

Community housing allocations framework for the Victorian Housing Register

A Submission from the Community Housing Federation of Victoria

15 September 2017

The Community Housing Federation of Victoria (CHFV) welcomes this opportunity to make a submission to DHHS on the draft Community housing allocations framework for the Victorian Housing Register (**Allocations Framework**).

CHFV is the peak body that represents the not-for-profit community housing sector in Victoria. CHFV's member community housing organisations (**CHOs**) are committed to providing secure, affordable and decent housing for people on low to middle incomes.

Members include the CHOs registered as housing associations or housing providers under the Victorian regulatory framework for non-profit housing providers plus other organisations and individuals interested in housing. These registered CHOs manage more than 19,000 units of rental property, over 9,000 of which are owned by CHOs themselves.

This submission has been endorsed by the CHFV Board and captures the views of many CHOs. CHFV has urged members to analyse how the proposed framework 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 CHFV paper given their mission, size and property portfolio. CHFV would welcome the opportunity to work in partnership with DHHS to work through all the submissions and attempt to design a system that works for all.

Background

CHFV supports simplifying the system for people who are looking for social and affordable housing. The introduction of one application process via the Victorian Housing Register (**VHR**) should make the system easier to navigate for applicants.

CHOs that opt-in to the common intake and allocation process under the VHR (known as participating registered agencies) will also be required to agree to the Allocations Framework with the Director of Housing (DOH). CHOs are social enterprises, relying on rent paid to fund ongoing operations, meet debt payments and ensure housing is properly maintained. In a context where rent is largely based on household income, allocation therefore takes on a crucial significance to the ongoing viability of the CHO sector. A responsive and balanced approach to allocations which seeks

to respond to local housing needs is also a key driver of the community housing model. Accordingly, the Allocations Framework shapes as the most significant factor for CHOs in determining whether to opt-in to the VHR.

As CHFV pointed out in its 2015 *Statewide Housing Register Principles Paper*, there is a distinction between a common intake process and a common allocations policy. As the two raise separate questions, it would be possible for government to address each separately. The Allocations Framework in its current form may discourage CHOs from opting in to the VHR, continuing the current system of multiple applications needing to be lodged by people looking for housing. The current referral process would need to be retained for those CHOs that do not opt-in but who have obligations with respect to housing applicants eligible for public housing under the existing referral protocol.

CHFV understands that most CHOs are willing to opt in to the VHR and make allocations using this system. However, some CHOs may not at this stage wish to opt in to the Allocations Framework. We believe if DHHS took the approach of separating the two questions, most of the sector will opt in to the VHR. CHOs would then come to a position on the Allocations Framework in the context of *Homes for Victorians* growth opportunities.

Using the current approach, government may not achieve the objectives (announced in September 2016 by Minister Foley) for the VHR to:

- consolidate all social housing waiting lists into a single place;
- provide a fair way for households to access a broad range of social housing options; and
- allow all participating social housing organisations to access one register to allocate vacant properties.ⁱ

In the 2015 principles paper, we laid out the following principles which we continue to maintain should underpin the development of any revised government policy on allocation:

- Development of the VHR, and the Allocations Framework, should recognise the primacy of what has already been agreed between government and CHOs; CHO's business models and their existing allocation policies. Any revised Allocations Framework should only take effect following negotiations between CHOs and government which recognise existing agreements as the starting point for the individual discussions.
- The VHR should recognise the diverse housing needs of Victorians and the range of responses to those needs that public and community housing can provide. This should include both social housing targeted at households most disadvantaged in the housing market and *affordable rental housing programs* targeted at low to moderate income working households who are in rental stress.
- The VHR should be used as a means of understanding the performance of CHOs against agreed allocations targets. Accordingly, the performance of CHOs – particularly in terms of allocations to applicants on the priority lists - should not be reported against an arbitrary target but instead against what CHOs have agreed to in their respective legal agreements.

CHFV is keen to continue to work closely with government on the successful implementation of the VHR. However, as will become clear from this submission, the community housing industry has serious concerns with elements of the Allocations Framework. In its current form, the Allocations Framework could have significant implications to the revenue base of CHOs that adopt it. This can be mitigated to some extent by the measures suggested in this submission. Naturally, the new growth opportunities arising from *Homes for Victorians* may also offset some revenue impacts. However, these opportunities remain in the design phase and the details of each are largely unknown to the industry at this stage.

The 75% allocations target

The allocations target - requiring 75% of allocations across a participating registered agency's portfolio to be made to priority access applicants – was flagged by government earlier this year in *Homes for Victorians*, its affordable housing strategy.

CHFV is concerned that this target was set with no consultation with the community housing industry or it appears regard to the impact of such a target on CHOs. Indeed, the Victorian Auditor-General recently found that:

*A key focus of Homes for Victorians is growing the community housing sector. This approach could ease pressure on the public housing system, and includes compelling the community housing sector to allocate 75 per cent of its housing to critical-need applicants with lower incomes. However, this could also have significant financial impacts on their financial viability. Currently, DHHS does not clearly understand these impacts and they require further investigation. The potential impacts need to be carefully balanced against the needs of the most disadvantaged Victorians.*ⁱⁱ

CHFV believes partnership between government and the industry and a stable, predictable policy environment is the key to addressing Victoria's worsening housing crisis. Allocation of housing is the key means by which CHOs ensure that they remain viable, and a target tenancy profile is the basis upon which CHOs develop rental budgets for new housing projects. For this reason, CHFV continues to believe that agreements on allocation should not be the subject of a blanket policy but rather subject to commercial negotiation between government and individual CHOs based on previous contractual arrangements.

CHOs have entered into significant levels of commercial borrowings in the last ten years, with the registered housing sector now supporting interest bearing debt of \$313 million.ⁱⁱⁱ This borrowing occurred under government policy under the Growth and Nation-Building programs for CHOs to contribute 25% of the cost of new projects. CHOs support this debt via rental income from particular mixes of tenants, usually a range of households eligible for community housing (now the group known as Register of Interest under the VHR). These mixed tenancy profiles were made clear by CHOs in their applications for grant funding to DHHS.

Changes to the rental income profile through increased targeting of vacancies to households on very low incomes may impact the ability of CHOs to meet covenants which attach to that debt. The Housing Registrar requires housing associations to produce annually a 15-year financial forecast to demonstrate the long-term viability of the agency, yet it appears that there has been little input

from the Housing Registrar on the impact of the Allocations Target. CHFV worked with DHHS officials on designing a study to ascertain the financial impact of increased targeting on CHOs, but DHHS later abandoned this project without reaching any conclusions about the financial impact of the Allocations Target.

Given the centrality of the 75% target to *Homes for Victorians*, we accept that it is unlikely that DHHS will adjust this 75% target as an outcome from this consultation. However, as can be seen from the remainder of our submission, the lack of flexibility of this target causes many of the problems in defining how the target will be applied to both:

- the existing portfolio of over 19,000 properties managed by the sector at present; and
- the future range of housing owned, managed or controlled by community housing into the future as the industry develops to meet our community's housing needs.

The scope of the allocations target: *Targeted Social Housing*

The 75% Allocations Target applies only to allocations by participating registered agencies to properties defined as "Targeted Social Housing". The Allocations Framework defines Targeted Social Housing as follows:

Housing owned, controlled or managed by a participating registered agency that has been subsidised by government including but not limited to properties in which the Director of Housing has an interest registered under section 107 of the Housing Act 1983, properties over which the Director of Housing has a mortgage and properties over which the Director of Housing holds a floating charge registered with the Australian Securities Investment Commission.

CHFV is concerned that the breadth of this definition – encompassing all properties "subsidised by government" does not allow any flexibility for participating registered agencies and the DOH to recognise the varying levels of government subsidy provided – both in the past and in the future – and the consequent impact this has on the intended beneficiaries of such government subsidies.

Instead, CHFV believes that the application of the Allocations Target should be flexible enough to recognise the diversity of funding contributions and also the future role of community housing. This would recognise that in some cases, the level of subsidy provided by government and/or the intended beneficiaries of funding means that some properties – while being subsidised to some extent and/or being subject to an interest of the Director of Housing – should not appropriately come under the target. This could include:

- *Affordable housing*: Properties targeted at moderate income working households. (See following section for further discussion on how this could be defined.)
- *Other non-state government programs*: Properties funded solely under the National Rental Affordability Scheme (where state government provided only 25% of the annual NRAS payment) or National Disability Insurance Scheme (NDIS) specialist disability accommodation funding;

- *Third party contributions:* Properties acquired with contributions from third parties in return for that party having the right to refer applicants to vacancies (e.g. nomination rights).

Without a re-think of the scope of the allocations target as it is currently defined in the Framework, the proposed bilateral discussions are reduced to a process of simply identifying whether any subsidy has attached to a property or not.

CHFV acknowledges that better defining the application of the allocations target is a complex task. At a minimum we believe that DHHS should produce and release a set of principles that will guide their bilateral negotiations over which properties can be excluded from the target. Without these principles the bilateral negotiations run the risk of producing idiosyncratic results that do not advance the desire for a fair and transparent system and provide a poor foundation for decisions that will need to be made regarding future developments.

In this section we offer some options as to how it might be more fairly and flexibly defined. There are merits and shortcomings of each approach and in the time available CHFV has not been able to fully consult with its members on their preferred approach. These options are put forward for the purposes of better advancing the consultation with a view to finalising the Allocations Framework as soon as practicable.

Option 1: Identify Targeted Social Housing by agreement

This would define “Targeted Social Housing” as follows:

Housing owned, controlled or managed by a participating registered agency that is identified as such in agreements between the Director of Housing and the participating registered agency, having regard to:

- *The level of subsidy provided by the Director of Housing (or other state government agency);*
- *The identified beneficiaries of such subsidies; and*
- *The duration of such subsidies.*

This definition would give participating registered agencies and the DOH scope to reach agreements about what is, and is not, subject to the target now and in future programs. The VHR Participation Agreement would be the first such agreement (applying to the current portfolio) but later agreements could also include agreement about the application of the target to some or all of the funded outcomes (for example if there is funding under *Homes for Victorians*).

However, this proposed definition (and indeed the current definition) would also continue to reinforce the concept that particular properties are tied to particular programs. It would require agreement to be reached in every new grant or funding opportunity as to whether all or some of the properties subsidised in some way are considered Targeted Social Housing or not. It would create ongoing administrative complexity as participating registered agencies would need to maintain as a part of the VHR a comprehensive asset list that identifies properties accordingly. This complexity was most recently exemplified by the recent *Rapid Housing Fund – Homelessness* funding round, which

required 100% of vacancies in properties funded under that round to be allocated to Priority Access applicants.

Option 2: Identify Targeted Social Housing by definition

This would seek to clearly define what properties are subject to the Allocations Target and which are not. This could perhaps be an exception-based definition, i.e. one where the following properties were excluded:

- Properties in which there has been no substantial Victorian government subsidy (e.g. properties in which NRAS is the only form of government subsidy)
- affordable housing (i.e. for low and moderate income households)
- Properties funded under the NDIS or other specialist programs which have their own eligibility or application pathway outside of the VHR
- Properties set aside for particular medium-term housing programs where it is not appropriate that applicants come via the VHR.

To define 'affordable housing' regard could be had to the newly-proposed definition of "affordable housing" in the Planning and Environment Act 1987 (Vic). See following section entitled "Promoting affordable housing" for further discussion on this definition.

The benefit of this option is that it would reduce the need for an agreement between government and participating registered agencies in the case of every property (although agreements could still be used for the sake of clarity). Individual participating registered agencies could maintain an asset list based upon their view of the definition and there could be a review process if there is any disagreement with government. The difficulty of this definition is that it would not allow for flexibility in the future, or would at least require subsequent agreements to be reached about allocation which are outside the scope of the Allocations Framework.

Option 3: Application of an annual adjustment to overall allocations

Under this option, defining the properties subject to the target would only be relevant for the purposes of adjusting the number of vacancies in any year to which the allocations target applies.

If (for example) 80% of a participating registered agency's housing is determined to be subject to the target, then the Allocations Target could be adjusted so that the 75% target applied to 80% of the vacancies across the portfolio in any given year. If such an agency has 100 vacancies in a year across its whole portfolio, then 80 of those vacancies would be subject to the Allocations Target. This would mean that the agency would need to make 75% of those 80 vacancies to Priority Access households, or 60 allocations across the 100 in that year.

The benefit of this definition would be to reduce the focus on individual properties and instead focus on outcomes. A participating registered agency could allocate the right applicant to the right home without being concerned about how the property was categorised.

At the end of each year a CHO could lodge a return detailing the number of new properties they have acquired over that year and allocate these to Targeted Social Housing or non Targeted Social Housing and therefore changing the percentage of stock in each category.

However, it would still rely on there being a clear definition of what properties are in the target, at least for the purposes of calculating the adjustment. This option would also not account for higher rates of turnover in affordable housing, for example. Nor would it account for the impact of adding a number of new properties that are not subject to the target (for example, a new affordable housing project) in one year.

Option 4: Discretionary enforcement of the target

This option would not seek to adjust the properties subject to the target but would rather give guidance to the Housing Registrar and Director of Housing as to mitigating circumstances when an agency's allocation does not meet the 75% target in a given year. This could include instances when the circumstances of existing tenants change or where there is higher than expected turnover amongst tenancies in the Register of Interest group.

This is discussed in further detail in the following section entitled "Monitoring, compliance and enforcement".

Counting allocations to properties that are not Targeted Social Housing

The Allocations Framework includes a metric with an "Adjustment Factor" for allocations from the Priority Access Group made to housing that is not Targeted Social Housing.

CHFV supports the principle that participating registered agencies should be able to engage in dynamic portfolio management. So long as a participating registered agency meets the policy objective of allocating the target number of Priority Access Group households in any given year, in principle it should not matter to which houses they are actually allocated.

CHFV understands that government has included the Adjustment Factor out of a perceived need to be fair to participating registered agencies that do not have much housing that is outside of the scope of the Allocations Target. CHFV also acknowledges the effort by DHHS officials at the recent consultation forum to explain the rationale of the adjustment factor – how this rationale translates into the formula.

However, CHFV does not accept the perceived fairness principle behind the adjustment factor. If participating registered agencies have a significant portfolio of housing that is not Targeted Social Housing, we see no reason why such an organisation should not be given full credit for allocations to households deemed most in need of housing assistance by VHR policy.

In light of this, CHFV does not support the formula specified in the Allocations Framework which seeks to apply an adjustment factor to such allocations. CHFV believes that for the purposes of measuring performance against the Priority Allocations Target in any given year, Priority Allocations to properties that are not Targeted Social Housing should simply be included without adjustment in overall Priority Allocations.

Also members made it clear at the recent forum that they believe that CHOs should simply be recorded as having met the target or not met the target. The actual percentage achieved, and measurements of subcategories within the priority access group is not relevant and should not be made public or used by DHHS in evaluating performance.

Recognising the role of both social and affordable housing

Government policy in *Homes for Victorians* recognises the role that *affordable housing* can play in addition to that of social housing. For example, under “Inclusionary Housing”, Homes for Victorians states that:

Already a number of developers are offering packages that include the delivery of affordable housing, in exchange for rezoning approval or a permit uplift condition through a value capture style agreement. The partnership could take one of a number of forms:

- *transfer of ownership of an agreed number of dwellings to a Community Housing Association or the Director of Housing for use as social housing*
- *the sale of dwellings to a Community Housing Association at an agreed discounted price to be used in perpetuity as affordable rental...^{iv}*

CHFV believes that a mix of social and affordable housing in housing developments can promote both social sustainability of housing developments and economic sustainability through diversification of income.

However, without recognition of a separate category of “affordable housing” in the Framework which is excluded from the allocations target, participating registered agencies that take on affordable housing developments where there is some form of government subsidy – however small - would only dilute their overall ability to meet the 75% target.

Changes to the Planning and Environment Act 1987 (Vic) currently before Parliament, which have proposed a definition of “affordable housing” to encourage affordable housing to be developed through voluntary planning agreements.^v While “social housing” (as defined in the Housing Act as all housing owned or managed by participating registered agencies) comes within this proposed definition, it is also intended to refer to a broader form of housing assistance for very low, low and moderate income households. The relative incomes of such households will be defined by guidelines made under the changes to that Act. This definition could form the basis of a definition of “affordable housing” which is excluded from the target.

Future changes to the Allocations Framework

The Allocations Framework itself is unclear as to how it might be changed in the future, stating (in part 4.4) that:

In the first years of the Register’s operation, operational policies and guidelines will be periodically assessed in relation to their efficacy by the Department of Health and Human Services in consultation with the Housing Registrar, Victorian Housing Register Senior

Leadership Group, or other appropriate representatives of the community housing and homelessness services sector.

This statement is potentially quite broad and could arguably be used as a basis for government to make further changes to the Allocations Framework without the consent of each participating registered agency. CHFV asks that government immediately release the proposed VHR Participation Agreement so that the industry can understand the proposed terms and conditions of a participating registered agency's acceptance of key VHR policies, including the Allocations Framework. This would presumably include how such documents may be reviewed and changed and the relative priority of documents in the event of any inconsistency.

CHFV believes that the Allocations Framework (and associated VHR policies, for example on eligibility) should not be capable of amendment in a material way which is adverse to participating registered agencies without the consent of the participating registered agency in each case.

The issue of how VHR policies can be amended also touches on the issue of the ongoing governance of the VHR. CHFV continues to maintain that the VHR should be overseen by inclusive and ongoing governance, to ensure that it works fairly and is seen to be fair, including by applicants.

Operation of the VHR within DHHS should be operationally separate from those parts of DHHS with responsibility for management of the public housing system to reduce the potential for actual or perceived conflicts of interest and to build confidence that the VHR is working fairly and in the interests of all stakeholders. Our industry needs to be assured that the Allocations Framework's assertion that policies and guidelines will be assessed by DHHS in consultation with the industry. A clearly articulated governance structure with appropriate membership is essential to safeguard the industry and the integrity of the VHR. If the VHR leadership Group is to perform this function for the long term then its terms of reference and membership will need to be reviewed.

Monitoring, compliance and enforcement

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, 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 CHOs to become comfortable that the Allocations Framework will be enforced fairly and in light of the overall objectives of regulation. CHFV believes that the Housing Registrar should take a balanced approach to the Allocations Target which recognises that continued annual allocation of 75% of vacancies to the Priority Access group may impact financial viability. A failure by an agency to meet the Allocations Target may be a legitimate financial response to:

- a cumulative financial impact caused by a higher turnover amongst tenancies allocated to the Register of Interest group;
- changing circumstances of current tenancies (such a loss of employment or changes to household composition) that results in a loss of rental income; or
- unavailability of suitable Priority Access applicants, particularly in regional areas or areas with a low amount of social housing suitable for single-person households (the household type most prevalent in the Priority Access group)

Indeed, the current performance standards recognise this balance, stating that *“The registered agency’s access and allocations policy is sensitive to clients with complex needs and low incomes and, to the extent permitted by other performance standards, ensures allocation of tenancies to this client group...”*

DHHS should also release its proposed compliance and enforcement plan to clarify the potential implications to agencies for non-compliance. This guidance must be provided before agencies are formally asked to opt-in. In our view there should also be discretion built into the DOH’s approach given the quite severe impact of a termination of funding. This would be consistent with the existing referral protocol states that “[t]he Department is aware of the need to ensure that HAs remain viable and would not want the cumulative impact of allocation through this process to threaten such viability...”

Other Feedback

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...” CHFV believes that where a property is not under the Allocations Target (i.e. is no Targeted Social Housing) then allocations may, but need not, be made, from the pool of applicants under the VHR.

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 1983) 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.

Priority of applicants

Participating registered agencies will be able to see all eligible applicants for a vacancy. There are no sub-targets amongst the various Priority Access groups. However, the Framework notes that under the Performance Standards, agencies are required to be fair and transparent in allocations, and accordingly *“to inform these obligations, the [VHR] will provide participating registered agencies with information on applicants’ order by priority and effective date...”*

CHFV believes that these sections stray into regulatory matters and should be deleted. It is for the Housing Registrar as a part of its assessment of agencies under the Performance Standards to determine whether the policy of an agency establishes a fair and transparent approach. The Allocations Framework should not seek to influence that process by suggesting that applicants should be allocated by priority and/or effective date.

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.

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

ⁱ Victorian Government media release, One Application form for Victorians Looking for Housing (4 September 2016)

ⁱⁱ Victorian Auditor-General, Managing Victoria’s Public Housing (June 2017), Findings page xi.

ⁱⁱⁱ Housing Registrar, Financial Data Dashboard 2015-2016

^{iv} Victorian Government, *Homes for Victorians, Inclusionary housing to increase the supply of social and affordable housing, Inclusionary housing in major developments*

^v Planning and Building Legislation Amendment (Housing Affordability and Other Matters) Bill 2017