

General factsheet

Residential Tenancies, Housing and Social Services Regulation Amendment (Administration and Other Matters) Act 2022

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The Victorian Parliament passed the *Residential Tenancies, Housing and Social Services Regulation Amendment (Administration and Other Matters) Act 2022* (the Act) on 2 September 2022 and it received royal assent on 6 September 2022.

Overview of the Act

The *Residential Tenancies, Housing and Social Services Regulation Amendment (Administration and Other Matters) Act 2022* (the Act) deals with several areas across the Housing portfolio. It makes amendments to the *Housing Act 1983* (Housing Act) and *Residential Tenancies Act 1997* (RT Act).

Amendments to the Housing Act

What is Homes Victoria?

Homes Victoria works to support all Victorians to have access to safe, secure and affordable housing. In November 2020, the Victorian Government announced the establishment of Homes Victoria to deliver on its record \$5.3 billion Big Housing Build investment – which will deliver more than 12,000 social and affordable homes across Victoria.

Homes Victoria has been established as a reformed and repositioned Director of Housing to:

- to support Victorians who are finding it difficult to secure stable affordable housing and help them live their best possible life
- to manage the more than \$35 billion in housing assets that currently housing more than 112,000 Victorians
- to renew and substantially expand those assets by ensuring the Big Housing Build is delivered on budget and on time
- to make sure we have a sustainable housing system that can deliver for generations to come.

The Director of Housing was established by the Housing Act with its administrative functions and public housing tenancy management provided by the Department of Families, Fairness and Housing. The Director of Housing was a unique body corporate structure in Victoria functioning as both a body corporate sole and as an appointed individual.

The Act formalises the transition of the Director of Housing to Homes Victoria. The Act distinguishes between the roles of the Director of Housing by changing the name of the statutory office to Chief Executive Officer, Homes Victoria, and changing the name of the body corporate sole to Homes Victoria.

This transition does not affect the existing structure of the body corporate, or the objectives and powers outlined in the Housing Act. The Act has been drafted to ensure that any Act, contract or document which uses the term 'Director of Housing' will continue to have effect or be valid.

How will the Act embed the Homes Victoria Advisory Board as an enduring governance structure?

Last May, the Victorian Government announced the appointment of a Homes Victoria Advisory Board (the Board). The 11-member Board, led by Chair Steve Goss, is overseeing the rollout of the landmark Big Housing Build and other major housing and homelessness initiatives and reforms.

The Board strengthens Homes Victoria's governance, accountability and financial oversight. It acts as an advisory body under the Housing Act, providing advice on the strategic direction and performance of Homes Victoria.

In addition, Board members draw on their skills and experiences to advise on long-term strategic direction, desirable community outcomes, best practice financial performance and growth, and the identification of new opportunities.

For further information, please visit the Homes Victoria website <<https://www.homes.vic.gov.au/minister-and-leadership>> .

To avoid delay in implementation of the Big Housing Build, the current Board was set up as an advisory committee under section 8(1) of the Housing Act.

The Act expressly enshrines the Homes Victoria Advisory Board in the Housing Act. This embeds the Board as an enduring legislative structure to provide strategic governance and oversight of Homes Victoria.

The Act provides that the persons who were appointed as the chair and members to the Board on 10 May 2021, are taken to be appointed as the chair and members of the Board under the new section 11D of the Housing Act.

The Act also enshrines Aboriginal representation on the Board by requiring the Minister to appoint an Aboriginal person and reflect approach to Aboriginal self-determination and the diversity of the Victorian community and industry in appointing members of the Board, including in skills, experience, gender, disability and sexuality.

The Board will consist of no fewer than five, and no more than 11, members, including the Chair.

How will the Act support the Big Housing Build?

As part of the Big Housing Build, Homes Victoria is creating 12,000 new homes across the state. The Big Housing Build is Victoria's largest investment in social and affordable housing in its history, creating over 40,000 jobs across Victoria.

The Act equips Homes Victoria with the rights, functions, powers and flexibility required to participate in the property development market in the ways in which the market most often transacts. The Act enables Homes Victoria to identify and enter into the most appropriate commercial models and transaction structures, required to support the Big Housing Build.

For instance, the Act provides new powers for Homes Victoria including:

- to form a corporation, trust, joint venture, partnership or other body, including a non-profit body. These will be known as Homes Victoria subsidiaries; and

- to engage in and with its subsidiaries (for example, by holding and disposing of shares or units in a trust, acting as a trustee, or entering into any arrangement for the sharing of profits, co-operation, joint venture, or reciprocal concessions).

The use of separate entities in property development structures is fundamental:

- to provide Homes Victoria with additional choices to procure and invest in property development
- to potentially access additional property development capacity in the market which is not being currently accessed by the Director of Housing; and
- to provide additional avenues for the State to achieve its Big Housing Build objectives of delivering the required number of dwellings.

To ensure appropriate oversight, the Act requires that Homes Victoria obtain the approval of the Minister for Housing and the Treasurer for the exercise of its new functions and powers.

How will the Act support the development and delivery of affordable housing?

More Victorians than ever are renters, including many who helped Victoria survive the pandemic. They are the essential workers who run our supermarkets, hospitals, schools, and aged and disability care facilities, deliver us water and power, take away our rubbish and recycling, and make our cities, suburbs, and towns work.

There is a growing gap between the existing private rental market and social housing. Many working households are being priced out of private rental.

Homes Victoria will continue to be the provider of public housing in Victoria and steward the homelessness and social housing systems. Homes Victoria is also supporting the growth of an effective affordable housing market. Homes Victoria expands the Director of Housing's former role by addressing the housing needs of low- to moderate-income households where the market is not delivering a sufficient supply of affordable homes.

To establish a framework for the development and delivery of affordable housing, the Act inserts a new Part VIIIIB in the Housing Act which provides:

- A new power for the Minister for Housing to declare an affordable housing program to be a Victorian Affordable Housing Program (VAHP). The declaration will outline the objectives and overarching parameters of the program.
- The Act also includes a new power for Homes Victoria (the Director of Housing) to determine operational settings for a VAHP. This may include eligibility criteria; allocation method for VAHP tenancies; application processes; rent settings; tenancy terms, and any other associated matters.

The Act makes clear that Homes Victoria must consult with relevant stakeholders in determining the operational settings for each VAHP.

The VAHP framework enables the delivery of programs that will help address the gap in housing affordability and supply for the many low to moderate income households who are experiencing rental stress and cannot afford to buy a home. The VAHP framework aims to encourage other investors, such as superannuation funds, to also build or buy additional affordable rental properties.

Amendments to the RT Act

What documents can be requested by social and affordable housing providers?

The 2018 RT Act reforms sought to protect the privacy rights of renter applicants by prohibiting residential rental providers from requesting bank statements with daily transactions. The reforms sought to prevent residential rental providers from having access to information about how a renter applicant chooses to spend their income. However, the intention was to allow residential rental providers of social and affordable housing to be able to request a bank statement with daily transactions where the debit transactions were redacted.

The Act amends the RT Act to clarify the type of documentation residential rental providers of social and affordable housing, as described in the RT Act, can request from renters. The Act explicitly confirms that bank statements with daily transactions, which have the debit entries redacted, can:

- be requested by social and affordable housing providers; and
- be provided by renters.

Access to a renter's daily credit transactions is required by social and affordable housing providers to assess whether they are eligible for social and affordable housing.

For example, regular monetary gifts from family (which are considered as income) can only be identified in a bank statement containing daily credit transactions.

What are the new notices to vacate for affordable housing?

Programs which target particular groups of renters require a means by which the demand for the program can be managed when a renter is no longer part of that targeted cohort.

Without a legislated mechanism to move ineligible renters from National Rental Affordability Scheme (NRAS) and Victorian Affordable Housing Program (VAHPs) properties, these affordable housing providers will be prevented from continuing to offer housing to their target renter group.

To enable the continued operation of NRAS and Victorian Affordable Housing Programs, the Act provides two additional reasons for issuing a notice to vacate:

- where a renter is no longer eligible for the NRAS or VAHP
- where a renter does not provide the required documentation within the specified time period to enable an assessment of eligibility to occur. NRAS and VAHP renters will have written notice of at least 150 days to demonstrate their eligibility before a notice to vacate can take effect (60 days from the first written request for income documentation plus the 90-day notice to vacate period).

To ensure the rights of renters are protected, the Act deems a notice to vacate to have no effect where a renter provides the requested documents and the residential rental provider verifies the renter's eligibility, prior to the termination date on the notice.

Further safeguards ensure the notices to vacate relating to NRAS are limited to use for properties that have a current NRAS allocation, and the notices to vacate for VAHPs can only be used by VAHP providers.

What are Community Impact Statements and how will they work? (Not yet in force - to commence at a date to be proclaimed or on 20 June 2023, whichever is earlier)

Safe, secure and stable housing is fundamental to each person's health, wellbeing and safety. It is the foundation that enables people to participate in the community and the workforce, and is essential to achieving a range of health, economic and social outcomes.

Homes Victoria needs to be able to balance the rights of neighbours (including neighbouring public housing renters) and the broader community, including the right to safety, against the rights of a particular renter.

Early intervention and preventative measures are always the preferred approach, with a focus on supporting the individual(s) and sustaining tenancies. For incidents of anti-social behaviour that involve serious criminal activity such as drug trafficking and serious assault, Homes Victoria considers the significant safety and wellbeing impacts this has on a renter's immediate neighbours, surrounding community and housing workforce. While these cases are rare, the impact on communities is extensive, impacting on neighbours' ability to enjoy their homes and amenities free of harassment, threats to safety and property damage.

Eviction from public housing therefore is only pursued in very limited number cases where proportionate action is required to respond to serious criminal activity or serious dangerous behaviour which poses serious risk to an individual or the broader community.

The Act includes a provision requiring VCAT to consider any Community Impact Statement provided by Homes Victoria, when deciding whether to issue a possession order.

A Community Impact Statement will only be provided by Homes Victoria where a notice to vacate has been issued due to anti-social or criminal conduct.

The voices of those individuals who are affected by serious criminal behaviour and serious anti-social behaviour need to be heard and people need to feel safe in reporting incidents that affect their immediate safety.

Community Impact Statements provide an opportunity for those impacted by anti-social behaviour to provide evidence to VCAT and feel confident that it will be considered by VCAT when deciding whether to issue a possession order.

If a person has concerns for their safety or privacy, Homes Victoria will not include identifying information in the Community Impact Statement.

The Act sets out what must be included in a community impact statement, namely information about the impact of the conduct of the renter, for which a notice to vacate was given, on others. Unsubstantiated allegations not related to the conduct for which a notice to vacate was given, will not be included in the community impact statement.

While the Act will require VCAT to consider the community impact statement in the application of the reasonable and proportionate test, the weighting it places on any community impact statement, remains at VCAT's discretion.

How will the definition of common areas change? (Not yet in force - to commence at a date to be proclaimed or on 20 June 2023, whichever is earlier)

The current definition in the RT Act of 'common area' is not clear on whether open areas fall under the definition of common area. While the definition is potentially broad enough to capture open areas, it is open to interpretation and therefore inconsistent application.

The Act makes technical changes to how common areas are defined on larger areas of land owned by Homes Victoria.

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Authorised and published by the Victorian Government, 1 Treasury Place, Melbourne.

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Available at <<https://www.homes.vic.gov.au/residential-tenancies-housing-and-social-services-regulation-amendment-act-2022>>