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Regulatory Framework Inquiry
Victoria Competition and Efficiency Commission
GPO Box 4379
Melbourne VIC 3001

Via email: regulatoryframework@vcec.vic.gov.au



Registered Office
55 Johnston Street
Fitzroy VIC Australia
Mail P O Box 234
Fitzroy VIC 3065
Phone (03) 9411 1444
Fax (03) 9416 051
Web www.tuv.org.au

Dear Sir/Madam,

Inquiry into Victoria's Regulatory Framework

The Tenants Union of Victoria (TUV) welcomes the opportunity to respond to the Inquiry into Victoria's Regulatory Framework Issues Paper. In this response we detail priority areas for improving the regulation of Victoria's housing system, with specific reference to the private rental market and the social housing system.

The TUV was established in 1975 as an advocacy organisation and specialist community legal centre, providing information and advice to residential tenants, rooming house and caravan park residents across the state. We assist about 18,000 private and public renters in Victoria each year. Our purpose is to improve the status, rights and conditions of all tenants in Victoria.

The regulatory system should be interpreted broadly to include regulatory agencies. In the housing system this includes key regulatory agencies including Consumer Affairs Victoria (CAV), the Department of Human Services Office of Housing (OoH), the Housing Registrar and local government. The broad functions of these regulatory agencies are of particular relevance. CAV and OoH are both responsible for policy development in residential tenancies, while the latter agency also has direct service delivery functions.

Approach to regulation

The TUV believes that good regulation of the housing system is vital to ensuring Victorian tenants are able to access appropriate housing and are afforded protections against unfair or exploitative practices. In addition to the approach VCEC specifies as the desired outcomes of the regulatory framework, the TUV suggests:

- Regulation should ensure transparency and accountability for public investment
- Roles and relationships between entities including providers, funders and regulators should be clearly defined and articulated, and

continued...

- Consumer protection is paramount and the vulnerability of some consumer groups is acknowledged.

Removing regulation which is overly burdensome and complex is appropriate where policy objectives are not compromised. Removing redundant and duplicative regulation is also necessary. However, removal of regulation should not be pursued in isolation from the desired outcomes of that regulation. An assessment of the regulatory framework should lead to improvements and increased effectiveness of regulation rather than a simple reduction of the number of regulatory instruments. Such an approach is likely to result in the reduction of regulation in some parts of the economy while and development of new regulation in others. Government should actively pursue new regulatory interventions where the absence of effective regulation results in a failure to achieve policy objectives.

The TUV can identify considerable scope for improving the regulatory framework in Victoria's rental housing system. These relate mainly to the body of existing regulations and the administration of regulation and its enforcement. The existing regulation of Victoria's rental housing system is characterised by low level of intervention in the private rental market and a lack of objective based regulation the social housing sector.

Private rental market

Despite seeking to regulate the same essential human need of housing, the regulation of Victoria's housing markets lacks coherence and consistency of objectives across the two key tenures of home purchase and ownership and residential tenancies.

The regulatory framework seeks to structure the key housing transactions between consumers and vendors of buying, selling and leasing residential property. Regulatory interventions are based on an acknowledgement of the essential nature of housing and the need to address market imperfections such as asymmetrical information. The essential nature of housing applies to consumers regardless of which tenure they seek housing.

The buying and selling of residential property is more highly regulated than are residential tenancies. This is most clearly evident in the regulation of the sale, contracting and auctioning of land in the *Sale of Land Act 1962* (SLA). The SLA specifies how auctions are to be conducted and cooling off periods are provided. The pre disclosure requirements of section 32 of the SLA are of particular interest. This regulatory intervention attempts to redress the asymmetrical distribution of information between the vendor and consumer by ensuring the latter is provided with specified information in regards to the title and restrictions affecting the property. This statement is provided as part of the contracting process. If this requirement is not observed, penalties are enforced by the regulator (CAV).

By contrast, the leasing process remains substantially unregulated. The practices of landlords and real estate agents in leasing or contracting with tenants that are followed are largely determined by longstanding real estate industry culture. These practices remain virtually untouched by the principles of fair and transparent contracting which operate under the SLA. Only certain aspects of the leasing or contracting process are regulated by the Residential Tenancies Act (RTA). Where practices are regulated there is widespread non-compliance by industry with both the spirit and the letter of the RTA. Typical problems experienced in the leasing process include:

- Inaccurate and misleading advertising, particularly in relation to the standard and amenity of the property
- Limited time provided to view property prior to lodging an application, with one short inspection typical
- No opportunity to review a tenancy agreement or seek advice, as the most common practice is for the agreement to be offered for signing at the same time as payment of bond and rent in advance
- A lack of transparency or negotiation of terms of agreement, particularly in relation to the setting of rent, rent payment methods, duration of tenure and the inclusion of additional terms which may be inconsistent with the right and obligations contained in the RTA.

Despite the scope for significant detriment to be experienced by tenants, the leasing process remains substantially unregulated. While entering a residential tenancy does not require a significant financial investment in the manner of home purchase, it is a consumer transaction which must be undertaken in order for a tenant to secure housing. The scope for significant consumer detriment should warrant a greater degree of regulatory oversight than is currently the case. While this has been identified by social and housing policy researchers as a site of asymmetrical information, regulatory intervention has not occurred.

Compliance and enforcement

CAV is responsible for enforcing and ensuring compliance with the RTA. CAV has had a long standing key objective of voluntary compliance. As a result, CAV compliance actively has focused on information provision and education of landlords, rooming house owners and caravan park owners. For many in the sector, this will be sufficient to encourage acceptable practice. However, for a significant proportion, information and education do not deter unlawful conduct. For this group, regulatory authorities should take a more proactive approach, monitoring the sector, identifying instances of unlawful conduct, and prosecuting breaches of relevant legislation.

Evidence suggests a significant degree of disputation in residential tenancies. CAV receives approximately 200,000 tenancy related enquiries each year. In addition to

this, approximately 60,000 applications are made to the Victorian Civil and Administrative Tribunal each year to resolve tenancy disputes. This suggests a high degree of uncertainty among landlords and tenant about their rights and responsibilities and that the focus on information and education is not enabling parties to resolve disputes without assistance. It is also important to acknowledge that voluntary compliance is an unrealistic means to achieve acceptable practice for all landlords. Information and education do not deter unlawful conduct for a significant proportion.

The reluctance of the regulator to take a proactive approach has compounded two key deficiencies in the regulatory instruments. Firstly, the current compliance and enforcement system requires formal complaints by tenants and residents to initiate inspection and investigation. This is undermined by the reluctance of tenants and resident to make formal complaints due to the fear of retaliatory eviction or other adverse consequences. Such fears are well founded give the ability of landlords to terminate tenancies without reason, to significantly increase rents within the broad market parameters and to exclude tenants and residents from future housing through the use of informal blacklisting and the use of residential tenancy databases. Secondly, the penalties currently contained in the RTA do not pose a sufficient deterrence for unscrupulous operators.

In this context, regulators are required to take a proactive approach, monitoring the sector, identifying instances of unlawful conduct, and prosecuting breaches of relevant legislation. CAV has proven to be reluctant to take such an approach despite considerable the evidence observed above. While the TUV has been encouraged by recent enforcement actions against several rooming house owners, it has been extremely rare for CAV to pursue legal action against landlords in breach of the RTA.

Social housing

The regulation of social housing exhibits a similar lack of coherence and is poorly linked to the achievement of policy objectives. The regulation of social housing is overwhelmingly focused on the financial viability and growth of community housing providers rather than regulating for the achievement of housing outcomes. The social housing sector in Victoria is regulated by the OoH and the Registrar. The Registrar regulates the small community housing sector of 31 housing providers and nine affordable housing associations via the *Housing Act 1983*. The legislative remit of the Registrar is the registration of rental housing agencies and ensuring compliance and performance monitoring of registered agencies. The Housing Associations were established in 2003 under the Victorian Government's *Strategy for Growth in Housing for Low Income Victorians* with the objective of delivering significant growth in social housing and are the key focus of the Registrar's regulatory role. Significantly, the Registrar regulates only community housing while the OoH remains exempt from regulatory oversight. The former provides approximately seven thousand housing units, while the latter

provides approximately 78,000 properties. The TUV believes this is a disproportionate response to the risk of not achieving policy objectives.

The focus of regulator is squarely on the prudential oversight of community housing providers and risk to funders. The Registrar's regulatory objectives are to:

- ensure that all housing agencies are viable, well governed and properly managed
- protect and ensure accountable use of government assets managed by the affordable housing sector
- build confidence in the public and private sector to invest in and grow affordable housing
- ensure quality and continuous improvement in service delivery and outcomes for tenants (Housing Registrar 2007 *Our Regulatory Framework*).

We believe these objects are appropriate but should operate alongside primary objectives such as:

- facilitating the provision of the highest quality social housing
- empowering and protecting tenants
- expanding the provision of social housing
- allowing for choice of landlord for tenants

The exclusion of these objectives is likely to result in a one dimensional emphasis on stock to the exclusion of the needs inhabitants.

By contrast the six service standards specified by the United Kingdom social housing regulatory body, the Tenant Services Authority, provide a suitable example of an outcome focused framework. All social landlords are required to achieve the following standards:

1. Tenant involvement and empowerment – which contains requirements relating to customer service, choice and complaints; involvement and empowerment; and understanding and responding to diverse needs of tenants
2. Home – which contains requirements relating to quality of accommodation; and repairs and maintenance
3. Tenancy – which contains requirements relating to allocations; rent; and tenure
4. Neighbourhood and community – which contains requirements relating to neighbourhood management; local area co-operation; and anti-social behaviour
5. Value for money
6. Governance and financial viability.

Of particular concern is the lack of independence between the regulatory body and the chief funding and delivery agency. The Registrar is a business unit of the OoH. The Victorian Auditor General's report *Access to Social Housing* recently found the Registrar does not have sufficient independence from the OoH and

needs to increase its scrutiny of housing associations in order to meet its obligations as a regulator. The Auditor General found the registrar relies on self reporting but undertakes limited verification of information provided by Housing Associations and that significant gaps were evident in data submitted by housing associations which were not systematically followed up. This suggests the Registrar is not adequately performing its function as a regulator.

The TUV considers the collection and reporting of data on housing management and tenant outcomes to be crucial to both assessing the performance of the social housing system and as a tool to manage the maturation of that sector. Given the community housing sector is in its infancy, good benchmarking from this point enables government and consumers to track the development of the sector, identify where it needs to improve and manage the maturation of the sector. This is equally applicable to the large scale provision of public housing by the OoH. Regulations which actively encourage the achievement of key housing outcomes combined with an active and independent regulator are the best means to achieve ensure accountability for public investment. Improved regulatory intervention is also vital to ensuring the ongoing improvement in service provision.

If you wish to meet with us or discuss this letter, please contact me on 9411 1444.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'T. Archer', with a long horizontal flourish extending to the right.

Toby Archer
Policy and Liaison Worker
Tenants Union of Victoria