

# Our regulatory framework

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# 1 Introduction



Our new regulatory framework aims to strengthen housing agencies' capacity to attract, develop and protect capital investment and manage existing housing stock and tenancies.

Registration and regulation of not-for-profit, non-government housing agencies is a fundamental part of the Government's approach to increasing the supply of affordable rental housing for low-income Victorians.

Together, registered housing agencies comprise a new, regulated housing sector, providing growth and quality service delivery to meet social objectives. Regulation provides a framework for accountability to government and other investors, tenants and the community.

The Victorian Government's financial commitment is reflected in the 2007 State Budget allocation of \$300 million to build 1550 new dwellings over four years, primarily through housing associations. This new funding complements significant existing capital commitments and a range of measures to facilitate innovation and growth.

In addition to this contribution, registered housing associations have the ability to leverage capital through partnerships with the private and philanthropic sectors, and local government.

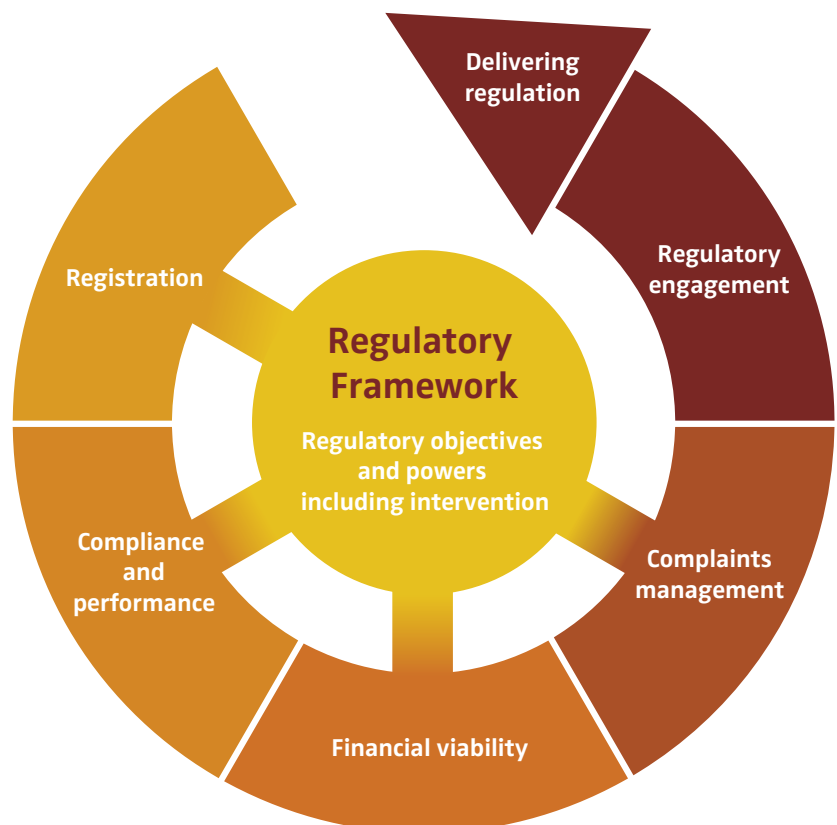
The role of registered housing associations is supported by registered housing providers, who provide quality housing management and deliver services that focus on local communities and local needs.

The Victorian system of regulation was introduced in January 2005, with a new *Part VIII* to the *Housing Act 1983*. The Registrar of Housing Agencies (the Registrar) was established to register and regulate these agencies, with the Office of the Registrar of Housing Agencies (ORHA) created as the administrative arm.

Our regulatory framework, described in this document, came into effect in July 2007. It was developed in consultation with currently registered housing agencies, agencies seeking registration and peak bodies.

This document summarises the new framework, identifying major components. Components are described in greater detail in an accompanying series of publications, available on our website at [www.housingregistrar.vic.gov.au](http://www.housingregistrar.vic.gov.au)

### Overview of regulatory framework



## 2 Regulatory objectives

Regulation holds organisations directly accountable for their use of public funds and private investment to provide housing for low-income Victorians where this is not currently provided by the market.

Regulation strengthens the sector's capacity to take on new challenges, particularly in expanding affordable rental housing for low-income Victorians and in managing rental portfolios that may be a mix of Government-owned properties and those under other ownership.

A well-designed regulatory framework identifies and addresses poor performance while supporting and promoting best practice.

There are four key objectives behind regulation. We will:

- > ensure that all housing agencies are viable, well governed and properly managed
- > protect and ensure accountable use of government assets managed by the affordable housing sector
- > build confidence in the public and private sector to invest in and grow affordable housing
- > ensure quality and continuous improvement in service delivery and outcomes for tenants.

To achieve these objectives, we register and monitor compliance of housing agencies against Performance Standards and other legislative requirements. All relevant data is used to appraise an agency's achievements against its business plan. Our approach is proportionate to risk, scale and performance, and focuses on the whole of an agency's business. Both incentives and sanctions are in place, with appropriate regulatory responses if requirements are not met.

### Principles of good regulation

We seek to understand the specifics of each agency's business and maintain an open and accountable relationship. To achieve this, we commit to five principles of good regulation:

- > **transparency** – clear explanations of decisions and actions taken, supported by regulations that are open, simple and user friendly
- > **accountability** – all decisions are justified by data and evidence, subject to public scrutiny where appropriate
- > **proportionality** – monitoring appropriate to the risks facing an individual agency, intervening only when necessary and with impacts and costs identified and minimised
- > **consistency** – judgements and actions applied in a predictable way, compatible with other government regulations, standards, contractual and program arrangements
- > **targeting** – focused engagement on specific areas of concern with individual agencies.

## 3 Regulatory powers

The Registrar's regulatory powers are underpinned by the *Housing Act 1983*, gazetted Performance Standards and Intervention Guidelines<sup>1</sup>.

Performance Standards detail our expectations for registered housing agency operations. Intervention Guidelines describe the Registrar's approach in cases such as severe financial difficulty, mismanagement or misconduct.

This regulatory platform supports a well managed, well governed and financially viable affordable housing sector, establishing:

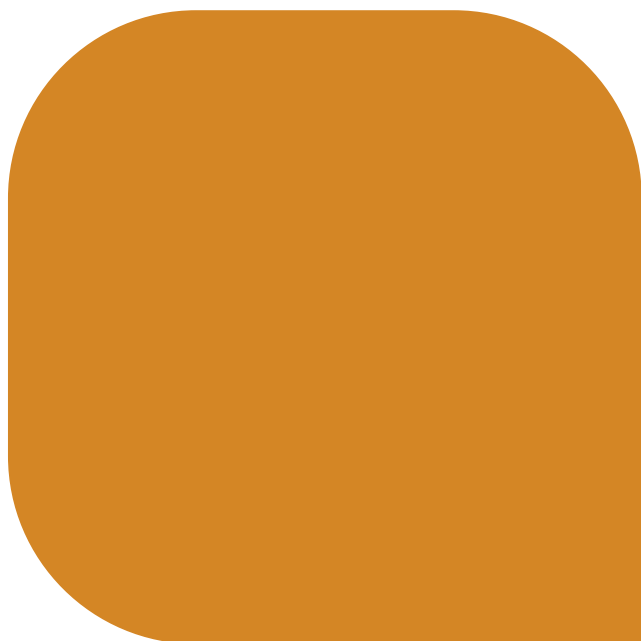
- > a clear set of criteria that agencies must meet to achieve registration
- > the Register of Housing Agencies, containing public information on all registered agencies (plus confidential details, only available to the Housing Registrar)
- > powers of investigation and intervention for the Registrar to use where a registered agency is in breach of legislation, or fails to meet Performance Standards
- > annual reporting requirements and declarations
- > a complaints process for tenants (or prospective tenants) affected by an agency's decision on a rental housing matter.

The Registrar has the capacity to establish other reporting obligations, if appropriate.

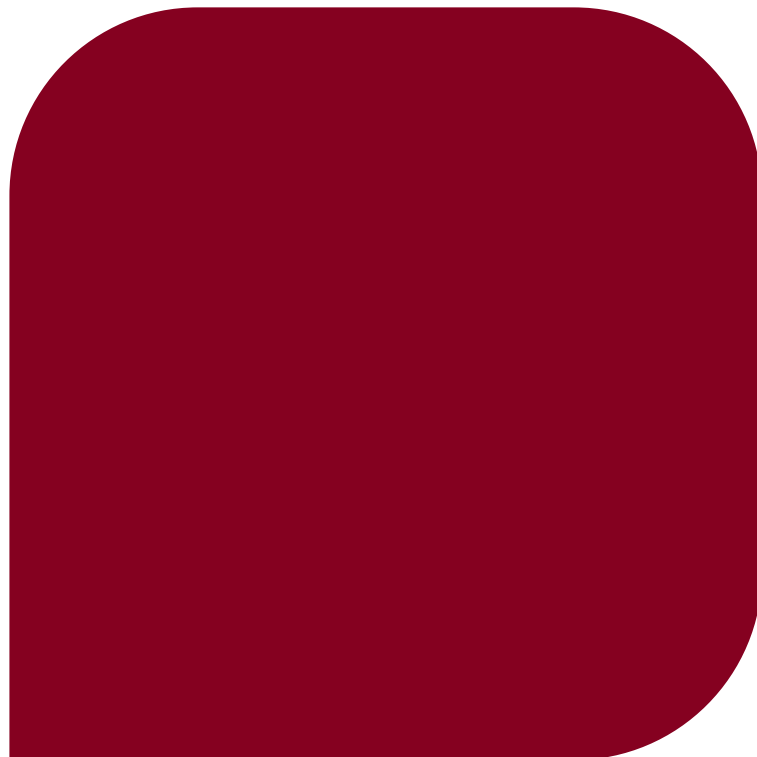
We offer further advice and guidance in the form of reports, practice notes, and research and development publications.

<sup>1</sup> Issued by the Minister of Housing and published in the *Victorian Government Gazette*.

## 4 Regulatory engagement



Bringing housing agencies into a regulatory environment is an essential step towards improving the sector's capacity for innovation, continuous improvement and self-regulation.



While the sector has significantly contributed to community housing in the past, further improvements are needed to meet future challenges. Our key strategies for achieving balanced and effective delivery of regulation are a risk-based approach, a clear code of practice and improving sector capacity.

We understand that some agencies have greater exposure to risk than others, particularly those who undertake housing development, or manage ongoing maintenance and upgrade of housing properties. We also recognise the critical role that registered housing agencies play in affordable housing reform. Key elements of this reform include recognising the need for diverse providers, property types, client group responses and service models. Our regulatory relationships feature ongoing contact, discussion and consultation with registered agencies, peak bodies and other stakeholders.



### **Our code of practice**

In our work with registered housing agencies, we act according to the following code of practice. We are:

- > vigilant in maintaining the confidentiality of any commercial-in-confidence information (whether written or oral)
- > courteous in our dealings with staff of housing agencies, board members, tenants and prospective tenants; communicating with sensitivity and in a manner that recognises and respects diversity
- > impartial and objective in the way we evaluate each registered housing agency
- > open and transparent when communicating our judgements to registered agency senior management and governing bodies
- > timely in reporting back to registered agencies
- > honest and fair in the way we report our findings, ensuring that our conclusions accurately and reliably reflect an agency's compliance and performance
- > consistent in the way we apply standards and make judgements
- > committed to promoting innovation and effective solutions, and encouraging continuous improvement and excellence for both individual agencies and the housing sector.

### **Our expectations of agencies**

We expect agencies to treat registration and regulatory obligations seriously. We ask them to be:

- > proactive and timely in keeping us informed about changes
- > courteous in their contacts with ourselves and other relevant stakeholders
- > open, honest and constructive when offering feedback on our regulatory approach.

## 5 How regulatory engagement works

There are four aspects to our regulatory engagement model:

- > **inputs** – information and data received from each registered agency
- > **activities** – actions we take to process these inputs
- > **outputs** – assessments, reports and plans
- > **outcomes** – benefits and positive changes.

### **Inputs**

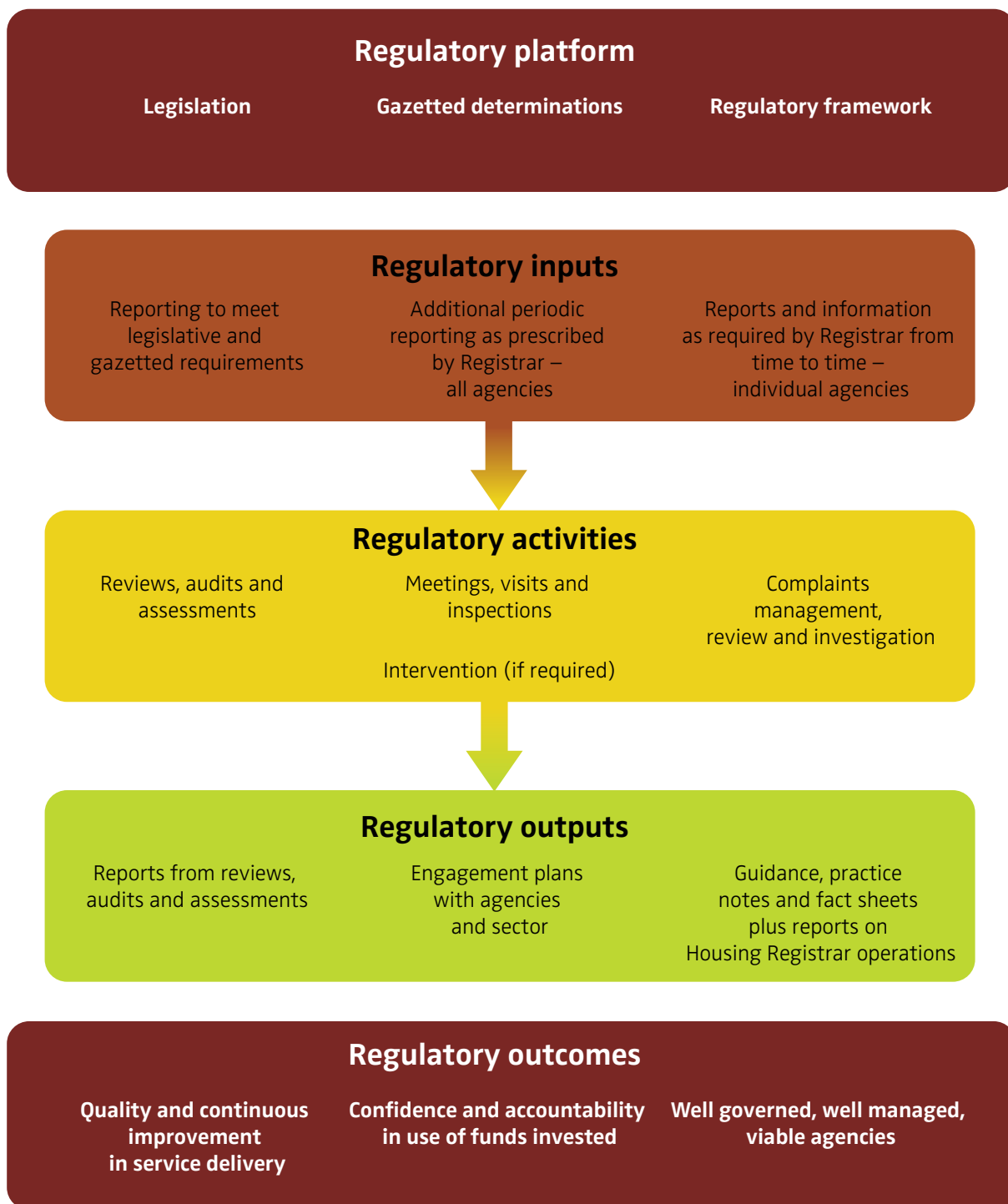
Inputs occur firstly during registration, then as part of ongoing regulatory engagement. When applying for registration, agencies submit:

- > information on legal and taxation status, including constitution and incorporation details
- > details of current land and property interests
- > strategic and annual business plans, including financial projections
- > any other information that demonstrates agency capacity to meet Performance Standards.

Each year, agencies are required to assess and submit to us their performance against Performance Standards, audited financial statements and accounts, and specific declarations of compliance with incorporation and taxation requirements.

Agencies must always notify us of any changes to constitutions or rules, and provide reports or information on request.

Agencies are also required to maintain a register of complaints, and make this register available to us for inspection.



**Regulatory engagement model.**

**Activities**

Some activities are planned in advance – agency regulatory review, financial assessment and performance improvement review. Others are a response to situations that arise over time – meetings, visits and inspections, complaints investigation and intervention. We also have a role in sector performance monitoring.

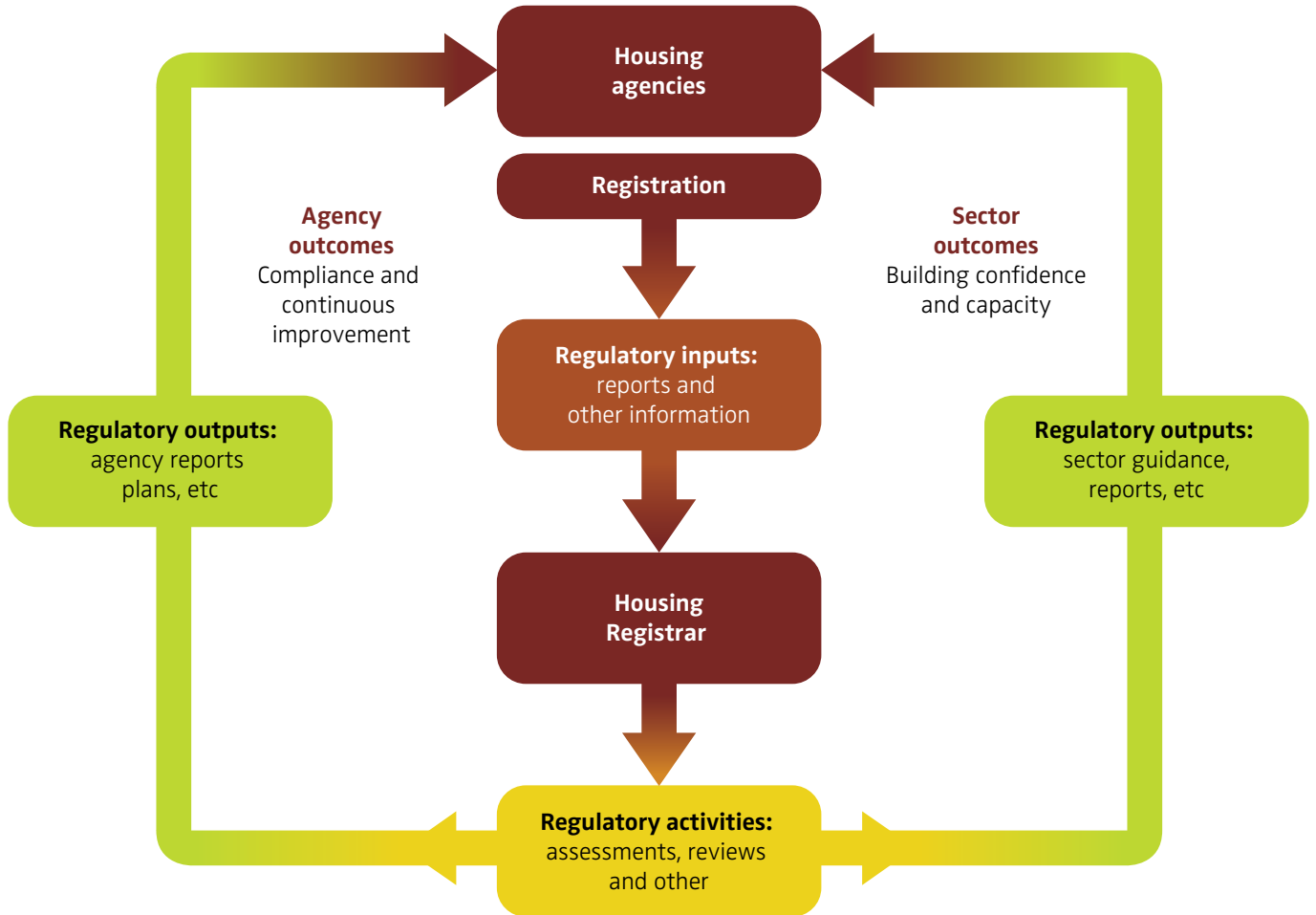
**Outputs**

Typically, we produce three annual documents for each agency – a regulatory review report, a financial performance assessment report and a regulatory plan, detailing engagement with the agency for the coming year. These documents are confidential between the registered agency and ourselves.

We also plan to provide information at a sector level, and about our own operations. These will be implemented over time.

**Outcomes**

As our regulatory framework becomes more established, we anticipate a number of benefits and positive changes, resulting in stronger sector performance and better housing services for low-income Victorians.



**Regulatory cycle for registered agencies. Inputs, activities and outputs form a regulatory cycle, which, in turn leads to agency and sector outcomes.**

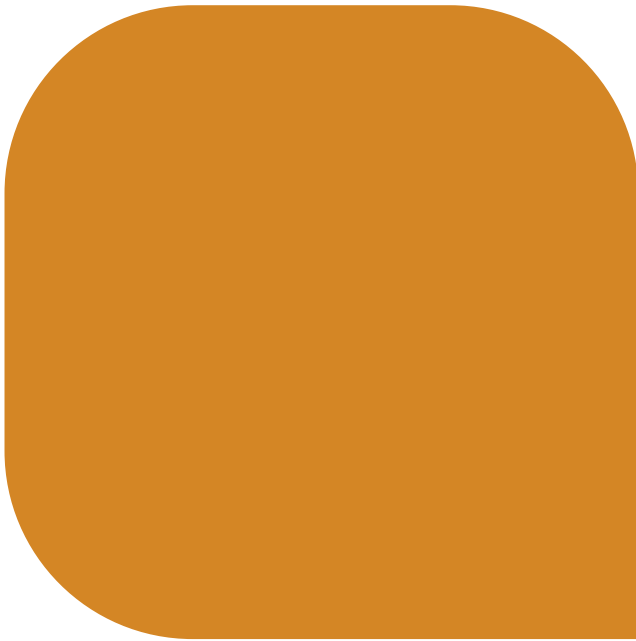
## 6 Registration

Achieving and maintaining registration positions an agency to develop a long-term relationship with the Victorian Government, delivering affordable rental housing and achieving quality outcomes for tenants.

We register agencies as either *housing associations* or *housing providers*. Housing associations expand new housing through construction, purchase or acquisition. They also manage housing portfolios – properties owned by themselves or leased from other parties, such as the Director of Housing. Housing providers primarily manage rental housing portfolios.

Under the *Housing Act*, housing associations must be companies limited by shares or by guarantee. Housing providers can be companies, or incorporated associations established under the *Associations Incorporations Act 1981*, or cooperatives established under the *Co-operatives Act 1996*.

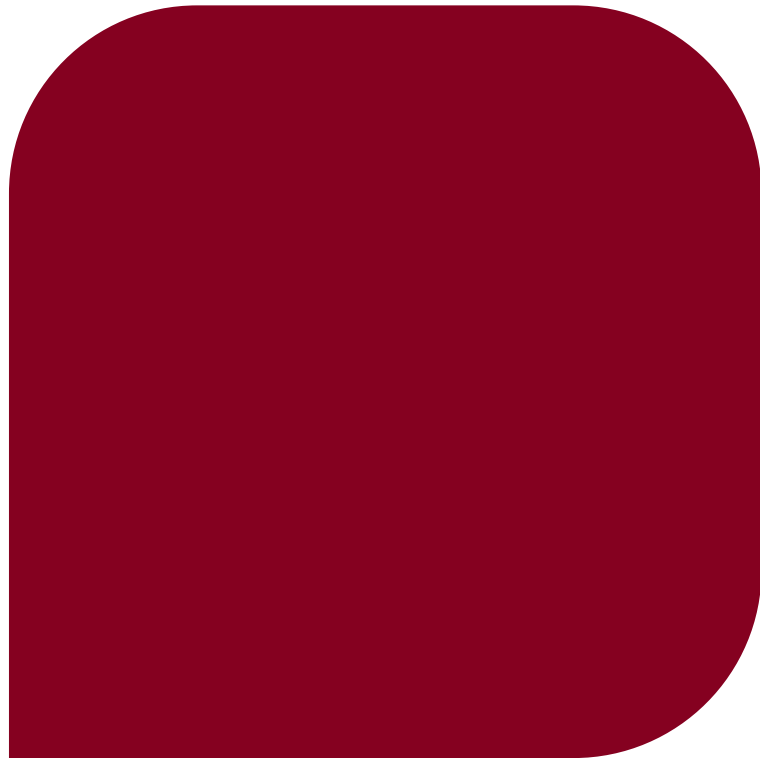
Agencies currently managing long-term, transitional or crisis housing leased to them by the Victorian Government via the Director of Housing, or long-term housing constructed with State Government funds, must be registered by December 2008.



Registration is permanent, but the Registrar has the power to de-register an agency, or downgrade its status. An agency can also seek to upgrade to association status, to meet a new agency vision or business objectives. Agencies receive ongoing constructive feedback on operations and performance, focussed on quality and continuous improvement. This demonstrates to other funding bodies, investors and relevant stakeholders that effective business practices are in place and that agencies are well governed, viable and well managed.

Failure to achieve and maintain registration results in leased properties being transferred to another agency. No further funds are allocated to the agency for construction or maintenance.

At right is a summary checklist. A full set of registration criteria appears in Schedule 7 of the Act.



#### **Registration checklist for agencies**

- ✓ non-profit body
- ✓ provides affordable rental housing – long term, transitional or crisis – to people on low incomes
- ✓ not acting as a trustee for any other person than a registered agency (unless approved by Registrar)
- ✓ not being a subsidiary of any body other than a registered agency (unless approved by Registrar)
- ✓ relevant powers exist in the agency constitution: power to acquire and dispose of property, enter into contracts and joint ventures with any public or private entity, and apply for and accept grants and loans
- ✓ other provisions exist in the agency constitution relating to:
  - altering that document only by special resolution
  - application of property and income solely for the purposes for which the agency is incorporated
  - transfer of assets to another registered agency, in the event of winding up.
- ✓ demonstrated capacity to meet Performance Standards.

## 7 Compliance and performance

Management and operational performance are assessed against the seven Performance Standards:

1. governance
2. management
3. probity
4. financial viability
5. tenancy management
6. housing management and maintenance
7. risk management.

To assure ourselves that an agency's business practices comply with Performance Standards, we review results from agency reporting against key performance measures and copies of relevant documents provided by registered agencies. We also review agency reports of self-assessment against Performance Standards and business plan objectives.

Feedback is sought from relevant business units in the Office of Housing and Department of Human Services, asking for observations about agency compliance and performance against the Performance Standards.

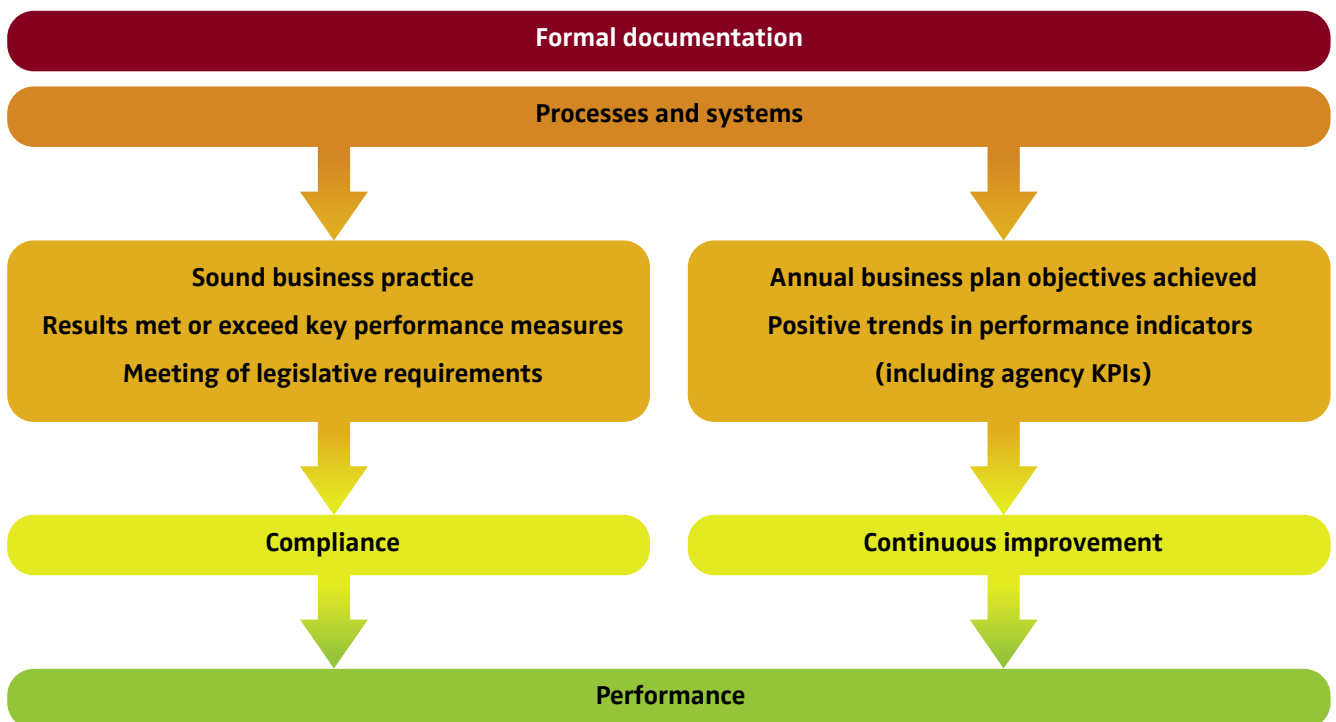
We also examine whether (and how well) an agency has met other legislative requirements, and the objectives and targets specified in its annual business plan.

Overall agency compliance is demonstrated through meeting specified legislative obligations and timeframes, meeting or exceeding minimum levels of performance for key measures, and demonstrating sound business practices. Continuous

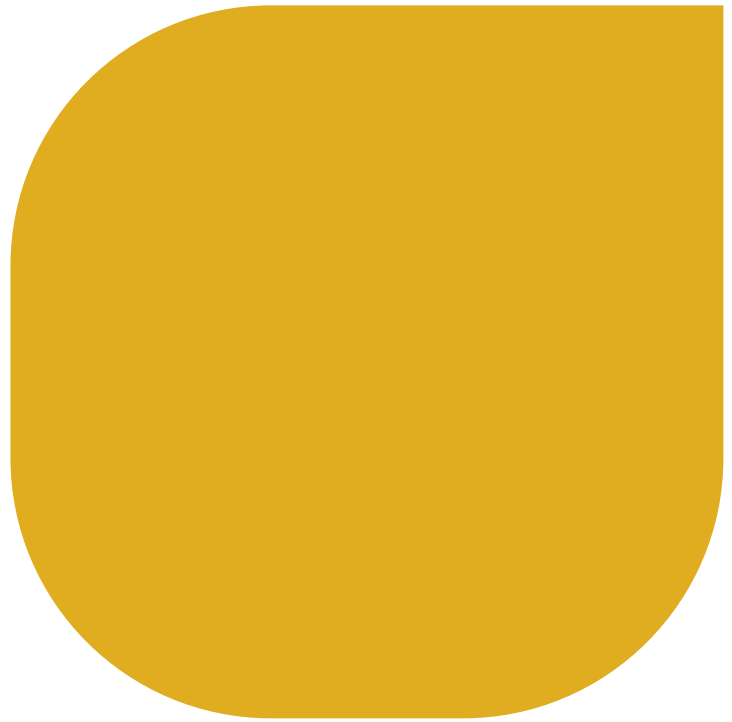
improvement is demonstrated by positive trends in results against key measures, and achievements against business plan objectives and targets.

Within this framework, we apply principles of risk-based regulation, applying differing levels of regulation depending on the assessed risk of an agency and potential risk impacts.

**Agency performance comprises a combination of compliance and continuous improvement.**



## 8 Financial viability



Agencies need sufficient operating funds and financial reserves to maintain infrastructure and affordable housing in the medium to long term. Growth potential is also important, particularly for housing associations, through leveraging government funding via commercial borrowing and partnerships.

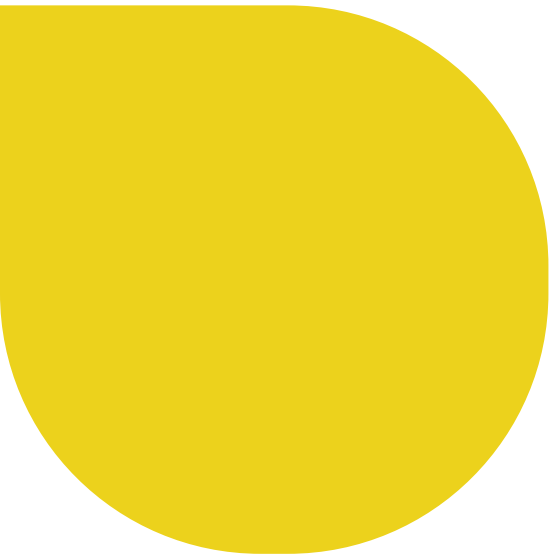
We conduct financial viability reviews to assess each agency's capacity for sustainable financial performance. These reviews involve a financial analysis and risk assessment.

### **Financial analysis**

Financial analysis looks at actual and projected financial performance: three years of actual information and five years of projected information. Actuals must reconcile to audited financial statements and projections reflect business plan objectives and strategies. Housing associations with large asset holdings and significant debt should forecast financial projections for 25 years or more.

We also review an agency's independent audit reports and management responses, documented policies and processes, performance against previous forecasts, the consistency of financial projections with agency business plans, and the timeliness of other reporting.

Financial performance is demonstrated by profitability and cash flow, short-term liquidity and capital structure – as shown in the following table.



Profitability and cashflow	Short-term liquidity	Capital structure
<ul style="list-style-type: none"> <li>&gt; stability and growth of earnings</li> <li>&gt; revenue composition: the nature and sustainability of revenue sources and reliance on other sources to maintain profitability</li> <li>&gt; amount of housing stock owned and/or managed</li> <li>&gt; revenue per property</li> <li>&gt; affordable housing expenditure per property</li> <li>&gt; staff utilisation</li> <li>&gt; average maintenance expenditure per property</li> <li>&gt; return on assets</li> <li>&gt; operating cashflow</li> <li>&gt; internal financing ratio</li> </ul>	<ul style="list-style-type: none"> <li>&gt; quick ratio: the ability to pay current debts as they fall due</li> <li>&gt; amended quick ratio: as above but with the assistance of overdraft and available loan facilities</li> <li>&gt; refinancing risk: any large impending call to repay loan commitments</li> <li>&gt; net assets: the extent to which an agency is maintaining its asset stock</li> <li>&gt; arrears and bad debts: identifies how well an agency manages its arrears and bad debts</li> <li>&gt; vacancies</li> </ul>	<ul style="list-style-type: none"> <li>&gt; balance and growth in net interest-bearing debt</li> <li>&gt; balance and growth in fixed assets</li> <li>&gt; leverage</li> <li>&gt; interest coverage</li> <li>&gt; cash interest coverage</li> <li>&gt; debt coverage</li> <li>&gt; cash cost of capital</li> </ul>

### Financial performance indicators

The above table shows the complete suite of indicators examined for housing associations. Housing providers complete a subset of these indicators.

Outcomes of these financial assessments are contained in the annual financial performance assessment report prepared for each agency. A summary of key findings is included in the agency's annual regulatory review report.

### Risk assessment

A risk assessment determines whether further in-depth analysis is required and considers at least three key factors:

- > **level of capital works** being undertaken by the agency and capacity for such development
- > **impact of failure** of an agency on government, the sector and tenants
- > **results of the financial analysis**, highlighting significant issues or agency deficiencies.

If further investigation is necessary, we conduct a deeper review of this information, concentrating on areas of potential risk.

## 9 Intervention

Concerns about an agency's performance may be identified in the annual regulatory review or during other regulatory activities.

Such concerns and any differences of opinion are generally addressed by a one-off discussion between the agency and ourselves, and any required actions documented in the agency regulatory plan. We may also make revisions to the annual regulatory review report.

Issues of a serious and significant nature may require intervention – for example, proof of severe financial mismanagement or concerns not addressed within agreed timeframes using agreed strategies. This usually applies where we believe an agency is either unwilling or unable to deal with issues in a satisfactory way. Several legislated mechanisms are available to us:

- > **directions** – an agency can be directed to remedy the matter complained of, or take other action to reduce the likelihood of future complaints
- > **recommendations** – made to the governing body of an agency, for the appointment of one or more persons to the governing body
- > **instructions** – agencies can be given instructions to take specific actions
- > **appointments** – some instructions involve an agency appointing one or more persons to its governing body, or appointing an administrator to control and direct the agency
- > **inspections** – in circumstances such as unsubstantiated financial breach, mismanagement or misconduct.

We follow the Intervention Guidelines that state that intervention is a means of last resort. A registered agency can apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of any directions, recommendations or instructions given by the Registrar, within 28 days of these occurring.

If a registered agency fails to comply with the intervention, the Registrar may apply to the Supreme Court for an Order requiring the agency's compliance.

## Summary

*Our Regulatory Framework creates the foundation for the regulation of affordable rental housing for low-income Victorians.*

Our strong commitment to transparency and continuous improvement can only strengthen regulation and in turn, the new sector.

Delivery of regulation and regulatory engagement with agencies comprises multiple components, underpinned by regulatory objectives and powers.

Engagement is informed by risk and proportionate in its approach. We seek to minimise the burden but at the same time add value to how the affordable rental housing sector responds to the challenges and opportunities offered by the Victorian Government, and by other sources of investment.

We are committed to transparency and improving and updating our regulatory framework in coming years, making best use of what we learn from its implementation to ensure effective and streamlined regulation.

For more information please contact:

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