

16 February 2022

Review Panel
Social Housing Regulation Review

Submitted online at: [REDACTED]

Our reference: ACNC2022/19

ACNC submission – Social Housing in Victoria (Interim Report)

1. The Australian Charities and Not-for-profits Commission (**ACNC**) welcomes the opportunity to comment on the Interim Report of the Social Housing Regulation Review (**the Review**). We also refer to the submission we made to the Review, during the consultation phase, on 21 September 2021.

The ACNC's interest in social housing regulation in Victoria

2. All 30 housing providers currently registered with the Victorian Housing Registrar are registered charities, and we understand that registration as a charity with the ACNC is a precondition to being registered with the Housing Registrar.
3. Registered charities must comply with the Governance Standards (and, if they operate overseas, the External Conduct Standards) contained in the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth). They must also continue to meet the definition of 'charity', which is set out in the *Charities Act 2013* (Cth), and includes the requirements that the entity must be a 'not for profit' and have charitable purposes. More information about how a housing provider can seek, and maintain, charity registration, is provided in our submission of September 2021.
4. Our interest in the work of the review panel is limited to areas where the Review might lead to legislative or regulatory change in Victoria which would impact the legislative framework that governs charities.

Parts 1-5: Proposed reforms to enhance the quality of services

5. We have noted the panel's preference for amending the regulatory regime to better focus on the needs and interests of tenants, including introducing a legislated objective "*to protect and safeguard the interests of current, prospective and future tenants*", and proposals that may lead to improved dwelling standards (in Part 5 of the report).
6. We do not have a view about the precise form that any changes should take. We recognise that providers must remain viable, which may constrain the quality of services they can provide. Nonetheless, we support reasonable regulatory changes that will safeguard and promote the interests of vulnerable beneficiaries.





7. For individual providers, an unsafe environment for beneficiaries may indicate that it is not compliant with the governance standards and/or not effectively pursuing its charitable purposes. Tighter regulations may, incidentally, help providers ensure they remain compliant with their charity obligations.
8. More broadly, as all providers are registered charities, unsafe environments for beneficiaries may threaten the reputation of the wider charity sector. An object of the ACNC Act is to protect and enhance public trust and confidence in the sector; effective regulations and standards within state jurisdictions may help to further that objective.

Part 9: Affordable Housing

9. The definition of 'affordable housing' is ambiguous, but the report takes it to include housing that is appropriate for low to moderate income households. Victorian housing providers may already be providing a limited amount of affordable housing.
10. Whether it is appropriate for a registered charity to be providing affordable housing to moderate income households depends on the circumstances, viewed holistically. For example, we may be concerned if a charity did so because it was purportedly to further its charitable purpose of providing housing to people in need of relief of benevolent relief, when the households in question did not need such relief.

9.1 Are any changes needed to the regulatory system for community housing to accommodate affordable housing?

11. State regulations about the involvement of providers in 'affordable housing', would complement – not override - charity law. The ACNC may take regulatory action if a charity, through its activities or otherwise, ceases to demonstrate that it is entitled to charity registration. Charities may also have governing rules and practices that limit the activities they can undertake. State regulations about who is eligible for affordable housing, and how a provider can treat any profits they make from affordable housing, may provide clarity for providers. However, if the regulations ultimately took a wide view on these questions, there is a risk that the regulations may imply that charities could engage in activities that would be incompatible with their charity registration.

Part 13: Growth and Innovation II; Emerging Models

12. Subject to their own governing rules and practices, charities are free to pursue opportunities that will enhance their viability, and maximise their ability to provide services for social housing tenants. This may include special purpose vehicles and joint partnerships. However, a reasonable regulatory safety net is essential to ensuring that such arrangements do not compromise the interests of social housing tenants. The proposals contained in the report appear to provide an appropriate balance.



13.3 What issues can you see with the proposed approach to regulating the provision of social and affordable housing in an increasingly complex investment environment?

13.3 Are there any other relevant factors that should be taken into account?

13. Insofar as providers are registered charities, the ACNC will continue to play a part in the regulatory oversight of providers. We have noted that the report does not accurately capture the ACNC's role. The report states:

"Confining registration to not-for-profit entities is also a regulatory control to help ensure that social housing providers remain mission focussed, especially in an environment of growth, and to help prevent their involvement in commercial activities from becoming the pre-dominant focus over time"

14. This statement is a direct reference to the regulatory oversight that the ACNC provides (footnote 6). We should clarify that the ACNC's jurisdiction is currently limited to 'registered charities', of which there are around 59,000, but does not extend to the wider not-for-profit sector. Most not-for-profit entities are not eligible to be registered charities, and there may be some not-for-profit entities that may be eligible but have not applied for registration. Registration with the ACNC is voluntary.
15. To the extent that the panel wishes to rely on the ACNC's oversight of providers as a check against providers pursuing commercial opportunities at the expense of vulnerable beneficiaries, those providers must be 'registered charities' as opposed to 'not-for-profit entities'.
16. The ACNC's [Commissioner's Interpretation Statement: Provision of Housing](#) provides further guidance on how providers are eligible to obtain and maintain charity registration.
17. We also note recommendation 13.3:

"Introduce requirements for disclosure of board and executive salaries and other forms of remuneration for all registered social housing providers".

From 2022, 'large' charities (those with annual revenue of \$3 million or more) will be required to include remuneration paid to key management personnel in their annual reporting to the ACNC. Some providers may fall into this category and they will already be required to provide this information to the ACNC in future. The Review may wish to consider reducing duplicate reporting requirements where it would ease the administrative burden for charities.

Part 16: Performance reporting for transparency and accountability

16. The panel includes several proposals aimed at improving the reporting framework for providers. We agree with the priorities for reporting that have been highlighted in the report, namely that:



the obligations are consistent for providers; those obligations yield data which is comparable across providers; and that data is accessible to users.

17. We explained in our September 2021 submission that the ACNC Act has an object of reducing the regulatory burden for charities. Rather than impose analogous reporting requirements on providers who are charities, there may be opportunities for the Victorian Housing Registrar to use information that these entities already provide – and will continue to provide – to the ACNC. These opportunities do not seem to have been considered in the report.
18. The ACNC has established the [Charity Passport](#) for government agencies, which allows those agencies to access ACNC data in a spreadsheet format.

16.3 Is the proposal for review of performance reporting adequate (every three years), and how often should this review take place?

19. As the panel notes, it is important to minimise unnecessary changes to the reporting framework, so that it is easier for providers to embed practices that will enable them to report easily, and so that data is comparable across years. In our experience, however, areas for improvement to the framework will continually come to light, and may not naturally coincide with a scheduled review cycle. It is important that the reporting framework can be adjusted when the advantages of doing so outweigh the potential disruption to reporting entities, or where the existing obligations impose a heavier administrative burden on entities than is necessary.

Next steps

19. If you have queries about this submission, please contact [REDACTED],



The Hon Dr Gary Johns
Commissioner
Australian Charities and Not-for-profits Commission