

CONNECT

the Newsletter of the Mornington Peninsula Human Rights Group

*Committed to promoting in our municipality and beyond
understanding of and respect for human rights
through programs of community education*

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<http://mornpenhumanrights.org/>

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Our next meeting will be held at

2pm on the 6th August, 2012

**Mornington Peninsula Shire Council Offices,
90 Besgrove Street, Rosebud**

ALL WELCOME



Save the date for the

Annual General Meeting

2pm on the 3th September, 2012

HABITAT FOR HUMANITY: A SOCIAL HOUSING PROJECT ON OUR PENINSULA

by Alex Greig

Adequate housing is a fundamental human right enshrined in Article 25 of the UN *Declaration of Human Rights* (1948), which states that “everyone has the rights to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care”.

In 2010 the Mornington Peninsula Human Rights Group mounted Operation Concern to increase the community’s awareness of the existence of unsatisfactory levels of homelessness on the Mornington Peninsula. The available 2006 census data revealed that 590 people were deemed to be homeless in this region, but the Australian Bureau of Statistics admits that such figures are likely to underestimate homelessness pertaining to youth, the indigenous population, and victims of domestic violence.

The Shire has experienced an increased demand for housing assistance and its report of 2008 (*Speaking Home Truths: Homelessness on the Mornington Peninsula 2008*) highlighted many living in unsafe and inappropriate circumstances, such as cars, tent, benches and dilapidated or insecure housing.

There are at least 8 community bodies attempting to redress the problem of homelessness on the Peninsula and one of these is **Habitat for Humanity** about which perhaps not much is known, although it does have a higher profile in other countries. It was initially established in America in 1976 as a world-wide movement to provide shelter for impoverished families, and those living in stress, and it does so on a partnership basis. It is a non-profit organisation supported by volunteers, corporate bodies and other partners.

In Victoria 38 homes have been built in country areas, and it is anticipated that there will be an additional 55 homes over the next 4 years. The Mornington Peninsula Chapter for Habitat has built six homes for low-income families to purchase through a mortgage scheme with HFH Victoria. Each family is required to pay a \$500-\$1,000 deposit during the build time and this is deducted from their mortgage. In addition, there is a requirement that 500 hours of voluntary work be undertaken and this is termed ‘sweat equity’.

Through donations of money and materials, and the use of volunteer labour under trained supervision, Habitat focuses on both building and renovating houses, and the Mornington Peninsula Shire has been very supportive of Habitat’s work by assisting with the acquisition of land at a reduced cost. Few may know that one of its projects resulted in the renovation of some houses at Police Point at Point Nepean, in order to provide a holiday respite for some families affected by the recent bushfires. Recently, sufficient land for 3 homes was purchased on the open market at Crib Point and the first build will commence in October.

Habitat’s projects extend beyond the Peninsula and land was purchased on the Yea Heights Estate, where 25 homes will be built for survivors of the disastrous bushfires. Recently, a single father with two young sons was the first to have one of these homes dedicated and he expects to move in shortly. Four further homes are planned for Yea using the ‘blitz build’ programme and selected families will be able to move in within a number of months, weather permitting.

Further information about Habitat’s invaluable community service on the Mornington Peninsula can be obtained from Mavis Peet – mavispeet@bigpond.com.

SCRUTINY OF REGULATIONS UNDER THE CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES

by Adrian Bates

Regulations are part of the laws of Victoria, but they are not passed by Parliament and they are not subject to the same public human rights scrutiny as Bills. Yet regulations contain many of the details and powers which set out how public servants carry out their duties, including in areas like law enforcement and health services, where government authorities can exercise a large amount of control over people’s lives.

What are regulations?

Regulations are also known as ‘subordinate legislation’ or ‘statutory rules’.¹ Statutory rules are defined in the Subordinate Legislation Act 1994 (Vic) (SLA) to include regulations made by the Governor in

¹ ‘What are “Regulations”?’ in the SARC, *Annual Review 2010, Regulations 2010*, June 2011 p1, at http://www.parliament.vic.gov.au/images/stories/committees/sarc/review_regulations/Annual_Review_Regulations_2010.pdf (last visited 25 June 2012).

Council². The Governor is ‘in Council’ when presiding over the Executive Council established by Part IV of the Victorian Constitution³. At meetings of the Council, the Governor acts as advised by Ministers (usually four) who represent the Government.⁴

Legislation made by Parliament is referred to as primary legislation or Acts of Parliament. Primary legislation normally authorises the Governor in Council to make regulations to fill in the details that are not specifically covered in the main Act. Regulations are developed by the Minister administering the authorising Act, or in practice, their department.⁵ The Minister then makes a written recommendation to the Governor in Council to make the required regulation. Regulations are tabled in Parliament but there is no formal debate or voting on them as with Bills. Parliament can object to them but this relies on an MP raising a particular issue.

The validity of regulations depends upon the regulation-making power conferred by the authorising Act. Regulations usually specify the authorising provision of the Act under which they are made. For instance, section 46 of the Charter of Human Rights and Responsibilities Act 2006 (Charter) confers power on the Governor in Council to make regulations necessary to give effect to the Charter. This includes prescribing entities not to be public authorities for the purposes of the Charter. This power has been used to exempt the Adult Parole Board, Youth Residential Board and Youth Parole Board from the operation of the Charter.⁶

Why regulations need close human rights scrutiny?

Laws which are compatible with human rights, including their associated regulations, provide the basis for effective service delivery and establish clear standards against which the government can be held accountable. Regulations provide the fine detail to the way many of the provisions of an Act operate in practice and have the potential to seriously impact on the human rights of people in Victoria. Regulations can have very practical outcomes and often directly impact on the way public authorities go about their work.

Some regulations require close scrutiny because of the sensitive nature of the authorising Act. For example, the Mental Health Regulations 2008 prescribe the forms, patients’ rights and other matters necessary to give effect to the Mental Health Act 1986. They cover the forms required to initiate involuntary treatment, the required statements that must be provided to patients before they consent to electroconvulsive therapy, psychosurgery and major non-psychiatric treatment and statements that must be given to patients outlining their legal rights and entitlements.⁷ These Regulations necessarily engage a number of Charter rights including the right to liberty and security, protection from cruel, inhuman or degrading treatment and freedom of movement.

Other regulations require close scrutiny because of the controversial provisions introduced by the authorising Act. For example, the Education and Training Reform (School Safety) Regulations 2011 detail how the search and seizure powers under the authorising Act should be exercised, including in respect of vehicles and non-school premises. The Regulations provide that the search power may be exercised on the grounds of ‘reasonable suspicion’, rather than the higher standard of ‘reasonable belief’. The Regulations engage the Charter rights of equality, privacy and property.

² *Subordinate Legislation Act 1994 (Vic)* (SLA) s3(1). Statutory rules also include regulations made with the consent or approval of the Governor in Council or which the Governor in Council has the power to disallow, rules relating to a court or tribunal or the procedure, practice or costs of a court or tribunal, instruments prescribed to be statutory rules by the Governor in Council and instruments deemed to be statutory rules by their own authorising Act.

³ *Constitution Act 1975* Part IV – The Executive.

⁴ More information on the role of the Governor is available at <http://www.governor.vic.gov.au/> (last visited 25 June 2012).

⁵ Some Acts are administered by more than one Minister.

⁶ *Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2009*.

⁷ These statements include a section on the Charter and refer to the Commission as an organisation for patients to call if they need more information on their rights under the Charter.

More general regulations may have specific provisions that engage human rights. For instance, regulation 32A of the Children, Youth and Families Regulations 2007 details the requirements for conducting searches of children including strip searches, regulation 6 of the Land Acquisition and Compensation Regulations 2010 involves the deprivation of property and regulation 15 of the Education and Training Reform Regulations 2007 permits a staff member to take ‘any reasonable action’ to restrain a student from dangerous acts or behaviour. Issues have been raised with the Commission in respect of regulation 15 due to incidents of children with disabilities being physically restrained in class.

The potential for the Charter to positively affect the making of regulations was highlighted during the making of the Corrections Regulations 2009. Feedback was incorporated into amendments to the regulations relating to instruments of restraint to enhance compatibility with the Charter. The amendments enhanced “privacy and reputation” and “humane treatment when deprived of liberty” by reducing the period for which a restraint can be used before prison managers must notify the Secretary, as well as better regulating prison searches and the criteria used to segregate prisoners.⁸ It also included improved human rights protections around prison placement and strip searches.

The Charter also prompted a review by the State Coroner’s Office of regulations relating to the viewing and touching of bodies by relatives.⁹

Parliamentary oversight of human rights in Victorian law

Victoria has different processes for considering the human rights impact of Bills and regulations.

Bills are debated and passed by Parliament before they become law. A Member of Parliament who proposes to introduce a Bill into a House of Parliament must cause a statement of compatibility to be prepared in respect of that Bill stating, in the Members opinion, whether the Bill is compatible with human rights.¹⁰ Statements of compatibility are laid before the House in which the Bill is introduced before the Second Reading Speech is given.¹¹ They are on the public record in Hansard and can be scrutinised by any interested party.¹²

Regulations are not debated or passed by Parliament. They are made under Executive power and come into operation at the beginning of the day on which they are made.¹³ Regulations have to be laid before Parliament but this occurs after they have already commenced operation.¹⁴

A human rights certificate must be prepared for any proposed regulation by the responsible Minister unless it falls within a relevant exemption provision.¹⁵ In which case, a human rights exemption certificate must be prepared.¹⁶ Exemptions are granted for reasons unrelated to human rights such as the proposed statutory rule relates only to a court or tribunal.¹⁷

⁸ See Victorian Equal Opportunity and Human Rights Commission, *The 2009 report on the operation of the Charter of Human Rights and Responsibilities: Making Progress*, April 2010, Table 2.1 p37. All Charter reports are available at <http://www.humanrightscommission.vic.gov.au/charterreport> (last visited 26 June 2012).

⁹ Victorian Equal Opportunity and Human Rights Commission, *2009 Report on the operation of the Charter of Human Rights and Responsibilities: Making Progress*, 2010, p. 43.

¹⁰ Charter s28.

¹¹ Charter s28(2).

¹² Hansard can be downloaded from <http://www.parliament.vic.gov.au/hansard> (last visited 18 June 2012).

¹³ SLA s16(1)(a).

¹⁴ SLA s15(1).

¹⁵ SLA s12A(1).

¹⁶ SLA s12A(3). See also the definition of human rights exemption certificate in SLA s3(1).

¹⁷ SLA s12A(3)(a).

A human rights certificate must certify whether, in the opinion of the responsible Minister, the regulation does or does not limit any human right set out in the Charter.¹⁸ If the Minister is of the opinion that the proposed regulation does limit a human right, the certificate must set out the nature of the human right limited, the importance of the purpose of the limitation, the nature and extent of the limitation, the relationship between the limitation and its purpose and any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.¹⁹ In effect the same process of analysis as under section 7 of the Charter.

The responsible Minister must sign and date the human rights certificate or human rights exemption certificate,²⁰ though they may not be standalone certificates because the SLA allows a composite certificate to be prepared incorporating a number of the required certificates under the Act.²¹

Proposed regulations submitted to the Governor in Council must be accompanied by all relevant documents including the human rights certificate.²² Once the regulation is made by the Governor in Council, it must be laid before each House of Parliament along with copies of these documents.²³

Unfortunately the records of proceedings in each House captured by Hansard and in the Votes and Proceedings of the Assembly and the Minutes of Proceedings of the Council only state that documents under s15 of the SLA in relation to specified regulations were tabled by the Clerk.²⁴ They do not say whether these documents include the relevant human rights certificates; or provide detail of any human rights issues raised.

This makes it difficult to know whether a human rights certificate was completed for a new regulation or for members of the public to engage with any human rights issues raised by the regulations – as mentioned above, regulations can set out the detail of significant powers for public authorities which engage the human rights of Victorians.

There is currently no central repository of human rights certificates available for download. Without access to human rights certificates it is impossible to determine how thoroughly a regulation has been scrutinised by the responsible Minister in respect of limitations it may place on any human rights in the Charter.

The Scrutiny of Acts and Regulations Committee

The Scrutiny of Acts and Regulations Committee (SARC) is a joint investigatory Committee of the Parliament of Victoria.

SARC must consider any Bill introduced into Parliament and must report to Parliament as to whether the Bill is incompatible with the human rights set out in the Charter.²⁵ The SARC process generally occurs when a Bill is still before Parliament so their considerations become part of the process and any issues with a Bill can be dealt with before it becomes law.

¹⁸ SLA s12A(2)(a).

¹⁹ SLA s12A(2)(b).

²⁰ SLA s12B(1).

²¹ SLA s12B(2).

²² SLA s14.

²³ SLA s15.

²⁴ Hansard and the Votes and Proceedings of the Assembly and Minutes of Proceedings of the Council are available under Parliamentary Documents at www.legislation.vic.gov.au soon after each House finishes sitting for the day.

²⁵ Charter s30. SARC must examine Bills under eight separate heads of scrutiny, one of which is compatibility with the human rights in the Charter – SARC Terms of Reference in *Parliamentary Committees Act 2003* s17. Reproduced at <http://www.parliament.vic.gov.au/sarc/article/914> (last visited 18 June 2012).

SARC reports to Parliament through an Alerts Digest tabled in Parliament on the first sitting day of a Parliamentary sitting week.²⁶ Charter issues may be referred to Parliament for their consideration or to the responsible Minister seeking further information or clarification. The Minister's response is included in a future Alerts Digest. In 2011 SARC considered 92 Bills, fourteen of which were accompanied by Charter Reports by SARC.²⁷

SARC must also review all regulations laid before Parliament and may report to Parliament if it considers that a regulation is incompatible with the human rights set out in the Charter.²⁸ Unlike Bills, regulations will have commenced operation before SARC reviews them. SARC generally reports on this work annually.

SARC has established a subcommittee called the Regulation Review Subcommittee to fulfil these tasks (subcommittee).²⁹ Meetings of the subcommittee are not open to the public. The subcommittee considers every regulation and its accompanying human rights certificate. All regulations should have a human rights certificate unless exempted under the Act.³⁰ Copies of human rights certificates and other relevant documents will have been sent to the subcommittee by the responsible Minister when the regulation was made.³¹

An important difference in the scrutiny process is that whereas SARC must report to Parliament as to whether a Bill is incompatible with the Charter, it has discretion as to whether it does the same for regulations it finds incompatible with the Charter.³² Such a report to Parliament could recommend a regulation be disallowed or amended.³³

SARC's current practice is to write a letter to the Minister in the first instance seeking an explanation or amendment of the regulation. Only if the subcommittee does not receive an adequate response will it consider preparing a report to Parliament. This is done rarely.

In 2010, SARC did not make any reports to Parliament about regulations.³⁴ Instead, SARC sought further clarification in relation to four statutory rules (out of 152) and received satisfactory responses from the responsible Minister in each case to the issues raised.³⁵ SARC considered the Charter in two of these, regulation 15 of the Road Safety (Driving Instructors) Regulations 2010 and regulation 6 of the Land Acquisition and Compensation Regulations 2010.

In 2009, SARC also made no reports to Parliament about regulations. It did seek clarification in relation to 17 statutory rules (out of 189) including ten on Charter issues. Charter issues included a question on equality rights (Education and Training Reform Amendment (Age Requirements) Regulations 2009), a question relating to strip searches of visitors and prisoners (Corrections Regulations 2009) and a

²⁶ 2012 Alerts Digests are available at <http://www.parliament.vic.gov.au/sarc/article/1737> (last visited 18 June 2012).

²⁷ SARC, *Annual Review 2011*, April 2012 p4, 5. Available at http://www.parliament.vic.gov.au/images/stories/committees/sarc/annual_reports/Annual_Review_2011.pdf (last visited 18 June 2012).

²⁸ SLA s21(1)(ha).

²⁹ SLA s21.

³⁰ SLA ss12A(1), 12A(3).

³¹ SLA s15A.

³² Compare Charter s30 with SLA s21.

³³ SLA s21(2).

³⁴ SARC, *Annual Review 2010, Regulations 2010*, June 2011 p11.

³⁵ *Ibid.* In 2011, the subcommittee reviewed 190 statutory rules - SARC, *Annual Review 2011*, April 2012 p9.

question relating to behaving in an ‘insulting manner’ at an alpine resort (Alpine Resorts (Management) Interim Regulations 2009).³⁶

The correspondence with the responsible Minister in these cases, reproduced by SARC in its Annual Review of Regulations, is very informative in relation to Charter issues with regulations. For instance, the Minister’s response in relation to regulation 6 of the Land Acquisition and Compensation Regulations 2010 went into great detail about how the regulation engaged the right to property in section 20 of the Charter but did not limit the right as the deprivation of property was lawful.³⁷ It also referred to the accompanying human rights certificate.

This material would be very useful for public scrutiny purposes. Unfortunately, the Annual Reviews of Regulations are not published until months after the end of the year in which the regulations were made (2010 review published June 2011, 2009 review published August 2010).³⁸ By this time, regulations considered by the subcommittee will have been in operation for at least six months and possibly 18.

Practically, this makes SARC’s Annual Reviews of Regulations more a historical record of human rights issues that arose in relation to regulations than a useful tool to inform politicians and the public and to encourage debate on those issues. The timing is too late to allow for any useful public contributions to discussions occurring and issues being raised around the time the regulations first came into operation.

The Commission proposed in its submission to the Four-Year Review of the Charter in 2011, that the mandate of SARC should extend to require the furnishing of a report where regulations infringe on Charter rights or where SARC believes there are potential human rights issues that need a response from the Minister. SARC should be required to report to Parliament where it forms such a view. This could be done by simply changing ‘may report’ in section 21 of the SLA to ‘must report’ as in section 30 of the Charter.

If SARC were required to report regularly to Parliament on human rights issues identified in regulations, as it does on Bills through the Alerts Digest process, the actions of the Executive would be subject to more appropriate scrutiny and Parliament would be better informed in their oversight of regulations.

A related issue SARC has expressed concern about is the lack of scrutiny or Parliamentary review of regulations falling outside the definition of statutory rule under the SLA.³⁹ Examples of regulations that fall outside the definition of statutory rule are - guidelines, ministerial directions, local laws, codes of practice, notices, declarations and licences. Such regulations should also be brought within the regulatory scrutiny functions of SARC.

Conclusion

The process under which regulations are made is less accessible to public scrutiny than for Bills. There is a clear tension between having a simple procedure for the making of regulations and the need for appropriate oversight. This has become even more apparent since the passage of the Charter.

A central repository of human rights certificates made available when they are laid before Parliament would ensure they are open to public scrutiny and discussion. Regular reporting by SARC on any human rights issues with regulations would allow further public scrutiny.

³⁶ SARC, *Annual Review 2009, Regulations 2009*, August 2010. Available at http://www.parliament.vic.gov.au/images/stories/committees/sarc/review_regulations/Annual_Review_2009.pdf (last visited 25 June 2012).

³⁷ SARC, *Annual Review 2010, Regulations 2010*, June 2011 p26-27.

³⁸ 2008 Review in July 2009, 2007 Review in August 2008 and 2006 Review in August 2007. Available at <http://www.parliament.vic.gov.au/sarc/article/1002> (last visited 27 June 2012).

³⁹ SARC, *Annual Review 2010, Regulations 2010*, June 2011 p3.

HOMELESSNESS, HOUSING AND FUTURE DIRECTIONS

by Ken Dyson

Homeless and insecurely housed people are amongst the most disadvantaged in our society. Their ability to enjoy their human rights and participate in our rich and diverse community is at best limited if not denied.

Unfortunately debate about solutions rarely sits within a human rights framework, and too often becomes bogged down in programmatic detail and limited by budgetary constraints. In this context government policy and implementation can lose sight of human experience and the importance of community. The need for advocacy is clear.

On the understanding that the network is interested in homelessness, there are two current opportunities worth considering:

Social Housing Framework

An Auditor General's inquiry into public housing found that operating costs exceed revenue by 42% and therefore the system is financially unsustainable. In response, the Victorian Government produced a discussion paper – *Pathways to a Fair and Sustainable Social Housing System* – and is inviting submissions up to 31 July. The details can be found at www.dhs.vic.gov.au/housingframework.

While the problem is real, the approach taken in the discussion paper has been characterized as a return to the notion of the deserving and undeserving poor, asking the question “How can good tenant behaviour and mutual obligation be incentivized?” (Discussion Paper p.42.) The paper does not demonstrate an understanding of public tenants' circumstances and what caused them to be in public housing. It also sets out a poorly argued case for public housing not being “fair”, particularly in reference to the private rental market.

Homelessness Bill 2012 – Exposure Draft

Following changes to administrative structure managing the Federal and State relationship around housing and homelessness, the Federal Government needed to recast the homelessness legislation. It has released a draft of the new Bill for comment – go to www.fahcsia.vic.au and search for Homelessness Bill 2012 – submissions due by 2 August.

Reference to human rights is explicit and extensive, even to the extent that clause 6(2) says:

The Commonwealth recognizes that persons who are, or are at risk of, experiencing homelessness may face more challenges than other Australians in accessing their rights.

The difference between drafting legislation and tackling reform in a complex housing provision system is acknowledged. Further, setting legislation in a rights framework does not guarantee delivery consistent with those rights, but it does allow for future accountability and a deeper conversation. And surely, that's got to be a good thing?

I look forward to future engagement with the Mornington Peninsula Human Rights Group around these fundamentally important issues of housing and homelessness. For further information, contact me on 5950 1682 or email ken.dyson@mornpen.vic.gov.au.

HOUSING AND HOMELESSNESS: VICTORIA'S SITUATION 2012

by Kaye Mackay

In the provision of human rights, housing is often overlooked. While lightly included in some international agreements, it is a serious omission in our Australian Constitution with the States bearing the main responsibility.

Yet housing is a basic need along with love, safety, food, clean water, clothing, education, health care and waste disposal. Given the sector's omission from many social science discourses also, it is not surprising that it is now another little noticed social provision bound to be 'privatised' in Victoria.

According to the Victorian State government the current social housing system is financially unsustainable, unfair to tenants and not meeting needs. These conclusions are based on the March 2012 Auditor-General's report that the Victorian Public Housing sector lacked an overarching direction and management strategy, and faced increasing costs.

Social Housing is the term embracing three existing housing models

1. Community Housing model (registered not-for-profit community housing associations as managers; 14 000 dwellings and 16 000 tenants) or a
2. Transitional Housing model (community sector management; 4 000 units for those with crisis accommodation or special needs) or a
3. Public housing model, with the government directly as landlord; remains for 65 000 dwellings with 147 000 tenants; the aim is to reduce this area and increase the Community Housing.

Generally Victorian housing stocks have remained the same (around 83 000 units) for the past three decades and the number of people on the housing list has been stable (approximately 38 000 people per annum) since 1989; homelessness numbers have also been steady over the past 12 years (105 000 nationally in 2006 – Homelessness Taskforce, 2008: viii).

Despite this stability no attempt was made to improve housing stocks in Victoria. Funding was reduced over the time and \$600 million is now needed over the next three years to renovate or repair a third of the 65 000 units (≈\$16.25+ billion value). Forty-seven per cent of the houses are too large (three plus bedroom stock) for the current 80% demand for one and two person dwellings.

In these three decades also, the government housing role shifted from providing low-cost housing for people on low incomes to providing basic or transitional accommodation for people with special needs (those who were disadvantaged, disabled or homeless, for example). Management failed to address these changing issues re matching housing stocks and clients, or reducing the waiting list.

The solutions by the Victorian government are to decrease housing stock and increase privatisation in the sector. Two reports have been released for public feedback by 31 July 2012: *Pathways to a Fair and Sustainable Social Housing System: Public consultation discussion paper*, and *Social Housing: A discussion on the options to improve the supply of quality housing*. (NOTE: Feedback must on the prescribed form to 29 specific questions.)

'Maintaining the status quo is not an option' according to the Minister Wendy Lovell Minister for Housing, Victorian Department of Human Services.

Models for increased non-government operation consider choices within three supply factors – development, transfer, finance. Some have some strengths but none are win-win models for tenants or the taxpayers of Victoria; all have serious faults – as all privatisation models do when efficacy and accountability are omitted.

Certainly elements of privatisation have occurred during the last decade or so. Of the eight registered housing associations none increased assets the mandated 15% and only three have used the assets as security for borrowing since 2008. That is, to date the increased not-for-profit entry has not performed well.

The proposal to add an additional layer of management for government and tenants to work through seems inefficient and only politically useful: a distancing of State government from responsibility and consequences (as has happened with the privatisation to our energy, transport and water management). While these forms of state subsidised enterprise are deemed successful in the USA in the KMPG report, alternative evidence from Phillip Mangano, Executive Director of the United States Interagency Council on Homelessness ‘cited 65 US studies which show the cost of current models of servicing the homeless are more expensive than placing them in housing (Johnson, 2010).’

Overall the reports fail to convince that there is any urgent reason for an immediate and ad hoc devolution to our State housing portfolio. Reduction of our State assets for a short-term balanced financial statement is simplistic and irresponsible at best. Rather government funding from entertainment (Grand Prix, fireworks) or unnecessary infrastructure developments (desalination plants, roads) can be redirected to social needs. Adjustments can be made also with a turnover of the portfolio from large multi-bedroom to one and two bedroom units with universal design features and 50-year life cycles to meet future housing demand.

Unfortunately the choices people make in regard to feedback are complicated by multiple additional factors impacting on this issue, such as:

1. Governments moving down the path of privatisation despite the multiple examples of market failure over the past decades in the case of transport, education, health, utilities. Free trade agreements, activated since the 1990s, and political policies and election promises, now too often determine our national and state goals legally and economically, acting against individual rights, and social and environmental needs and objectives generally.
2. Secrecy re planning and contracts (e.g. Private-Public Partnerships contracts between the State of Victoria and private companies which are unavailable for public scrutiny). This secrecy in turn prevents precise or informed future planning given the lack of baseline information. In the future, salt, dry rot, ant, floods, storm and bushfire damage are all increasingly undermining infrastructure in worsening climate change scenarios causing increased insurance and maintenance costs. If this is noted anywhere and is a reason for decreasing State housing portfolios, the lack of openness is evident and will only result in compounding tragedy as people fail to prepare.
3. The sector of housing is interwoven with many other areas, and an able understanding of the issues is near impossible: much of the information is isolated and this complex background invisible. In the end a silo treatment of one sector – in this case the sector of housing measured with a financial yardstick – prevails without relationship to the causes (global economic impacts, increased immigration with climate change refugees, continued domestic violence from social stresses, falling employment opportunities with global competition, increased use of technology and robotics in workplaces) or the impacts on these most vulnerable tenants (increased expenses and social service needs, decreased health, safety, and community contributions: a compounding poverty).
4. For many low income and disadvantaged people their control is stunted by muffled needs and voices, lack of or incomprehensible language and information, internet access or management authority. The voices that purport to represent this vulnerable group can be distorted by political self-interest.
5. A victim-deficit approach to social issues where tenants or the homeless are blamed for such aspects as housing maintenance, allocation, or neediness rather than acknowledgement of business and government failures as causes.
6. Lack of assessment, evaluation and accountability are additional obstructions to the equitable provision of basic social needs. Vulnerable people do not have the emotional or financial resources to address these issues through negotiation or the legal system because the legal

system is driven increasingly by corporate and statute considerations, not common law protections.

All these factors seem to predicate an increase in homelessness and housing disadvantage; an increasingly volatile and insidious deprivation with ominous consequences.

Unless a broader more cooperative perspective to solving these issues is undertaken the legalised market approach seems bound to speed change for the worse.

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Johnson, G. (2012) Housing and homelessness. in *Dissent*. No 32 Autumn / Winter pp 54-57

KMPG (2012) *Social Housing: A discussion on the options to improve the supply of quality housing*. Victorian Department of Human Services, Melbourne

Pathways to a Fair and Sustainable Social Housing System: Public consultation discussion paper. (2012) Victorian Department of Human Services, Melbourne

[Please note:

- a. That the term “community” is a misnomer and refers to registered private / not-for-profit administrators, not community individuals or cooperatives.
- b. Subsequent to the release of these reports, the distribution of social services has been altered from a four-segment system to a three-segment system. The first two segments (tiers) apply to community and transitional housing applicants. The last tier is for low-income residents and will rarely apply in the future due to the resource shift to special needs tenants. No one will know where they are on a waiting list as with multiple service providers there will be multiple service waiting lists.]

THOUGHTS ON THE FUTURE OF SOCIAL HOUSING IN VICTORIA

by Rosemarie Draper

The Victorian Government is holding a public consultation based on a discussion document, *Pathways to a Fair and Sustainable Social Housing System*, and a KPMG Paper exploring funding options for the future supply of public and community managed housing. These documents are available at www.dhs.vic.gov.au/housingframework. The following are comments on this consultation by one of our members who has provided her clear and straightforward perspective on the complex issues facing public housing in Victoria.

What is the role of Government? Should the State Government remain involved at all?

I believe the State Government should remain involved in social housing because in a country as wealthy and developed as Australia, everyone should have the right and ability to access affordable and appropriate housing to meet their individual needs. The private market motivated by profit, does not take this sufficiently into consideration.

Who should provide/manage the public housing?

The three tiers of government in Australia should work together on providing and managing public housing. This could include some degree of outsourcing such as providing subsidies to not-for-profit organisations such as Community Housing Co-operatives and Associations to provide social housing where there could be a mix of incomes of tenants using the accommodation facilities, to try and prevent stigma and related issues. However government, particularly on the State level should retain overall responsibility, to ensure that the needs of vulnerable people such as people with disabilities, sickness and/or frailty can be met.

How could the allocation of public housing be made fairer?

I consider the current method of having concurrent general and segmented waiting lists where homeless people or people with medical (or other urgent needs) get some priority allocations, is basically already a fair system.

How could the public housing system be made more flexible? How could tenure be made fairer?

I believe the only "fair" way is to offer indefinite secure tenure to all public housing tenants conditional to their meeting their obligations under residential tenancy laws and increasing rent to market rates if the incomes of tenants increase.

How can public housing be made fairer for tenants? How can public housing be made fairer for the Victorian community?

Allow access to public housing to all Victorians irrespective of their income levels and have those on higher incomes paying market rents, so that the public housing sector has more income to maintain and improve their housing stock. I also strongly object to some current thinking that because tenants in the private rental market have to pay more even when they receive Centrelink rent allowances for rent than public tenants, that public tenants should pay more to make things fairer. I would argue if this is perceived as unfair then Centrelink should increase the amount of rent allowance paid to their low-income clientele to even things up.

How can good tenant behaviour and mutual obligation be incentivised?

As with the private rental market, use current residential tenancies legislation to evict tenants who do not meet their obligations. However, as eviction should only be a last step, tenancy sustainability programs should be funded, to work with and support tenants on the verge of eviction. Also, consideration has to be made about what happens to those who are evicted. This could include development of supported housing programs targeted to work with evicted tenants on any underlying issues, as well as their future accommodation issues.

How can the supply of quality social housing be improved?

By the three tiers of Government working together to look at ways of encouraging and perhaps subsidising developers who are willing to provide and build environmentally sustainable properties which also use *ageing in place* principles in their design.