



## Housing for the Aged Action Group

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### SUBMISSION TO THE AUSTRALIAN GOVERNMENT DISCUSSION PAPER REGULATION AND GROWTH OF THE NOT-FOR-PROFIT HOUSING SECTOR

Submission prepared by Jeff Fiedler, Tenancy Advice/Policy Worker

Housing for the Aged Action Group Inc. (HAAG) welcomes the release of the discussion paper **Regulation and Growth of the Not-For-Profit Housing Sector**. Our submission is based on a tenant advocacy perspective, particularly in relation to the needs of older people on low incomes. HAAG has also historically been a strong supporter of the public housing system and has regularly measured the quality of services provided by the not-for-profit housing sector against the benefits established by state housing authorities over many decades since the formation of the Commonwealth-State Housing Agreement. It is these benchmarks of rights, housing justice, quality facilities and services that HAAG believes should be at the forefront of any meaningful regulatory regime for not-for-profit housing agencies if it were to be established by the Commonwealth Government.

Due to the interests and perspectives of HAAG we wish to make brief comment on one aspect of **Chapter 2 Reshaping Australia's Social Housing Sector** and mainly address our submission to Chapter 5 of the report entitled **Protecting the Interests of Tenants in Community Housing** and the questions it poses. We have one further comment to make in regard to Chapter 6, subsection 6.3 on **Rental income**.

#### **Chapter 2      Reshaping Australia's Social Housing Sector**

HAAG is concerned that there has already been agreement between the Commonwealth and the States to grow the not-for-profit housing sector from 10.8% in 2008-09 up to 35% of all social housing stock by 2014 before an appropriate regulatory regime has been agreed and determined. This is a massive shift in emphasis in the supply of affordable housing in Australia over a very short period of time and HAAG is concerned about such a massive shift away from affordable housing supplied by state housing authorities without any extensive evaluation of the costs and benefits of such a wholesale change in government policy. HAAG believes that a range of issues we are raising in our submission need to be addressed to ensure there is no detriment to tenants in any changes that are planned. The development of an appropriately structured regulatory authority is one of the key foundations that should be in place well before such a change occurs.

## Chapter 5     Protecting the Interests of Tenants in Community Housing

### Questions:

- **State and Territory legislation and regulation provide coverage for protecting tenant's rights. How would the national regulation of not-for-profit housing providers ensure compliance with these protections?**

HAAG believes there must be clear understanding of the difference between the compliance requirements of state tenancy legislation and any proposed regulatory framework. Tenancy legislation such as the Residential Tenancies Act in Victoria provides a range of protections based on the balance of a fair market place. To this end enforcement of such legislation is provided by separate governments departments such as Consumer Affairs Victoria and funded tenancy advice agencies like the Tenants Union of Victoria and other specialist agencies such as HAAG. Our organisation provides support specifically to frail older people who may need additional assistance to understand and exercise their rights. Compliance with such legislation is non-negotiable and should not be seen as any sort of flexible arrangement that is determined by a regulatory authority that also has a role to ensure proper management of the housing agencies.

The critical issue that must be adopted in any national regulatory framework is a clear understanding and respect for independent scrutiny of the operations of housing agencies in terms of their compliance with tenancy laws. Therefore HAAG believes that **a national regulator should not have any role at all in monitoring compliance with tenancy laws. Instead, it should be the role of federal and state governments more broadly to increase their action to ensure the effective reform of future legislation to better protect tenants. This should also include the introduction of national tenancy legislation to provide effective coverage across Australia.** This has been a particular concern of HAAG due to the expansion of older persons' specific housing companies such as Village Life and Sunny Cove who operate across five states and have therefore five different compliance regimes. This has caused problems for older tenants when these companies have not been clear about establishing tenancy agreements that reflect the respective state jurisdictions. For example, because Village Life is a Queensland company, they developed agreements in Victoria that reflected Queensland legislation. Once complaints were raised with the company in conjunction with Consumer Affairs Victoria, Village Life had to re-issue their agreements for tenants across Victoria. National legislation would remove the chance of such confusion and complex compliance.

The introduction of better tenancy legislation should be reinforced with **better funding for tenancy advice services** in line with the expansion of the not-for-profit housing sector. This initiative emphasises HAAG's view that **the regulation of the not-for-profit sector should ensure a clear separation of**

**the roles between housing management and tenancy support and compliance.** While HAAG accepts that it is important for housing agencies to develop supportive and inclusive tenant participation processes, it is more important that tenants always have an independent organisation to contact when they have a problem with their housing manager or landlord. This separation of roles also ensures that there are no conflicts of interests for tenants who may otherwise be asked to consider management issues that may compromise their tenancy rights and willingness to exercise those rights. HAAG believes that a clear separation of roles and support services can avoid the possibility of a form of co-option of tenants in the guise of genuine tenant participation. In many cases reported in Australia, and also in Great Britain since the transfer of many Council Housing tenancies to Housing Associations, tenants can be wittingly or unwittingly included in decision-making processes that are designed to 'get someone on board' about a deliberation on, for example, a cost cutting exercise. A typical example may be in regard to the need for repairs. If there is no clear delineation between the role of tenant and management then the managers may try to convince or coerce tenants to forego much needed maintenance works if the cost is seen as prohibitive to the housing management. This puts tenants in an unfair position if they are asked to weigh-up such decisions where it is clear their rights are being breached and can also cause disharmony amongst the tenant community. HAAG's preferred option is the **establishment of government funded social tenant groups who can independently represent the needs of tenants and advocate for those who are vulnerable.**

- **Should the adoption of National Community Housing Standards by providers be mandatory in a nationally regulated system?**

The adoption of national community housing standards should be mandatory but need to be of a much higher standard than currently exists or is proposed in this Discussion Paper.

As mentioned previously, HAAG believes that the benchmarks or standards that have become accepted in the public housing system for decades should be adopted by a national regulatory authority for the administration of not-for-profit housing organisations. In fact it is incumbent on the federal government to ensure that the standards that have been set by state housing authorities are not allowed to be eroded in any new housing regime as HAAG fears that the 'flexibility' in policies around tenancy eligibility, allocations and tenancy management that not-for-profit housing associations often implement have already compromised some of the long standing pillars that have defined the meaning of public or social housing. For example there are a range of rent setting formulae that put into question the concept of affordable housing. The term 'affordable housing' should not be seen as a broad reference term for public or not-for-profit housing but a specific social justice definition of housing costs relative to a tenant's income that allows a person to live comfortably within their means. While public housing has

developed rent benchmarks at 20-25% of income we now see that not-for-profit housing agencies have decided that 30% of income, or even worse 75-80% of the market rate, is an acceptable rental charge. It is well accepted in housing research that tenants enter housing stress when their housing costs exceed 30% of their income. Why then is it acceptable that housing associations can charge a rent that puts tenants on the edge of such housing stress?

A further erosion of rental affordability benchmarks is the practice by some not-for-profit housing associations to charge a set rental amount no matter what happens to a tenant's income. This practice has broken the accepted social justice pillar created in the public housing system that allows for the downward flexibility of rental payments if a tenant's income is reduced due to job loss caused by illness, redundancy or any other reason. What then is the difference between social housing and free-market housing if this policy is allowed to flourish? What then is the point of government's investing in social housing if it does not provide a social safety net that acknowledges the hardship impact on tenants of the vagaries of the economy when there is a rise in unemployment? Surely such protections are an example of the very foundations upon which such a system must be designed.

We are further concerned that in Chapter 6 entitled **Commercial Activities of the Not-For-Profit Housing Sector, Section 6.3 on Rental Income** the discussion paper actually promotes this form of increased rent setting that erodes tenants affordability benchmarks.

In reference to the ability to maximise rent returns the paper states that

It may mean moving to some degree from income-linked rents to rents based on the quality and location of dwellings (while maintaining affordability benchmarks). While improving overall rental returns, this would also have the advantage of sending market signals to existing and prospective tenants about the value of the housing, and help to remove workforce disincentives. Community housing tenants are already prepared to pay rents that are higher than for public housing and demand for this type of housing has remained high, indicating some scope for improved returns for providers.

HAAG frankly finds this to be an appalling statement that stigmatises and labels people on low incomes as needing special signals that reinforce the value of their housing and that people on low incomes are more likely to leave their employment than other citizens if they know that their rent will be reduced if they do so. In our experience all our clients are seeking secure and affordable housing and, contrary to this view in the discussion paper, if there is any disincentive for prospective tenants it is being offered housing that is unaffordable or that might force them into poverty or eviction, as these policies would do if implemented. HAAG also strongly objects to the statement that 'community housing tenants are already prepared to pay rents that are higher than for public housing'. This completely



misunderstands the reality of the current housing environment where there is such a massive shortage of affordable housing and tenants are not in a position to choose community housing over public housing. Further, this statement reinforces the stigma of public housing and the bigoted attitudes of some misinformed sections of the community by suggesting that community housing is somehow a 'better' option. Demand for community housing is high, even with higher rents, because applicants have no choice but to accept whatever offer of decent housing they can find. It is completely incorrect, in our experience, to justify higher rent charges based on the spurious argument that community housing is a preferred choice. Clients who contact HAAG want decent, secure and affordable housing that provides them with a good home from which they can enjoy their lives and not carry a burden of high cost, insecurity and stress. The housing provider is never the issue. Decent housing is. The fairness of the policies that provide them with dignity and peace of mind is a central factor that they consider in determining whether it is decent housing. In HAAG's opinion, it is the not-for-profit social housing system that often does not provide the benchmarks that people on low incomes require. In many cases we have substantial evidence of unfair discrimination against applicants by the not-for-profit sector under the cloak of unwritten policies and procedures. In contrast, transparent policies and procedures of the state housing authorities are standards that have been established for many years. For example, anyone can view every policy on-line at the Office of Housing website at <http://www.housing.vic.gov.au/publications/manuals> . If only the not-for-profit housing sector was so accountable for publicly funded housing and services.

It is also important to note that current State regulatory authorities have not addressed this problem of a lack of standards that would ensure there is an effective social safety net for tenants in the not-for-profit housing sector. Any effective regulatory regime developed by the Commonwealth Government must provide a more meaningful and independent regime of protection for tenants. For example the Performance Standards for Registered Housing Agencies established by the Housing Registrar under the provisions of the Housing Act 1983 in Victoria do not provide a definitive set of standards for housing agencies to adhere to.

For example, the Housing Act specifies a series of social justice purposes for which the agencies must adhere to, such as in subclause 2:

(2) The rental housing agency's statement of objects must include an object to the effect of one of the following objects-

(a) to promote the relief of poverty, sickness or the needs of the aged by providing affordable rental housing to persons in housing need as low-income households, or through infirmity or age; or

(b) to promote other purposes beneficial to the community through the provision of affordable housing and associated services.

The Housing Act then absolves them of such responsibility if they comply with a basic requirement of any community organisation, by stating that:

(3) The rental housing agency's statement of objects is not required to include an object set out in subclause (2) if the rental housing agency otherwise satisfies the Registrar that it is a non-profit body.

The Housing Act also refers to the need for rental housing agencies to be able to meet certain performance standards. The performance standards are determined by the Minister and are outlined in a document available from the Victorian Registrar entitled **Performance Standards for Registered Housing Agencies**. Along with criteria for financial probity and governance the standards include, as stated in section 94 of the Housing Act:

- (e) tenancy management;
- (f) housing management and maintenance;
- (g) allocation of housing;
- (h) affordability of rents;

On the theme of our earlier point on rents and affordability the performance standards state the requirement that:

The agency has policies and strategies to deliver housing services at affordable rents to low income tenants. The Registrar will monitor the extent to which rent charged is below 75 per cent of market rent and exceeds 25 per cent and 30 per cent of tenant income.

Monitoring rent charges falls well short of any form of real compliance and is the weakest form of regulation one could imagine. There is no evidence of the Victorian Government taking any housing agencies to task over their rent setting practices. We believe there is considerable evidence where rent setting formulae is inequitable and unfair. These affordability guidelines allow for what we believe are unaffordable rents in any case and therefore do not achieve the stated standard of affordable rents. Therefore it is essential that standards are developed that have clear benchmarks that are based on independently assessed criteria of affordability based on assessments of income and cost of living parameters. The benchmarks should have specific conditions that must be met, with compliance and enforcement procedures to deal with breaches of the conditions. The benchmarks must be clear and transparent so that they are understandable and accessible to all tenants and applicants to the housing.

A national regulatory authority should ensure that standards and guidelines are developed independently from the not-for-profit housing agencies

growth process. It must include consultations with tenants and refer to past state and federal government policy development. To highlight the main benchmarks of decent housing that governments have historically provided and tenants have demanded for many years HAAG believes that the Commonwealth Government should use as a guide a number of measures including HAAG's **Older Persons Housing Charter** and **Housing Justice for the Aged Manifesto** (see attached). These documents were developed over a two year period in consultation with low income tenants on aged pensions to determine their fundamental housing needs.

- **As the not-for-profit grows, how do we retain the focus on local community connection and the co-ordination of tenant support services?**

As previously stated HAAG believes it is essential that the Federal Government assists the process of independent tenant participation in housing developments and services. This would be best achieved by funding locally based social housing tenant groups that would be connected to a statewide and national representative organisation. Establishing these forms of tenant organisations would ensure the involvement and participation of tenants as they are the fundamental community the housing is aimed to assist. Tenants also have connections with many other local support agencies and community interest groups who would play a vital role in the development of effective services for the broader tenant community.

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9.06.2010

Housing Charter link  
<http://www.oldertenants.org.au/files/Charter.pdf>

Housing Justice for the Aged Manifesto  
[http://www.oldertenants.org.au/files/HAAG\\_Manifesto.pdf](http://www.oldertenants.org.au/files/HAAG_Manifesto.pdf)

HAAG website  
[www.oldertenants.org.au](http://www.oldertenants.org.au)