



Victorian Equal Opportunity  
& Human Rights Commission

# Submission on

## Pathways to a Fair and Sustainable Social Housing System

31 July 2012

## 1. Introduction

The Victorian Equal Opportunity and Human Rights Commission (the Commission) welcomes the opportunity to make a submission to the *Pathways to a Fair and Sustainable Social Housing System* public consultation discussion paper.

The Commission is an independent statutory body that has functions under the *Equal Opportunity Act 2010*, the *Racial and Religious Tolerance Act 2001* and the *Charter of Human Rights and Responsibilities Act 2006* (the Charter).

Our functions include dispute resolution, providing education about human rights and equality of opportunity, undertaking projects and activities aimed at eliminating discrimination and promoting human rights, conducting research, and providing legal and policy advice. In addition, the Commission has a role to report to the Victorian Attorney-General on the operation of the Charter and, at the request of public authorities, conduct compliance reviews.

## 2. Structure of this submission

This submission is structured according to the Commission's key concerns in social housing and in response to questions posed in the Discussion Paper.

This submission focuses solely on public housing policy. It does not address policy relating to community housing (housing associations) however, the legal obligations arising from the Equal Opportunity Act and the Charter would apply equally to this sector of social housing.

## 3. The Commission's interest in the issue

The Commission is keen to ensure that any new policy framework for public housing complies with legal obligations under the Equal Opportunity Act and the Charter.

As a public authority, Housing and Community Building, Department of Human Services, (H&CB) has legal obligations under the Charter. In particular, to act consistently with Charter rights and to consider human rights when making decisions, developing policies and providing services.<sup>1</sup> Charter considerations are discussed throughout this submission.

In addition, the Equal Opportunity Act makes it against the law to discriminate against someone because of their race, sex, age, disability, marital status, family responsibilities and sexual orientation, among other attributes protected by the Act.<sup>2</sup>

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<sup>1</sup> *Charter of Human Rights and Responsibilities Act 2006* s 38.

<sup>2</sup> These attributes are age, breastfeeding, employment activity, gender identity, disability, industrial activity, lawful sexual activity, marital status, parental status or status as a carer, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, sexual orientation, and personal association (whether as a relative or otherwise) with a person who is identified by reference to any of these attributes. *Equal Opportunity Act 2010* s 6.

Discrimination is treating someone unfavourably because of one of these characteristics. Direct and indirect discrimination is against the law under the Equal Opportunity Act.

Direct discrimination is when a person treats, or proposes to treat, someone with a protected personal characteristic unfavourably because of that personal characteristic. Indirect discrimination occurs when an unreasonable requirement, condition or practice that purports to treat everyone the same ends up either actually, or potentially, disadvantaging someone with a personal characteristic protected by the law.

In addition to the obligation not to unlawfully discriminate in the delivery of services and the provision of accommodation H&CB also has a positive duty to take reasonable and proportionate measures to eliminate discrimination as far as possible.<sup>3</sup> This duty is discussed further later in this submission.

Equality considerations in public housing are of particular concern to the Commission because:

- stable housing makes an enormous difference to people's lives and life chances. It is the foundation for the enjoyment of many human rights, and contributes directly to the ability of individuals and families to lead healthy, productive lives and engage fully with the economic and social life of the community. The Commission is mindful that the largest cohort of occupants of public housing are children. These children have specific human rights protected at law
- fairness in allocating and managing public housing is critical to ensure positive outcomes for individuals and families living on the margins
- given the resource and demand pressures on public housing, the Victorian allocations system is organised to reflect the principle of housing people in the highest need most quickly. This has led to a high degree of targeting in the allocation of public housing. As a result, an increasing proportion of applicants and tenants may be described as vulnerable due to disability, experience of violence or abuse, and/or entrenched disadvantage. Most applicants and tenants therefore have attributes under the Equal Opportunity Act. Many possess multiple attributes
- there is a well-established link between discrimination and disadvantage. This is recognised in the objects of the Equal Opportunity Act. Discrimination may drive disadvantage that in turn contributes to family and social conditions which lead households to need public housing and the stability it brings
- discrimination is also a symptom of the disadvantage that people without secure, stable housing experience before they access public housing. This in turn can interrupt a positive pathway through public housing to a more stable and productive life.

### **3.1 The Charter and the housing policy framework**

Although there is no express right to housing in the Charter, eviction from public housing has been held by the Victorian Civil and Administrative Tribunal (VCAT) to engage the section 13 (a) Charter right to not have privacy, home and family arbitrarily interfered with.<sup>4</sup>

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<sup>3</sup> *Equal Opportunity Act 2010* s 15.

<sup>4</sup> *Director of Housing v Sudi* [2010] VCAT 328.

The Supreme Court of Appeal overturned this decision on the basis that VCAT had no jurisdiction to review the validity of the Director of Housing's decisions as a collateral issue in possession proceedings.<sup>5</sup> However, this does not disturb the finding that eviction from public housing engages the right to privacy protected by the Charter.<sup>6</sup>

Further, although a tenant cannot raise the Charter in possession proceedings at VCAT, they could challenge a decision for non-compliance with the Charter by seeking judicial review of the Director of Housing's actions in the Supreme Court. In summary, the Director of Housing is still required to act compatibly with rights in the Charter in all of its acts and decisions.

In addition, the Commission considers that a stable, secure home is fundamental to realising other Charter rights, such as participation in public life, protection of the family and the best interests of the child, as well as human rights protected at international law, such as the right to health and the right to education.

### **3.2 The Equal Opportunity Act and the housing policy framework**

Any new policy for public housing must also comply with the Equal Opportunity Act. Therefore, when devising the policy framework, particular attention must be paid to risks of direct and indirect discrimination in the making of and in the application of allocation, transfer, rent and housing management policies and procedures.

The Commission is interested to ensure that a future housing policy framework complies with the positive duty required by section 15 of the Equal Opportunity Act. This obliges duty holders to take reasonable and proportionate measures to eliminate discrimination as far as possible. This means that H&CB must take steps to identify and address all policy, procedure or practice barriers faced by people with attributes protected under the Equal Opportunity Act.

These groups include women and children (including those escaping family violence), sole parents, people with disability (including mental health, drug and alcohol dependence), and people from Culturally and Linguistically Diverse Communities (CALD) and Indigenous backgrounds.

## **4. Response to key questions**

### **4.1 A new approach to housing**

#### **How could the allocation of public housing be made fairer for tenants (and the community)?**

The Commission notes that the stated aim of developing a new policy is to ensure the sustainability of social housing and to promote equity. The Commission supports these aims, noting that they are consistent with the objectives of the *Housing Act*

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<sup>5</sup> *Director of Housing v Sudi* [2011] VSCA 266.

<sup>6</sup> The decision in *Sudi* does not prevent Charter rights from being raised in proceedings in VCAT, but does restrict when it can be raised. It cannot be raised where the unlawfulness of a public authority's act or decision is 'collateral' to the issues in the proceeding. However, where the unlawfulness of an act or decision of a public authority arises directly in a proceeding at VCAT, section 39 (1) of the Charter still allows a person to seek the same relief or remedy on a ground of unlawfulness arising because of the Charter.

1983, which include “that every person in Victoria has adequate and appropriate housing at a price within his or her means”.<sup>7</sup>

In the Discussion Paper, the argument appears to be that one means of securing a more sustainable public housing system is to remove security of tenure for tenants. The argument is that where public tenants gain employment or otherwise improve their circumstances that they should move on to other housing options, thereby freeing up housing stock for more disadvantaged tenants on the waiting list.

While the Discussion Paper does not go into any detail about how the public housing system would work without security of tenure, or how the broader housing system would be reformed to ensure that public tenants had a reasonable chance of finding and keeping a home in other tenures, the Commission has the following concerns:

- **Removing security of tenure will engage Charter and Equal Opportunity Act rights and protections**

The removal of security of tenure will require legislative amendment. Any legislative amendments to the Housing Act and/or the *Residential Tenancies Act* 1997 must be compliant with the Charter and the Equal Opportunity Act.

If public housing tenants lose security of tenure, the following Charter rights are likely to be engaged and will need to be considered in the Statement of Compatibility to be laid before Parliament: the right to equality, the right to privacy and reputation, protection of families and children, and the right to fair hearing.

The Charter will also be engaged when policy makers determine the class of tenants for whom security of tenure will be withdrawn. Equal Opportunity Act provisions will also be engaged, including the prohibitions on direct and indirect discrimination.

- **Determining which tenants lose their tenancies risks indirect discrimination and will require significant workforce capacity enhancement**

If the new public housing system does not include security of tenure then decisions will need to be made about which tenants should be included in the class of persons eligible for eviction.

To be lawful, such a policy and its associated procedures will need to comply with Charter and the Equal Opportunity Act.

- **Each eviction will need to comply with human rights in the Charter**

In addition to the legislation and policy being compatible with the Charter, proper consideration needs to be given to human rights engaged in individual evictions. Under section 38 of the Charter, failure to properly consider a relevant human right when making such decisions is unlawful.

Evictions will also need to contain procedural protections that comply with human rights in the Charter. This includes, for example, providing adequate notice of eviction, considering the particular needs of disadvantaged groups and providing appropriate referrals to housing and non-housing supports.

Further, each case will need to be considered individually so that any review considers the circumstances of each tenant and/or the circumstances of the entire household or family. These include (but are not limited to): continuity of schooling and post-school training for children and young people, and long-term barriers

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<sup>7</sup> *Housing Act* 1983 s 6(1) a.

faced by people with a disability, including those with mental illness and supports for recovery from substance misuse. Time needed to re-establish a stable life for women and children escaping violence and the specific needs of people recovering from trauma, including refugees and survivors of abuse, will also need to be considered in each case.

This will require a new set of skills for the H&CB workforce.

Failure to include these considerations in the procedures that accompany the new policy framework may also result in the failing to meet the policy aim of providing housing for as long as it is needed to stabilise or achieve improvements in circumstances.

- **Limiting security of tenure may create an incentive for tenants not to engage in work, get well or stabilise due to fear of eviction**

While the policy aim in the Discussion Paper is to encourage people to maximise their opportunities, in particular to connect with employment and education, the methodology for achieving this may be counter-productive. This is particularly so if the policy evicts public tenants once they enter employment or are deemed by H&CB to be 'work ready'.

Such a strategy contains a structural emphasis upon very high needs and risks escalating existing poverty traps and disincentives in public housing. Given that many public tenants have waited years for a stable home, the prospect of losing that home and facing the private rental market once again is likely to create pressure on tenants to portray their circumstances in the worst possible light. It may even motivate tenants to stay unwell or otherwise marginalised because it punishes those who get well, find a job or enter education.

- **Lack of supply in the private rental market risks homelessness for those evicted from public housing under a policy of no security of tenure**

An underlying premise in the Discussion Paper is that public tenants will transition to alternative accommodation, usually in the private rental sector, following a stay in public housing to stabilise their circumstances.

This policy direction assumes that there is a supply of private rental accommodation that is available, affordable and suitable for these tenants. Unfortunately however, market evidence suggests that this is not the case now, and is unlikely to be the case for some time.

The Commission notes that National Housing Supply Council reports that in 2009–2010 there was a national shortage of rental properties, in the amount of 539,000 dwellings, that are affordable and available to low income households.<sup>8</sup> They further estimate that the national housing shortfall is expected to rise by another 141,000 dwellings in the next five years – so that the shortfall of affordable dwellings will be in the order of 680,000 dwellings by June 2016.<sup>9</sup>

Private rental vacancy rates in Victoria are low and demand for properties continues to outstrip supply. In March 2012 vacancy rates were 2.2 per cent and 1.5 per cent for regional Victoria.<sup>15</sup> Rental affordability for Metropolitan Melbourne fell in the last quarter from 10.6 per cent to 9.5 per cent. The number of affordable

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<sup>8</sup> Australian Government, National Housing Supply Council, *State of Supply Report* (2012).

<sup>9</sup> Australian Government, National Housing Supply Council, *State of Supply Report* (2012).

rental lettings in Regional Victoria also fell, and in the past decade has dropped from 83.8 per cent in September 2002 to 55.2 per cent in March 2012.<sup>16</sup>

- **Discrimination in the private rental market increases the risks of homelessness for those evicted from public housing under a policy of no security of tenure**

Conditions in the private rental market are intensified for public tenants who, because of increased targeting over the last 20 years, are more likely to be poor, have a disability, be older, have children, be a victim of domestic violence or be vulnerable in some other respect. In particular, these groups may face discrimination by landlords and agents when seeking accommodation.

In such a tight market, discrimination can present an extra barrier, making access to the private rental market even more difficult. The Commission is also mindful that in such a competitive and difficult market, people may be less likely to make a complaint of discrimination or know that they can.

The Discussion Paper argues that transition to private rental is crucial to freeing up existing public housing stock in order to provide housing to those most in need and to promote independence of tenants that H&CB considers no longer need public housing.

The Commission sees this argument as lacking an empirical base. In 2012 the Commission carried out research that found discrimination was a factor *preventing* disadvantaged groups from accessing private rental accommodation.

Our research showed that parental status was a factor preventing people from accessing private rental (44 respondents), followed by age (38 respondents), marital status (34 respondents), race (37 respondents) and disability (27 respondents).<sup>10</sup>

The report, published in August 2012, reveals that for private rental to be a viable option for people leaving public housing, or an alternative for those seeking public housing, it is crucial that barriers to the private rental market – including unlawful discrimination – are removed. However, the Discussion Paper presents no strategy for achieving this.

- **Market conditions and discrimination are likely to lead to churn of public tenants back through the homelessness system and into public housing**

The Commission is concerned that if security of tenure is removed some tenants will simply re-appear on the waiting list several months later if they cannot secure a private rental property, or their private tenancy breaks down.

This 'churn' creates significant disadvantages for the tenants concerned, for example where children are subject to frequent moves and cannot properly engage in schooling. It may also create hardship for individuals and families in terms of excessive transaction costs of moving from place to place, when in the end the household ends up back on the public housing waiting list.

It also creates an administrative burden for public housing and other systems attempting to find a housing solution for a household that arguably should have remained in secure accommodation.

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<sup>10</sup> Victorian Equal Opportunity and Human Rights Commission, *Locked out: Discrimination in Victoria's private rental market* (forthcoming) 9.

In 2008–09, 72 per cent of all public housing allocations were made from the early housing waiting list (out of 5,756 allocations). This suggests that increasing numbers of public housing tenants are already churning in the system and have an experience of recurring homelessness, poor tenancy histories and evictions.<sup>11</sup>

## 5 Improving equity in allocations

### 5.1 Updating housing eligibility criteria

Reforms to public housing could take an individualised approach which takes into account tenant’s needs. The Commission agrees with the Victorian Council of Social Service that, “the current allocation eligibility criteria do not take into account the ‘human factors’ when assessing the appropriateness of allocation”.<sup>12</sup>

The Commission notes that the eligibility criteria in the housing allocations process currently disadvantage groups of applicants with Equal Opportunity Act attributes in several ways:

- **The income level criteria are set very low**

To be eligible for public housing, an applicant must have an independent income that does not exceed income levels broadly equivalent to the means test for Commonwealth Rent Assistance.

The requirement of an independent income has implications for newly arrived immigrants, including permanent residents and holders of Permanent Protection Visas, who are subject to the Centrelink two-year waiting period. Such applicants may be placed on the waiting list; however, they cannot actually be *offered* housing until in receipt of an independent income.<sup>13</sup>

### 5.2 Removing discrimination from allocations policy and procedures in the segmented waiting list

A high degree of targeting in the allocation of public housing has led to an increasing proportion of applicants and tenants who may be described as vulnerable due to disability, experience of violence or abuse, and/or entrenched disadvantage. Many applicants therefore have attributes under the Equal Opportunity Act.

The targeting mechanism used, a ‘segmented waiting list’, applies different eligibility and allocation rules to each class of applicant (segment). This may lead to unintended discriminatory outcomes for groups that may be over-represented in some segments. These groups include women (escaping domestic violence), people with disability, including mental health, drug and alcohol dependence and other forms of disability, and people from CALD and Indigenous backgrounds.

The general application of standard rules may be discriminatory when overlaid against the specific eligibility rules for each class of applicant. However, in the absence of transparent data on the attributes of applicants in each segment it is difficult to establish whether the current threshold of indirect discrimination is met.

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<sup>11</sup> Family and Community Development Committee, Parliament of Victoria, *Report of Inquiry into the Adequacy and Future Directions of Public Housing in Victoria* (2010), 89.

<sup>12</sup> Victorian Council of Social Service (VCOSS), *VCOSS Submission to Inquiry into the Adequacy and Future Direction of Public Housing in Victoria: January 2010*, (2010) 5.

<sup>13</sup> Department of Human Services, *Allocations Manual 2012*, Chapter 2, 10.

- **Low asset limits may adversely impact on people with a disability and older people.**

The general asset limit is \$30,000. Previously, different income and asset levels existed for different segments of the waiting list. From September 2007 income limits for all segments were made the same. However, the assets test continues to be different across segments.

For example, the asset limit for households that require specified disability modifications is double the general asset limit at \$60,000. Arguably, the \$60,000 limit is unrealistic, as it does not consider other non-modification costs associated with disability, such as purchasing support services and transport. Further, people who have received compensation for their disability (following an accident) may be ineligible for public housing. The purpose of this compensation is generally to provide funds to go towards lifetime support needs. Such compensation may not be enough to both purchase accommodation or to comfortably rent privately as well as meet all their long-term support needs

- **Previous tenancy history**

General housing eligibility criteria includes a requirement for no history of eviction from public housing for (non-arrears) breaches in the last 12 months. Potentially this may have ramifications for women who have remained in violent relationships during the life of the tenancy, and have been co-evicted but subsequently leave the violent partner and seek re-housing. Arguably, there may also be some over-representation on antisocial behaviour-based evictions among people with drug and alcohol dependence, mental health, acquired brain injury and other forms of disability.<sup>14</sup>

- **Short timeframes for acceptance of offers**

Short time-frames for acceptance of an offer of housing combined with the various rules relating to re-payment of previous debts may disadvantage some attribute groups protected by the Equal Opportunity Act.

Applicants who experience transient lifestyles, whether because of mental illness or other issues, can miss out on potential housing offers if policies enforcing time limits on housing offers are strictly applied. In the absence of transparent data however, it is difficult to substantiate whether this is a significant pattern or not.<sup>15</sup>

- **Previous debts**

Applicants in the highest segment (homeless with support) are required to enter into a repayment agreement to pay any outstanding debts to H&CB before they can be accept an offer of housing.

For those in the lower segment (supported housing applicants) the *Allocations Manual* 2012 states that:

“outstanding charges of up to \$200 must be paid in full prior to allocation. Outstanding charges of over \$200 require a pre-allocation repayment agreement comprising: a minimum lump sum payment of \$200 and regular

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<sup>14</sup> Department of Human Services, *Allocations Manual September 2012*, Chapter 2, 20.

<sup>15</sup> There is an absence of comprehensive data on reasons for entry into public housing. For example, there is no figure stating how many people with mental illness live in public housing. Nor is there data on numbers of women who have experienced family violence that led to their need for public housing.

repayments at a minimum amount of \$10 per fortnight for at least three months prior to the offer of a property”.<sup>16</sup>

Short offer periods may have ramifications for those in the supported housing applicant category who must find a \$200 lump sum.<sup>17</sup> This category of applicants is likely to have significant numbers of people who may hold attributes (particularly disability).

The Commission would like to see a more flexible application of policies regarding acceptance of housing offers and repayment of debt. A proactive approach consistent with the positive duty would mean that individual applicant’s needs are assessed on a case by case basis. This may mean providing reasonable support or assistance or extending periods to assist them to accept an offer of housing.

### **5.3 More flexible transfer rules**

Short-term absence and public housing transfer rules may also raise potential discrimination issues specifically for women (escaping domestic violence) and people with disability for whom full property modifications are not necessary, but whose current housing is unsuitable.

The Discussion Paper acknowledges that that tenants’ needs change over time and that current public housing stock has not kept pace with changing needs.<sup>18</sup> The Commission believes that inflexible policy rules regarding transfers prevent tenants from accessing more suitable accommodation if their needs change.

The Commission strongly believes that in the case of transfers, a new policy framework should require individual’s needs to be assessed on a case by case basis. This should lead to a more flexible and equitable allocation of limited stock that is better suited to tenant needs. For successful transfers to occur, tenants need to be regularly provided with accessible information about the types of H&CB options and stock available.

The Australian Housing and Urban Research Institute (AHURI) adopts a consistent view and supports a dynamic approach which is more responsive to change. AHURI acknowledges that social housing tenants experience changes in residential circumstances which should be recognised as an important form of residential mobility.<sup>19</sup>

- **Temporary absence**

The Temporary Absence Policy allows prisoners, nursing home and respite service residents and people in rehabilitation services to be absent from their

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<sup>16</sup> Department of Human Services, *Allocations Manual September 2012*, Chapter 8, 10.

<sup>17</sup> The H&CB does provide some supports to assist tenants avoid rent arrears and other problems. These programs include the Social Housing Advocacy and Support Program and specific programmes for Indigenous tenants, as well as rent deduction schemes and early intervention approach to managing arrears.

<sup>18</sup> Department of Human Services, *Pathways to a Fair and Sustainable Social Housing System-Public Consultation Discussion Paper*, (2012) 18.

<sup>19</sup> Australian Housing and Urban Research Institute (AHURI), *Pathways into and within Social Housing*, (2012) 16.

tenancy for up to six months.<sup>20</sup> In contrast, women escaping family violence are not eligible for temporary absence. This means that if they flee to a refuge, they must pay two rents – one for their public housing and accommodation charges to the refuge.

While the policy principle informing the temporary absence policy is sound (ensuring stable housing upon release from prison, nursing homes or respite), given the gender profile of prisoners compared to those escaping family violence there may be an argument that a more anti-discriminatory approach would also allow public tenants escaping family violence to use this policy.

#### **5.4 Applying the positive duty requires effective data on who is waiting for housing and establishing an allocation system that does not indirectly discriminate**

The Commission is concerned that although a great deal of personal information is collected in the public housing application form, H&CB does not currently have readily accessible data on the attribute profile of each of the segments in the public housing waiting list.

In order to comply with the positive duty the H&CB needs to set up a reliable database which provides information about the tenant attribute profile in the segmented waiting list.

This should include, for example, data on the numbers and proportions of people with disabilities, mental illness, Indigenous people, single parents, older people, children, CALD backgrounds and women experiencing domestic violence in each segment. Without this critical information it is impossible to know how policies and procedures that apply to some segments and not others should be appropriately reformed to avoid unintended discriminatory impacts on these population groups.

This data will provide a strong evidence base to inform H&CB to plan its new policy framework to meet the needs and provide tailored supports to future public housing tenants. It can also be used to ensure that proactive policies and practices are put in place to avoid unintended discrimination.

The Commission is aware that H&CB is developing a new data management system called the HIIP and that it will be used to underpin the practical application of all H&CB policies and procedures. The development of this database provides an ideal opportunity to analyse data to support the H&CB in implementing the positive duty.

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<sup>20</sup> If a person relinquishes their tenancy within the six months, and then re-applies for housing, they are treated as an early housing transfer applicant, as long as they do this within two years. Department of Human Services, *Allocations Manual September 2012* Chapter 7, 8.

## **6 Using the opportunity of a new policy framework to improve management and allocation of public housing**

### **6.1 Accessible information for tenants and applicants**

In a recent report AHURI commented that in an efficient and equitable housing allocation system, all potential applicants have access to information about housing options and how to navigate the system.<sup>21</sup>

While current public housing policy manuals are drafted to assist Housing Service Officers to apply policy there appears to be little information available for prospective and existing tenants to help them navigate the complex housing system. This operates to prevent them from fairly accessing suitable housing options that meet their needs.

The Commission notes that currently, there is limited information available to people with disabilities or people from CALD backgrounds about public housing policy and the housing application process. Sufficient information should be provided to tenants to ensure that they understand their rights and obligations. For example, making tenant brochures available online, in community languages and in multiple formats, including easy English.

This is in contrast to other jurisdictions, such as the Australian Capital Territory which publish online fact sheets written in plain English, which provide essential housing information to tenants and are ‘tenant user friendly.’

### **6.2 Tenant participation**

The Commission believes that tenants should be recognised in policy as the most important stakeholders. Current policy approaches in H&CB appear to be largely focused mainly on asset management, managing anti social behaviour with limited social inclusion approaches.<sup>22</sup> The Commission sees tenant participation as critical to developing targeted and relevant housing policies which will improve service delivery. The development of a new policy framework is an opportunity to encourage such participation and include a focus on the needs and on the rights of individual tenants.

### **6.3 Workforce Capacity: training on good decision making**

The Commission is aware that some training has been rolled out in H&CB regarding obligations to act compatibly with rights in the Charter and the Equal Opportunity Act.

The Commission believes that for a genuine cultural shift to take place under a new revised policy framework, housing staff (including housing service officers and housing managers at all levels) should be required to attend mandatory training on the principles of good decision making, specifically tailored to the housing context.

This should include: training on decisions that meet administrative law standards, training on how to avoid discrimination and implement the positive duty under the Equal Opportunity Act, cross-cultural training on the needs of diverse tenants, training on human rights in the Charter and training on how rights should be considered in housing decisions, including evictions.

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<sup>21</sup> Australian Housing and Urban Research Institute (AHURI), *Pathways into and within Social Housing*, (2012), 51.

<sup>22</sup> This view was also adopted by the Tenants Union of Victoria in its *Submission to Inquiry into the Adequacy and Future of Public Housing in Victoria* (2004) 24.

This would support Housing Service Officers and managers in their capacity to make good decisions in housing which meet lawful obligations and which contribute to fairer outcomes for tenants and prospective applicants. It would also significantly eliminate the risk of litigation and build confidence in the public housing system generally.

## 6.4 Awareness of diverse tenant needs

The Commission strongly encourages an acknowledgment in the new housing policy framework, of the specific needs of diverse tenants. These include, but are not limited, to the following attribute groups under the Equal Opportunity Act:

- **Children**

The Commission notes that children under 12 years represent the largest age cohort living in public housing, followed by people over 65.

The Commission agrees with the following observation by the Family and Community Development Committee,

*...that there is a lack of consideration of children in the context of public housing, but that their experience is equally as significant as that of any other population group.*<sup>23</sup>

The Commission is concerned that the needs of children in public housing may be excluded in policy, even though they make up the largest age cohort of those living in public housing.

The positive duty requires proactive measures that will prevent potential discrimination against children in public housing. In practice, this means designing housing policies that contribute to a safe, stable environment for children. For example by paying particular attention to the needs of a family and children when allocating properties, such as being housed close to the child's current school.

The Commission is mindful that if security of tenure is removed from public housing that households who may face eviction may include children. The Commission strongly urges a housing policy framework which takes into account H&CB's obligation to act compatibly with Charter rights, including freedom from interference with privacy and family life, and to make decisions in the best interest of the child.<sup>24</sup>

- **Older people**

The Commission is aware that the population of older Victorians is increasing and that the projected number of older people (aged over 65) in low income housing will increase by 115 per cent from 195,000 in 2001 to 419,000 in 2026.<sup>25</sup>

The Commission is also aware that older people constitute the second largest cohort living in public housing.<sup>26</sup> The Commission is concerned that the current

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<sup>23</sup> Parliament of Victoria, Family and Community Development Committee, *Inquiry into the Adequacy and Future Directions of Public Housing in Victoria* (2011) 31.

<sup>24</sup> *Charter of Human Rights and Responsibilities Act 2006*, ss 13, 17.

<sup>25</sup> Council on the Ageing, *Submission to Victorian Parliament Family and Community Development Committee: Inquiry into the Adequacy and Future Directions of Public Housing in Victoria* (2010). In Australia, the National Affordable Housing Summit Group developed their definition of affordable housing as housing which is "reasonably adequate in standard and location for lower or middle income households and does not cost so much that a household is unlikely to be able to meet other basic needs on a sustainable basis".

housing stock is considered unsuitable for the needs of older people and that inadequate housing is a significant contributor to poverty, disadvantage and homelessness among older people.<sup>27</sup>

The Commission encourages the development of a housing policy framework that takes into account the specific housing needs of older Victorians in practice, this could mean reforming housing policy to ensure that properties allocated to older people are accessible (for example, located near community services and on lower levels) or purpose designed as a person ages in place.

- **People with a disability, including mental illness**

The housing needs of people with a disability will vary according to the nature of a person's disability. Any new housing policy framework must ensure that the needs of people with disabilities are taken into consideration. This could include, applying allocation and transfer policy more flexibly.

People with a mental illness often experience difficulties sustaining tenancies. It might also be difficult for applicants with mental illness to access public housing because of poor relationships with service providers in the community or because of difficulty complying with H&CB requests. For this group, the positive duty in practice could mean applying policies flexibly, especially in the areas of transfer applications, debt recovery and antisocial behaviour. Referrals to appropriate supports in policies, such as community health centres or mental health services could also assist a person with a mental illness to sustain a tenancy and avoid eviction.

## **6.5 Simplifying paperwork in the application process**

The Commission recognises that H&CB needs to ensure a rigorous application process that guards against fraud. However, the Commission notes that some groups may be disadvantaged by an overly burdensome or complex application process.

The Commission is aware that the application process may require significant cooperation with a range of professionals, such as real estate agents, doctors, and Centrelink. This may exclude people who have difficulties engaging with services in their community from applying, for example, because of a disability, mental illness or being a victim of domestic violence.

The Commission would like to see a process that policy framework that adopts an individualised approach to each applicant of public housing. In practice, this could mean assessing the circumstances of each applicant and applying policies flexibly by: reducing the need for complex, lengthy housing documents and granting exceptions to the need for identification documents in genuine cases of hardship.

## **7. Conclusions**

The Commission welcomes the opportunity to make a submission to the *Pathways to a Fair and Sustainable Social Housing System*. We are confident that the issues raised in this submission will help H&CB in its long-term planning for a fair and

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<sup>26</sup> Department of Human Services, *Pathways to a Fair and Sustainable Social Housing System – Public Consultation Discussion Paper*, (2012) 22.

<sup>27</sup> Council on the Ageing, *Submission to Victorian Parliament Family and Community Development Committee: Inquiry into the Adequacy and Future Directions of Public Housing in Victoria* (2010) 1.

sustainable housing system. The Commission looks forward to the publication of the final housing policy framework.

In this submission, the Commission has argued that the removal of security of tenure of public tenants (so as to free up housing stock for waiting applicants) is unlikely to lead to a more sustainable and equitable housing system in the absence of much larger reforms across the whole housing system, including the private rental market.

The Commission's research has shown that discrimination in the private rental market for disadvantaged groups is *real* and that, unless such discrimination is removed, private rental is unlikely to be a viable housing option for many.

The removal of security of tenure will also engage Charter rights including: rights to equality privacy and reputation, protection of families and children, and the right to fair hearing. It may also be inconsistent with legal obligations to take measures to eliminate discrimination.

The Commission strongly believes that reliable data that records tenant attributes in the segmented waiting list 1–4 is critical. This will allow H&CB to plan for a new housing policy framework that complies with the Equal Opportunity Act, remove any existing procedural inequities and deliver a fairer public housing system.

### **Further information**

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