



Community Housing

INDUSTRY ASSOCIATION **VICTORIA**

The Community Housing Industry Association Victoria (**CHIA Vic**) welcomes this opportunity to provide feedback to the Department of Health and Human Services (**DHHS**) on the suite of documents that define the terms of participation of the Victorian Housing Register (**VHR**).

The relevant documents include:

- Participation in the Victorian Housing Register: Registered Agency Agreement (**Participation Agreement**);
- Community housing allocations framework for the Victorian Housing Register (**Allocations Framework**); and
- Performance Monitoring Framework.

This submission has been endorsed by the CHIA Vic Board and captures the views of many of CHIA Vic's members. CHIA Vic has urged members to analyse how the documents will impact on their particular organisation and submit a response that reflects their unique position. Therefore, members may take differing positions to those in the CHIA Vic paper given their mission, size and property portfolio.

CHIA Vic appreciates the level of consultation that has occurred and the opportunity to work in partnership with DHHS to date. This submission builds on our September 2017 submission to the Allocations Framework.

The Victorian Housing Register and *Homes for Victorians*

CHIA Vic supports simplifying the system for people who are looking for social and affordable housing. The introduction of one application process via the VHR should make the system easier to navigate for applicants. Removing the need for all 39 registered agencies to run their own waiting lists or registers of interest should reduce duplication and costs for the sector.

The introduction of the VHR has been repeatedly delayed. CHIA Vic urges DHHS to move swiftly to finalising the outstanding issues in partnership with the sector.

The sector is keen to see some progress with government's growth agenda as set out in *Homes for Victorians*. Officials from DHHS have indicated that DHHS will not release the documents for the *Homes for Victorians* initiatives until the VHR documentation is finalised (i.e when the Director of Housing formally invites registered housing agencies to participate in the VHR).

CHIA Vic is keen to work with DHHS to bring about a swift resolution the remaining outstanding issues so that the sector can consider whether to opt-in to the VHR in light of *Homes for Victorians*. Standing still means going backwards - research commissioned by CHIA Vic has estimated that in

light of Victoria's booming population growth, we need to build at least 1,800 new social homes a year just to maintain the current level of social housing as an overall proportion of housing stock.

To that end, we have focused our submission on making changes to the documents only to the extent necessary to address material issues.

In respect of other issues, where there are outstanding matters, we have asked that these be dealt with as a part of the VHR's ongoing governance after the documents are issued to the sector. These are identified in a separate section.

Allocations Framework

The revised Allocations Framework represents a significant change to the way many members allocate housing. It is now clear from the suite of documents that the Allocations Framework is intended to be legally enforceable as a contract between the Director and participating registered agencies.

Failure to comply with the Framework, most importantly the Allocations Target, can have significant consequences for agencies. DHHS has made this clear by stating that such failures can lead to the registered agency's access to the VHR being revoked. Indeed, clause 13.2(3) of the Participation Agreement warns that "*...the Agency may be required to relinquish management or ownership of state government funded assets in accordance with the terms of the agreement under which such funds or assets are provided.*"

CHIA Vic appreciates that government has taken on board some of the feedback provided by CHIA Vic and its members on the previous draft of the Allocations Framework released for comment. In particular, the revised draft reflects:

- The exclusion of Nation-Building properties from the Allocations Target (even though we suggested removing a proportion of the properties paid for by the sector in a couple of programs), and
- The removal of the complicated adjustment factor formula and its replacement with a simple formula for adjusting the Priority Allocations Target for each agency.

Exclusion of Nation-Building Properties

The exclusion of Nation-Building properties may give rise to unintended consequences. Agencies with few Nation-Building properties may be unreasonably prejudiced when compared to other agencies which may have many more. The Allocations Framework states that Nation-Building properties required rapid expansion of organisational capacity and a debt leverage commitment, however other funding programs or projects may have had similar objects. We think this could easily be amended by changing para (b) of the definition of Targeted Social Housing to read:

Nation Building properties, or properties funded under similar programs, on the basis of government project funding required rapid expansion of organisational capacity and an up-front leverage commitment of at least 20 per cent of project costs through commercial loans at market rates.

It appears that the referral protocol will continue to apply to Nation-Building properties. DHHS has yet to clarify how this will work in the VHR context, in particular where there is no referral process and no longer a “public housing eligible” category. We ask that DHHS clarify its position on how the protocol will continue to apply. This could be set out in the Participation Agreement.

Meaning of “government”

The definition of “Targeted Social Housing” in the framework refers to “government” variously in defining what is in and out of the definition.

Given that this is a Victorian government policy that seeks to regulate allocation of Victorian-government funded housing, we think this should be clarified (perhaps in a definition) that this is a reference to the Victorian government. Conditions attaching to funding from the Commonwealth or local government funding program should be outside the scope of the legal arrangements.

Similarly, we also ask that Specialist Disability Accommodation (SDA) funded under the NDIS be excluded from the definition of “Targeted Social Housing”. Eligibility for SDA is not tied to eligibility for social housing.

Allocations in scope (Part 1.2)

The Allocations Framework provides that participating registered agencies “...*should* make all allocations into all social housing from the Register...”

While the “should” in this part of the Framework is perhaps an aspirational statement, the Framework must be clear as to what a participating registered agency is obliged to do. Not all housing owned, managed or controlled by a participating registered agency (the definition of “social housing” used in the Allocations Framework and the Housing Act) can be allocated to people who are eligible for social housing under the VHR. NDIS-funded specialist disability accommodation (where there is no income and asset eligibility) and programs for asylum-seekers (who may not meet residency requirements) are two such examples.

CHIA Vic maintains that the Allocations Framework should make it clear that where a property is not under the Allocations Target (i.e. is not Targeted Social Housing) then allocations may, but need not, be made, from the pool of applicants under the VHR. This is also consistent with the fact that the Allocations Framework only operates as a variation to existing funding agreements as they relate to Targeted Social Housing (see clause 3.2 of the Participation Agreement).

Future funding programs

The revised Allocations Framework, while trying to identify what has been funded in the past, still has not made any allowance for the mix of properties that participating registered housing agencies may own or manage in the future. This includes, for example:

- Projects funded under *Homes for Victorians* funding initiatives which seek to maintain a tenancy mix (Priority vs Register of Interest) which is different to the Allocations Target; or

- Government planning policies which have sought to promote *affordable housing* (targeted a low and moderate income earners seeking relief from rental stress) as a separate intervention to *social housing*. This is reflected in the definition of “affordable housing” that has been introduced into the Planning and Environment Act and the introduction of Affordable Housing Agreements.

This will lead to having to renegotiate projects on a case-by-case basis, undermining the policy intent of the Allocations Framework to be “the primary source of allocations policy and guidance to participating registered agencies” (see definition in the Participation Agreement).

It is difficult to see how this can be easily resolved given the parameters set by DHHS for the Allocations Framework. We can only suggest that the Framework provide that:

- New properties funded by the Director of Housing are considered Targeted Social Housing, unless otherwise agreed between the Director and the participating registered agency; and
- Other new properties (e.g. affordable housing under planning initiatives) are not Targeted Social Housing unless otherwise agreed.

Participation Agreement

Ongoing governance of VHR

To date, governance of the VHR has been led by the Senior Leadership Group, comprising representatives of DHHS, CHIA Vic, the sector and wider stakeholders. This has been effective to ensure that the VHR is a genuine partnership between government and the sector.

CHIA Vic’s members have given feedback that these governance arrangements should be given a level of formal expression in the Participation Agreement. The Director of Housing should be obliged to continue to maintain and resource an appropriate Governance body, that might be the Senior Leadership Group of the VHR, during the operation of the VHR to provide governance of the VHR. This body should be (at a minimum) responsible for monitoring the overall effectiveness of the VHR (including the resourcing as set out in the following section) and must:

- comprise representatives of the community housing sector; and
- approve all significant changes to the VHR, including changes to any of the conditions of participation (e.g. operational guidelines).

Ongoing operation of the VHR

CHIA Vic’s members have expressed concern that the Participation Agreement does not contain any undertakings by the Director about the ongoing operation of the VHR.

We suggest therefore that the agreement be amended to include an agreement by the Director to ensure that the VHR is operated and appropriately resourced so that:

- all Victorians who are eligible for social housing have a reasonable opportunity to be made aware of their ability to apply;

- all Victorians who want to apply for social housing, and all current social housing tenants wishing to apply for a transfer, have a reasonable opportunity to do so and by means which are appropriately accessible;
- participating registered agencies can access the VHR to carry out their functions in assisting applicants and allocating social housing efficiently and effectively; and
- the VHR reflects demand for social housing across Victoria and that this demand information is made reasonable available to participating registered agencies.

Variation to existing funding agreements

CHIA Vic understands that the policy intent of government is that the Allocations Framework will override all undertakings made about eligibility and allocation by participating registered agencies under previous funding agreements.

There is perhaps some ambiguity in the relevant provisions of the Participation Agreement. The Allocations Framework is expressed to:

- “override any provisions of the existing agreements relating to eligibility for housing and allocation of housing in respect of any of its Targeted Social Housing” (clause 3.2); and
- prevail over the existing agreements to the extent necessary to resolve the inconsistency (clause 3.3).

However, it could be argued that there may not always be an inconsistency between the existing agreements and the allocations framework (for example, if the existing agreements contained a more onerous obligation in respect of allocation).

We think it would therefore be preferable if clause 3 of the Participation Agreement contained language that reflected that the Allocations Framework *replaces* any provisions of the existing agreements relating to eligibility for housing and allocation of housing in respect of any of its Targeted Social Housing. This would be such that compliance with the Allocations Framework is indeed compliance with the relevant provisions of the existing agreements relating to eligibility and allocation.

This mechanism also appears to give rise to the perhaps unintended consequence that even a minor breach of the Allocations Framework could trigger the default and termination provisions of *all* of the existing agreements. CHIA Vic would expect that the Director would always follow the process set out in the Performance Monitoring Framework before taking any steps under the existing agreements. Only once the Director has terminated the Participation Agreement under clause 13.4 should there be any consideration by the Director of a default under the existing agreements (which would revert back to their former provisions on eligibility and allocation).

CHIA Vic appreciates that the method of amendment adopted by DHHS in the Participation Agreement reflects a pragmatic approach which does not require reference to each relevant existing agreement. However, some CHIA Vic members have pointed out that defining which properties are Targeted Social Housing and which are not requires an analysis of the underlying funding agreement in each case in any event. Accordingly, we think that DHHS should be open to negotiation with

agencies that seek to go through the exercise of specifying the amendment to the existing amendments in each case for the sake of clarity, if this is desired by the agency.

Conditions of use of the VHR

Clause 4.1(2) of the Participation Agreement provides that an agency must comply with any conditions imposed by the Director from time to time relating to the use of the VHR. There is no express limit on the conditions that may be imposed by the Director.

We consider that this should be amended to clarify that:

- The VHR Senior Leadership Group, or its successor, must approve such conditions.
- The Director must act in good faith and cannot impose conditions that would have the effect of depriving participating registered agencies of the benefit of the Participation Agreement or which would have a material adverse effect on participating registered agencies.
- Such new conditions must not take effect for at least six months (or such longer period as may be necessary to enable participating registered agencies to adopt the new conditions).

While CHIA Vic believes that the agreement as drafted means that the schedules (including the Allocations Framework) could not be significantly altered without the consent of each participating registered agency that is a party to it, we think it would be prudent that the Participation Agreement is amended to make that clear.

Issues for further consideration

In this section we identify areas where DHHS should engage in further consultation with the sector, but do not immediately need to be addressed in the draft documents if time does not permit.

Information-sharing by the Director to the Registrar

Clause 9.3 of the Participation Agreement states that the Director and the Registrar of Housing Agencies will share information in line with the signed Memorandum of Understanding (Schedule 4). This is also reflected variously in the Performance Monitoring Framework, including that the Registrar will be informed of certain instances of non-compliance with the Allocations Framework.

DHHS has not yet released the Memorandum of Understanding to the sector. However, none of the powers of the Director in the Housing Act expressly concern information sharing. Nor are there any broad powers granted to the Director to do “all things necessary” (or similar) for carrying out its functions. Accordingly, CHIA Vic questions whether the Director has statutory power to share information with the Registrar. We ask that DHHS give consideration and provide advice in due course. In the interim it might be appropriate to delete reference to the MOU from the documents if DHHS is not able to release the document promptly.

Use of Data

While DHHS has assured agencies that compliance with the Allocations Framework is a simple 'comply/ does not comply' assessment, the rich allocations data produced by the VHR would allow:

- comparisons of performance between participating agencies (i.e. which agency has exceeded the target by the greatest extent); and
- analysis of performance in the various Priority Access sub-categories between agencies.

CHIA Vic's members have expressed concern that as this data could be used by DHHS in making decisions about funding, and asks that DHHS clarify the limits upon which the VHR will used to produce performance data.

Role of the Housing Registrar

The Allocations Framework states that

Participating registered agencies must comply with the allocations framework under the Housing Registrar's Performance Standards on allocations performance and contractual arrangements, including for Victorian Housing Register participation, as well as continuing the Director of Housing's practice of including allocations performance requirements as a condition of new initiatives and funding.

Accordingly, it appears that a failure to comply can be enforced by both the Housing Registrar (as a failure to meet the Performance Standards) and the Director of Housing (as a failure to meet funding conditions).

We understand that there is not to be a change to the Performance Standards. Rather, that the Housing Registrar will consider compliance against the Allocations Framework under the Performance Standard that requires registered housing agencies to manage housing assistance "... in accordance with its policies and the legal and policy requirements..." The Housing Registrar has not however issued guidance on how enforcement of the Allocations Framework fits within the existing regulatory and compliance framework.

Clear guidance from the Housing Registrar may assist CHIA Vic members to become comfortable that the Allocations Framework will be enforced fairly and in light of the overall objectives of regulation.

30 April 2018