



Victorian Public Tenants Association Inc



## **Housing (Housing Agencies) Bill 2004**

# **Joint Submission on the Exposure Draft**

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The Tenants Union of Victoria, Council to Homeless Persons and the Victorian Public Tenants Association as representatives and advocates of consumers of social housing have joined together to make this submission to the Victorian Government on the Housing (Housing Agencies) Bill 2004.

The Tenants Union of Victoria is a specialist state-wide advocacy organisation and community legal centre, established in 1975, that provides free information and advice to residential tenants, rooming house and caravan park residents across Victoria. The TUV assists about 30,000 private and public renters in Victoria every year. These services are provided through a phone advice service and a series of drop in locations throughout metropolitan Melbourne. The TUV also promotes community awareness of tenancy law and issues, lobbies for tenancy law reform and provides accredited training on a state-wide basis for tenancy and housing workers.

The Victorian Public Tenants Association supports and resources local public tenant groups across the state, promotes the rights of all Victorian public tenants and represents its members views to government, media and the community. It is a community-based organisation, run by public tenants.

The Council to Homeless Persons (CHP) was established in 1972 and represents both individuals and organisations with a stake or interest in homelessness.

The work of the Council to Homeless Persons incorporates:

- Representing the views and concerns of agencies, organisations and services that work to assist people experiencing homelessness.
- Advocating on behalf of people who are homeless to government and the wider community.
- Providing opportunities for people experiencing homelessness to have a voice and make a contribution towards policy related to homelessness.
- Working in partnership with other stakeholders to improve service provision for people experiencing homelessness.

We welcome the Victorian Government's commitment to expanding the supply of affordable housing for low income Victorians. We recognise that the Government's allocation of \$70 million for capital grants for community housing is above the ever-decreasing amount provided by the Commonwealth Government through the Commonwealth State Housing Agreement. We also support the Government's assurances that any additional funding for community housing will not be at the

expense of public housing and that public housing tenants will not be forced to become tenants of community housing agencies or providers.

### **General Comments on the Bill**

While the first clause of the Draft Bill clearly states the Government's purpose "to provide a regulatory framework for non-profit rental housing agencies serving the needs of low- income tenants", we are extremely concerned that the rest of the Bill does not outline how this purpose is to be achieved. The Bill, while setting up what appears to be a solid regime for the protection of assets fails to provide any equivalent security for the people whose current hardship is the purpose for both the Bill itself and the allocated capital funding.

Nowhere in the Bill are there clear protections for low income earners who are tenants of Community Housing Associations or providers. Nowhere in the Bill are these associations and providers required to act in the best interests of tenants, nor even to house a widespread group of tenants including those with complex needs or those exiting homelessness services. In our view the Bill must do more than establish a framework for community housing in the hope that those who get registered do the right thing by the Government and tenants and provide genuinely high quality affordable services. This Bill should not focus on buildings at the expense of those expected to occupy them.

We are also concerned at the implication in both the Bill and the consultation sessions, that these critical issues are sought to be addressed in yet to be seen, easy to alter, performance standards. While accepting the need for a range of standards that more specifically address a range of critical sector viability and tenant diversity and management issues we do not accept that their existence in any way eliminates the need for legislative protection of tenants rights and interests. Strong performance standards should sit alongside strong legislative protections for low income Victorians whose interests must be at the heart of this system.

The widespread community support for community housing is based upon the promise of growth in a sector of the industry that is equipped to provide innovative and affordable housing that sustains tenancies. Community housing must do more for tenants than the limited outcomes they are able to achieve in the private rental market. If the Bill fails to provide specific sections outlining how and when those promises must be fulfilled by the relevant agencies then the Bill fails to live up to the expectations of the community and the promises of Government.

### **Specific comments on clauses in the Exposure Draft**

Due to the limited period of consultation on the Exposure Draft we have limited our specific comments on aspects of the draft Bill. We welcome the opportunity to discuss in greater detail our concerns and to expand upon these comments in advance of the presentation of the Bill to Parliament.

### **Definitions**

There are no definitions of the following important terms: "low income", "affordable", "tenancy management". Without a definition of these terms the purpose statement exists in a vacuum and there is no context for the making of performance standards in this area.

## The Registrar

We are supportive of these provisions and in particular Clause 81 that makes clear that the Registrar is subject to the direction and control of the Minister. The experience of the Essential Services Commission has been that a regulator that is not sufficiently capable of being directed by their Minister can become a captive of the industry that they are seeking to regulate. We are very firmly of the view that the Registrar must seek at all times to have the best interests of good management for good tenant outcomes at the heart of their considerations in this position.

There is a general lack of reference in the Draft Bill that the Registrar must act to protect tenant outcomes along with their role to ensure Housing Association accountability. We consider that a specific function of the registrar ought be to “to ensure that tenants and residents, recognising their position as vulnerable customers in the housing market benefit from the regulation of the community housing sector.”

We also believe that the Registrar should have a clear role in the resolution of complaints from tenants including making binding determinations about redress. Our specific comments in this area can be found in the section below entitled “Dispute Resolution”.

## Performance Standards

The performance standards are currently the only mechanism by which the registered agencies can be held accountable for ensuring a range of important outcomes for tenants. The management of tenancies, maintenance, allocation and affordability are mentioned solely as matters for performance standards. We believe that it is critical that the Act itself provide a strong requirement for compliance in these areas. We are not convinced that the provision in Clause 95 provides a genuine protection for tenants. While non compliance with a standard would obviously be a serious matter for the Registrar there is no specific legislative provision to provide a penalty or process for agencies which do not comply with this section. We are concerned that only a strong and diligent Registrar will ensure that any non compliance with performance standards will be quickly investigated and remedied. We call on the Government to strengthen this provision to ensure that non compliance is an offence or at least a matter requiring an immediate investigation by the Registrar.

## Dispute Resolution

We strongly support the rights of tenants to refer matters including complaints to the Registrar. It is critical for the efficacy of the system that tenants have a mechanism for redress to the regulator and that the regulator is empowered to act on their behalf. We think it can only benefit the continued improvement of providers to have a regulator 'biased in favour' of positive tenant outcomes.

While we believe that the clauses as drafted will enable the registrar to undertake investigations and take action in relation to complaints we feel that the active engagement of tenants in the process of resolving their complaints is missing. We propose that tenants have a cause of action against the Registrar if they are unhappy with the outcome of the Registrar's determination. We believe that this balances the right of the affected agency to seek review at VCAT and ensures in a structural sense that the Registrar is accountable to both tenants and agencies over their regulation of performance standards. We believe that tenants should not have to pay fees for the lodgement of such appeals.

In addition, we call for a provision in the Bill that allows for complaints to be initiated by tenant advocates in situations where the tenant is afraid or unable to act on their own behalf. Such a provision would provide increased accountability for the sector and ensure that tenant concerns are not marginalised due to individual tenants not being confident enough to speak out on their own.

### **Regulation making power**

We support the regulation making powers save for the general nature for fees to be charged under Part VIII. While it may be appropriate, though not currently anticipated, that agencies be charged fees for registration we do not believe that it should ever be appropriate for tenants to pay any fees under this section. That includes fees in any way associated with their accommodation or fees to lodge complaints or any other matter with the Registrar. We therefore propose that after the word "fees" in sub clause (f) it be inserted "though not fees payable by tenants or prospective tenants in relation to their accommodation or any other matter"

### **Open and accountable regulation**

We support a regulatory regime that is open and accountable and ensures that the public can have confidence in the performance of both the registered agencies and the Registrar itself. We consider that the Bill should provide that data be made available, whether through a report to Parliament or through an Annual Report of the Registrar, that allows assessment of whether housing agencies are meeting the social policy goals of the legislation. For example, a strong tenancy mix is a stated goal of the Government and performance standards can be made in this area under clause 94 (g). We think it critical that data about the mix of tenancies be publicly available. Some amendment to Schedule 8 may therefore be required. The full mix of publicly available data should be determined once the performance standards have been finalised.

### **Conclusion**

We call on the Government to incorporate these improvements before introducing the Bill into Parliament. We would welcome the opportunity to work with the Office of Housing and the Minister to ensure that the Bill truly represents best practice in its promotion of the rights of low-income renters in Victoria.

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