

**COVID RECOVERY:**

# PEOPLE IN INSECURE HOUSING

Some of the most significant fault lines exposed by the pandemic have related to housing. Rental and mortgage stress have increased, and the consequences of Victoria's long-standing lack of social housing for our most disadvantaged community members have become more acute than ever. The recovery must embed and enhance the protections for tenants experiencing hardship that have been so important in keeping some renters housed, while sustained and meaningful investment in public and community housing is an essential part of ensuring that the rebuilding of Victoria's economy sits on just foundations. Both measures will be crucial to improving our society's resilience to future economic shocks.

The Victorian Government has recognised the impacts of COVID on people in the private rental market, responding with a suite of measures to soften the financial consequences for private renters. The moratorium on evictions, introduction of a rent reduction process and rent relief grants have helped people living in private residential tenancies to retain their accommodation. However, many remain unaware of the scheme and unsure of their rights, and the protections are set to expire in March 2021 – long before our economy will be fully recovered. The CLC sector now recommends the implementation of a transitional rent reduction scheme and certain other measures to continue protections for renters in a fair and measured way over 2021.

Meanwhile, one of the most significant fault lines exposed by the pandemic has been the lack of public and community housing in Victoria. The supply of social housing has fallen far short of demand for decades, and the compounding impact of increased financial hardship and stay-at-home orders create an even more serious problem. The community legal sector echoes calls made by housing organisations and charities for renewed investment in public and community housing as a core part of the COVID recovery.

## PROTECTING TENANTS THROUGHOUT THE COVID RECOVERY

Protective measures including the evictions moratorium and rent reduction scheme introduced as part of the government's COVID response have been essential in helping tenants stay safely housed over this period. In order to avoid an uptick in evictions when these protections end but tenants remain in financial hardship (especially given the end of the JobSeeker and JobKeeper increased payments), the CLC sector recommends the implementation of transitional measures to soften the impact of changes scheduled in March 2021.

## RENTAL ARREARS

There are a large number of tenants who will face an increased risk of eviction at the end of March 2021, when the temporary measures expire, due to rental arrears accrued during COVID-19 or because of rent deferral arrangements that are coming to an end. The CLC sector has seen many tenants experiencing financial hardship steadily accrue arrears over the course of 2020 because they were unable to negotiate a rent reduction or payment plan; did not access the rent reduction scheme because they didn't know about it or were worried about adverse action from their landlords; or because the rent reduction they did achieve through negotiation was ultimately unaffordable.

In order to avoid the eviction of people in this situation when the moratorium on evictions comes to an end, the Federation recommends that VCAT or the Residential Tenancies Dispute Resolution Scheme (RTDRS) be given the power to waive or reduce deferred rent and rental arrears accrued between March 2020 and March 2021. To ensure the fairness of this measure, the waiver should only be available when the tenant has accrued the arrears due to a COVID reason and it would be fair and reasonable to do so (including consideration of landlord circumstances). The CLC sector has developed a detailed proposal for such a mechanism in its Transitioning Tenancy Law from COVID-19 Emergency Measures to Economic Recovery briefing paper. The Federation endorses the suggestions put forward in this paper.

The Federation also recommends that financial relief be available to tenants where deferred rent or arrears accrued during the COVID period are not waived or reduced.

**Recommendation:** Create a mechanism for the RTDRS to waive or reduce arrears accrued by a tenant within the COVID-19 period, where it is fair and reasonable to do so.

**Recommendation:** Create a provision that prior to making a possession order, VCAT must consider whether or not to order a waiver of all or part of the deferred rent or rental arrears; and whether to order a rental reduction.

**Recommendation:** Create a new stream of DHHS financial relief, which covers arrears already accrued from 1 March 2020 until the expiry of the Residential Tenancies COVID-19 regulations.

## TRANSITIONAL RENT REDUCTION SCHEME

The rent reduction scheme has seen over 55,000 rent reduction agreements lodged with Consumer Affairs Victoria,<sup>1</sup> while the Victorian Government's rent relief grant program has also played a critical role in keeping tenants safely housed through the COVID crisis. It is clear that the financial impacts of COVID will continue to be felt by many tenants for some time, especially if the scheduled reductions to JobKeeper payments take place, and as employers continue to face business challenges.

Accordingly, the Federation recommends that the scheme should continue for at least an additional six months after March 2021, with some modifications. The *Transitioning Tenancy Law* briefing paper sets out the sector's recommendations for changes to the rent reduction scheme after March 2021, which include the provision of information about negotiating a rental reduction and their rights and responsibilities, by both landlords/agents and by Consumer Affairs Victoria, and limitations on the possibility of agreements to defer rather than reduce rent.

These recommendations respond to issues that the CLC sector has seen in the operation of the current scheme, where some tenants have been placed in an unequal bargaining position as a result of not understanding how the negotiation scheme is designed to work, and others have accrued unaffordable arrears as a result of unfairly negotiated deferral agreements.

**Recommendation: Implement a transitional rent reduction scheme until at least September 2021, with changes to ensure the schemes' effectiveness in protecting tenants.**



## RENT RELIEF GRANTS

The rent relief grants provided by DHHS have provided critical support for tenants, and should be available to tenants as part of the transitional rent reduction scheme after March 2021.

The expansion to the eligibility criteria for the grants has been a positive step, and the effectiveness of the scheme could be further improved by ensuring that information about how the grant operates, whether tenants will be eligible and the amount they could receive is provided to tenants. Ideally, information should be given to tenants who are eligible for the rent relief grant program prior to negotiating rental reduction agreements, to assist in the achievement of fair and reasonable rent reduction agreements.

**Recommendation: Extend the DHHS rent relief grant scheme until at least September 2021 to be accessed as part of the transitional rent reduction process, and that the administration of the grant scheme be reviewed.**

**Recommendation: Ensure that all tenants are provided with timely and accessible information about their rights and options in relation to tenancy law and protections.**

## RENTAL REFERENCES AND BLACKLISTING

Tenants frequently tell CLCs that they are afraid that if they exercise their rights under the COVID tenancy protections, they will experience reprisal from their landlord or real estate agent, such as by providing a negative rental reference or by blacklisting them on rental databases. This fear prevents tenants from seeking a rental reduction or otherwise asserting their legal rights – especially the many tenants who may not seek legal assistance with their rental problem.

The introduction of a prohibition on blacklisting tenants for unpaid rent due to a COVID reason has been an important protection for tenants with rental arrears, and will mean that many tenants impacted by the pandemic are still able to access housing in the private rental market in future. The Federation recommends that this prohibition is retained throughout the COVID recovery period, after March 2021.



Tenants' reliance on rental references from landlords and agents is another source of vulnerability. There is currently a lack of visibility and regulation around the provision of rental references, which creates the risk of negative references which unfairly alert prospective landlords to irrelevant circumstances like a tenant's exercise of their legal rights. The current reliance on informal, verbal references also creates the possibility that agents or landlords misdescribe complex dynamics – such as damage to a property resulting from family violence.

The use of a standardised reference could instead promote reliance by landlords and agents on more objective criteria when assessing rental applications, and the Federation recommends that a reference pro forma be developed and introduced as part of the COVID recovery measures.

**Recommendation: Retain protections to prevent tenancy database listings where the tenant was unable to pay their rent due to a COVID-19 reason.**

**Recommendation: A standardised reference form be introduced which would enable a more objective assessment of rental applications**

## INVESTING IN PUBLIC AND COMMUNITY HOUSING TO KEEP PEOPLE SAFE

Never has the need for a safe, comfortable and secure home been so pressing than during the COVID crisis. Our collective health has relied on finding appropriate housing for everyone, and the lack of permanent community and public housing has been acutely felt. We know that having a home is critical for people's mental, physical and social wellbeing, it can allow people to escape family violence and raise their family safely. The economic recovery from COVID provides the opportunity – and the clear need – to invest in both public and community housing to keep people safe and supported as they, and the Victorian community as a whole, rebuild in the wake of the pandemic. At the same time, it's important that sufficient protections are in place to ensure that social housing is safe and secure, and that people whether they rely on public or community housing, have the same rights and protections. The recent trend to transfer responsibility for affordable housing from the government to the not-for-profit sector should not result in lower quality housing outcomes for people who need our help the most.

## EXPANSION TO VICTORIA'S SOCIAL HOUSING STOCK

Secure housing is fundamental to live a safe, dignified and productive life – yet even before COVID hit, there were more than 80,000 people waiting for social housing,<sup>2</sup> and almost 25,000 Victorians homeless on any one night.<sup>3</sup> Many more people who are not yet homeless are at risk of losing their housing and becoming dependent on the public and community housing system due to a range of factors, including declining housing affordability, rental stress and instability, mental health crises and family violence. The need for public and community housing will only increase as a result of the economic impacts of COVID. If our public and community housing stock is not expanded to meet this need, more and more people will become homeless or end up in insecure, unsafe housing. Once people are in this position, it is difficult to retain or find employment, stay healthy, care for children – and near impossible to re-enter secure housing in the private rental market. The potential for escalating impacts to individual wellbeing, and increasing costs through rising dependence on other publicly funded systems like health and social security as people are less able to meet their own needs, is enormous.

Victoria's economic recovery will be a time of significant government spending as we seek to rebuild and reactivate our regional economy – and it is crucial that the Victorian Government takes this opportunity to invest in both public and community housing and build a resilient affordable housing system. The Victorian Government has committed to building 1,000 public housing properties over three years,<sup>4</sup> and the community legal sector welcomes this effort. However, given the number of people in need of housing even before the COVID crisis, and the ongoing economic impacts the pandemic will have for years into the future, this expansion falls far short of what is necessary.

The Federation joins other social support organisations – all of whom see the consequences of unsafe housing for the people they support every day – in calling for the construction of 6,000 new public and community housing properties every year for the next 10 years, including 300 homes for Aboriginal people.

We understand that expanding the stock of public and community housing will take time, and that there are difficulties in finding and obtaining appropriate sites for housing developments, especially given the changing and diverse demographic make-up of people in need of social housing. However, delaying investment any longer will only postpone the inevitable: housing affordability has been declining in Melbourne and many parts of regional Victoria for decades, and the economic shock of COVID will continue to impact many people's capacity to afford housing for years to come – the affordable housing crisis can be expected to get worse, not better, over time. The Victorian Government must take action now to invest in both public and community housing as a fundamental part of a just and equitable recovery for our state.

**Recommendation: Expand public and social housing stock by 6,000 properties each year for 10 years, including 300 homes designated for Aboriginal and Torres Strait Islander people.**

## EQUAL PROTECTIONS FOR ALL SOCIAL HOUSING TENANTS

The expansion to Victoria's social housing stock that is necessary to safely house all Victorians in the wake of the COVID crisis and beyond must be founded upon legal protections to ensure that everyone who depends on social housing is treated equally.

Social housing is an umbrella term for public housing, owned and managed by the Victorian Government, and community housing, provided by not-for-profit organisations. Community housing associations play an important role in meeting the housing needs of a range of vulnerable groups within our community, including people with disabilities, people experiencing mental and physical illness, people in poverty, and victim survivors of family violence. These are complex needs, and people require extra help to live safe and comfortable lives.

Recent decades have seen a shift in the makeup of social housing from public housing towards community housing, as the Victorian Government has transferred both ownership and management of some existing housing stock to the not-for-profit sector, and has resourced the social housing sector through funding to community housing rather than investing in public housing development. However, this transfer of responsibility has not always been accompanied by funding and capacity-building to ensure that community housing providers have the resources, policies, protocols and governance structures to safely and sustainably meet the complex needs of people reliant on their services.

At the same time, because community housing providers are non-government organisations, they are not bound by the same level of legal obligations as social housing landlords as the Office of Housing is as the public housing landlord. This can operate to the detriment of people living in community housing compared to public housing. People living in any social housing should have the same benefits and protections. The Victorian Government must ensure that community housing is sufficiently resourced and that the legal protections are in place to provide tenants the same protections as public housing. For example:

- ▼ Public housing tenants can apply for a six-month 'temporary absence' from their properties, for reasons including family violence, medical treatment and imprisonment, which allows them to pay a reduced rate of rent (\$15 per week) during this time. This is unavailable to community housing tenants.
- ▼ Public housing tenants can apply for a six-month 'temporary absence' from their properties, for reasons including family violence, medical treatment and imprisonment, which allows them to pay a reduced rate of rent (\$15 per week) during this time. Compensation is not sought from public tenants where a property has been damaged due to violence or third parties.
- ▼ Public housing tenants' rental payments cannot be more than 25 per cent of their total household income;
- ▼ The Office of Housing is required to take into account human rights and procedural fairness considerations before attempting to evict public housing tenants.

Policies and procedures affording protections and rights to community housing tenants are not consistent across the sector, nor are they equivalent to public housing protections. Some of these discrepancies are due to the distinct difference in the funding model of community and public housing, whereby community housing providers must fund their services through rent revenue for financial viability.

Many community housing providers are dedicated, skilled organisations assisting their clients in a highly resourced-constrained and at times difficult environment. However, these legal disparities create the risk that people in community housing are less well protected and more likely to be evicted than people in public housing.

Research commissioned by one of Australia's largest community housing providers shows the increasingly complex needs of people in community housing. The snapshot study of the service found that one in five people who had previously been homeless were no longer housed after six months, and that a third of people housed after leaving prison or health institutions were homeless after six months.<sup>5</sup>

As more people become reliant on community housing, and as the stock of housing properties is expanded, it is important that no one is excluded from the safety net afforded by comprehensive, fair housing policies and laws. It is also vital that community housing providers are supported to build workforce and governance capacity to implement improved policies fairly and to meet the complex needs of their clients.

**Recommendation: Ensure that community housing tenants are not disadvantaged compared to public housing tenants as a result of differences in policies, procedures or governance.**

## REFERENCES

- 1 Consumer Affairs Victoria, weekly data as at 25 October 2020.
- 2 Department of Health and Human Services Victoria, 'Victorian Housing Register Transition Report', (June 2019); Victorian Public Tenants Association, 'Housing Wait List Jumps Again', (2019) <<https://vpta.org.au/housing-wait-list-jumps-again/>>.
- 3 Council to Homeless Persons, 'Homelessness will increase as social housing proportion falls', (2019) <<https://chp.org.au/mediareleases/homelessness-will-increase-as-social-housing-proportion-falls/>>.
- 4 State of Victoria, 'Delivering More Public Housing for Victorians' (2019) <<https://www.premier.vic.gov.au/delivering-more-publichousing-for-victorians/>>.
- 5 Johson, G. McCallum, S. Watson, J., Who stays, Who Leaves and Why? Occupancy Patterns at Unison Housing Between 2014-2016 (2019) 4, 5.