees to a proposed determination of the scheme within 30 days of the determination being proposed, the determination will then be made and binding upon both rental provider and renter;
 - ii. If the renter does not agree, the body would not make a determination, and the renter or rental provider would be free to pursue remedy before VCAT;
- h. If (g) is not available, all parties would be able to apply for merits review of any binding order made by the scheme to VCAT.

Appropriate housing for Aboriginal people

We welcome the recognition of and extensive recommendations on the need for greater access to social housing and cultural safety for Aboriginal people. In particular, we welcome the recommendations on embedding cultural safety in performance standards and creating accessible and culturally safe complaints and dispute processes, as well as greater accountability through transparent data and reporting.

We particularly note the importance of independent Aboriginal renter advocates to assist Aboriginal people to navigate their way through the social housing system and guide people on complaints and disputes processes, as per recommendation 1 of our joint response to the Social Housing Regulatory Review Aboriginal Housing options paper.

We also endorse the establish of an alternative dispute resolution (ADR) mechanism that is culturally safe and includes informal and community-based complaints processes, co-designed with the Aboriginal community.

Stronger accountability and transparency

We welcome a uniform performance-indicator framework for both public and community housing, which should be drafted in consultation with Victorian social housing renters, their advocates and other relevant stakeholders. Coupled with uniform and transparent performance reporting and data on outcomes, this will ensure direct comparison between social housing providers and continuous improvement.

A single independent social housing regulator

We are supportive of the recommendations made by the Panel in relation to a single regulator for social housing, including in relation to governance arrangements with the aim of enhanced independence. We note VCOSS' submission to SHRR consultation papers 2 and 3 on the question of a single regulator, and its comments in relation to the complexity of such a reform, and the need for genuine consultation and co-design with a breadth of stakeholders. We watch with interest the Victorian Government's progress on implementing the Social Services Regulator, which we understand is to commence operation in 2023, and we query to what extent the 2 regulators will intersect.

The need for integrated and legal support services

As recognised in the Interim Report, renters in social housing are often experiencing disadvantage and complexities that require specialised supports to access and sustain their tenancies. In order to ensure that social housing renters can stay safely housed and support the sustainment of tenancies, investment in both legal and non-legal support services is critical, including:

- *Early intervention supports* which support social housing renters to address factors that make increase their risk of eviction;
- *Ongoing flexible supports* that provide flexible, multidisciplinary and ongoing support to people with complex needs. These are particularly effective for people who have experienced ongoing homelessness.

However, we note the absence of recommendations in the Interim Report for greater funding for legal support services for social renters, despite the anticipated increase in the volume of social housing renters in the imminent future. Accessible and tailored legal services are a vital part of a multi-disciplinary service response to accessing and sustaining social housing. Holistic, integrated services are key to ensure that both legal and non-legal needs can be collectively addressed. This approach allows for earlier intervention in sustaining tenancies while simultaneously addressing non-legal issues to prevent future legal issues occurring. In particular, early access to legal help is vital for people with complex needs, and crucial to avoiding an escalation of legal issues. The impacts of escalation were recognised in the Victorian Government's 2016 Access to Justice Review:

'Increasingly though, unresolved civil legal problems, such as those related to a community member's housing, mental health, employment or family, are recognised as having far reaching consequences for both the individuals involved and the state. For individuals, unresolved legal problems can lead to diminishing health and restrict social and economic participation, as well as triggering further legal problems, including possible criminal legal issues. These consequences for individuals often generate costs which must be borne by the state, whether in the justice system or in other publicly funded systems.'¹⁰

Our services, jointly, support thousands of social housing renters each year, in an already under-funded service system. Our services' eligibility guidelines for renter support generally prioritise those at risk of

¹⁰ Victorian Government, Access to Justice Review: Summary Report (Report, August 2016) (Access to Justice Review: Summary Report) 4, available at: https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/9814/8601/7130/Access_to_Justice_Review_-_Summary_and_recommendations.PDF

homelessness, or for whom safety is otherwise an issue (i.e., family or personal violence, urgent repairs or disability modifications), for intensive assistance. Our capacity rarely extends beyond these cases, because they present at such a volume.

Such legal services also play the important role of supporting the integrity of the legal and housing system through identifying trends in non-compliance, and systemic issues requiring law reform, and reporting these back to government, in particular legislators and regulators. Well-funded renter legal services, including to assist renters participating in any new dispute resolution processes, is therefore a vital part of the health of the broader social housing system.

Recommendation

9. The Victorian Government should provide additional and adequate funding to legal assistance services to support the anticipated growth in the number of social housing renters, to support their participation in the proposed dispute resolution process, and to sustain the strength of the regulatory framework by supporting renters to raise meritorious complaints against housing providers in cases of regulatory non-compliance.

Rental provider and estate agent education and Code of Practice

We welcome the recommendations made at part 18 of the Interim Report, in particular those in relation to a pilot Code of Practice for rental providers and property managers (noting that a limited Code of Conduct does exist for real estate agents in the *Estate Agents (Professional Conduct) Regulations 2018* (Vic)¹¹) and that of education being made available for private rental providers. Too often, in our work, we come across rental providers who do not know their legal obligations. One frequent example is rental providers' lack of understanding of the new documentary requirements for some forms of Notices to Vacate. Given the complexity of the recent amendments to the *Residential Tenancies Act*, and the lack of freely available training for rental providers on these, this is perhaps not surprising. We strongly support giving rental providers the strongest possible foundation from which to carry out their responsibilities.

Recommendation

10. The Victorian Government should fund free and high-quality education of different forms (including in-person training, and training tailored to particular rental provider groups) for rental providers and property managers, which includes the following content:
 - a. Legal obligations in relation to:
 - i. Their basic duties and obligations as rental providers;
 - ii. Minimum standards, maintenance and repairs;
 - iii. Payment of compensation, when and where required;
 - iv. Family and personal violence, including modifications;

¹¹ Estate Agents (Professional Conduct) Regulations 2018 (legislation.vic.gov.au)

- v. The process of advertising for renters, and establishment of a new rental agreement;
 - vi. Rights of entry, and how to provide adequate notice;
 - vii. The process of ending a tenancy;
- b. What is family violence, and how to support someone who is experiencing family violence;
 - c. What is trauma, and how to work with someone who has experienced trauma.