GUIDANCE

Assets and complaints under Registrar’s Jurisdiction
Revised version – April 2017

Purpose
This guidance provides advice for registered agencies on:
- housing assets required to be listed on their agency register; and
- tenants and prospective tenants whose complaints may be referred to the Registrar of Housing Agencies ('the Registrar') if not resolved by the registered agency.

The guidance also identifies the housing and tenancies to be included in reporting to the Registrar against key performance measures (KPMs).

Introduction
Registered housing agencies have considerably expanded the range and location of housing assets which they manage since the amendments to the Housing Act 1983 ('the Act') were first introduced in January 2005.

Feedback from the sector identified a need to clarify the jurisdiction of the Registrar in terms of rental housing properties and tenants and prospective tenants of these properties.

What does the Act say?
The Act includes a number of relevant provisions set out below.

Housing assets
The objects of the Act include the participation of non-profit bodies in the provision of well maintained, affordable rental housing of suitable quality and location. Affordable, rental housing is not defined in the Act.

Schedule 8 of the Act however sets out the information to be included in an agency register including assets as follows:

1. The address and title or other identifying particulars of any land of which the registered agency is a registered proprietor
2. The address, title or other identifying particulars and name of the registered proprietor of any land over which the registered agency holds a lease, tenancy agreement or licence of more than 3 years’ duration and in which the Director has an interest, a copy of the lease, tenancy agreement or licence, and the date of the lease, tenancy agreement or licence
3. The address, title or other identifying particulars and name of the registered proprietor of any land at which the registered agency provides housing services to the public

Complaints
Subdivision 2 ('Dispute Resolution') of Division 5 of the Act includes a role for the Registrar in investigating complaints from tenants or prospective tenants of registered agencies if the complaint is not resolved by an agency within 30 days of it being made.
The Act is silent on any geographic, tenure or housing type restrictions on the Registrar’s jurisdiction.

**Subsidiaries and Trusts**
Section 82 of the Act requires a registered agency to have the approval of the Registrar to be a subsidiary of a non-registered entity, or to act as a trustee. However it is silent on the Registrar’s jurisdiction with wholly owned subsidiaries of a registered agency in terms of recording any housing assets or management of complaints.

**Function of the agency register**
The addition of the new Part VIII and Schedules 7 and 8 to the Housing Act in 2005 aimed to:
- promote the growth of affordable housing provided through community housing agencies;
- protect investment by government and encourage investment by other parties in affordable housing; and
- provide an oversight mechanism for low income tenants for the quality of housing and housing services provided to them by community housing agencies.

Schedule 7 also sets out the requirement for registered agencies to have a winding up clause in their constitution stating that in the event of the rental housing agency being wound up, any surplus assets remaining after payment of its liabilities must be transferred to another registered agency.

The assets section of the agency register is the primary reference point for the Registrar for land / housing assets of the agency. It also identifies the affordable rental housing assets within the overall assets listed, for which the Registrar has a role in investigation of complaints by tenants or prospective tenants.

The affordable rental housing assets recorded within the agency register are summed each year and used in reporting by the Registrar to stakeholders including the general public. The aggregate figure provides an annual picture of affordable rental housing available to lower income households in Victoria.

**New challenges**
Many registered agencies are continually exploring opportunities to expand their businesses and housing portfolios. Three mechanisms used to expand portfolios are outlined below.

**Management of public housing units**
One category of affordable rental housing is public housing which is owned and generally managed directly by government. It has its own specific rules and procedures governing how it is provided. The Registrar has no role with public housing or its tenants where it is managed directly by government.

Since the 2005 amendments to the Act, management of some public housing has been leased to, or is managed by registered agencies.

**Real estate business units**
Another mechanism for expansion has been the establishment of real estate agency business units managing housing for private landlords. Some housing has been leased to tenants at full market rent, whilst other housing has been leased to tenants at a discounted market rent rate. The discounted rent tenancies are likely to be serving the housing needs of low-income Victorians with which the regulatory framework is focused.
National Rental Affordability Scheme (NRAS) incentives
A further example of business expansion has been where agencies have successfully applied for NRAS incentives to facilitate the development of new affordable housing in partnership with other entities. However in some cases ultimate ownership of the new housing and ongoing management of the tenancies in the new housing does not lie with the registered agency.

Where this has occurred, the housing and its tenants have not been subjected to the agency register or complaints provisions of the Act. This will continue to be the Registrar’s approach with such arrangements.

Where the affordable housing created through the NRAS incentives is owned by the registered agency or managed in Victoria by the agency, the housing and its tenants have been subjected to the agency register provisions of the Act and to the complaints provisions for housing located in Victoria. This will continue to be the Registrar’s approach with such arrangements.

Our approach

Assets
Our focus will continue to be affordable rental housing.

We have defined affordable rental housing as housing that is:
• owned by, or managed by the registered agency;
• provided to a tenant at a lower rate than the market rent level (80% or less); and
• subject to the Residential Tenancies Act 1997 or part of the Department of Human Services (DHS) Transitional Housing Management (THM) program.

However any housing assets owned by the registered agency are generally required to be listed on the agency register regardless of whether they are classified as affordable rental housing.

Where a registered agency is an approved trustee of a trust containing housing assets, these assets are required to be listed on an agency register (where the agency is managing the assets for a period of twelve months or more). However housing assets managed (but not owned) by a wholly owned, non-registered subsidiary of the registered agency are not subject to this requirement.

Where a registered housing agency provides short term crisis housing at a low nominal rent for tenants in addition to transitional or longer term housing, these assets are required to be listed on the agency register.

Interstate housing, housing at full market rental, and/or disability housing managed under different tenancy arrangements (but not owned by the agency) are not required to be recorded in the agency register or complaints provisions of the Act to date. The exception to this arrangement has been where any such housing is owned by the registered agency – in this case that housing has been subjected to the agency register provision of the Act.

Where management of public housing has been outsourced to a registered agency, the housing and its tenants and prospective tenants have been subjected to the agency register and complaints provisions of the Act. The Registrar will continue to adopt this approach with public housing.
Discounted market rent housing managed by a real estate business unit within a registered agency is required to be listed on the agency register where the agency is managing the housing for twelve months or more. This ensures we are getting a full picture of affordable rental housing being managed in Victoria through registered housing agencies.

A comprehensive housing asset list within an agency register assists us to make a fully informed judgement of an agency’s ongoing financial viability.

**Complaints**

Our focus will continue to be on tenants and prospective tenants for housing that:
- fits our affordable rental housing definition; and
- is owned by, or managed directly by the registered agency (under lease of other formal contract arrangement) on behalf of the Director of Housing or another government department or authority; or
- is managed under a Trust arrangement for which the registered agency is a Trustee OR holds a substantive contractual agreement with the Trustee to manage housing assets for three years or more.

This means that tenants in affordable rental housing managed by a registered agency on behalf of private landlords (individuals or companies) will **not** be subject to the Registrar’s complaint’s jurisdiction.

Interstate housing, housing rented to private tenants at a full commercial rate, and/or disability housing managed under different tenancy arrangements is also **not** subject to the Registrar’s complaints jurisdiction.

Where a registered housing agency provides short term crisis housing at a low nominal rent for tenants in addition to transitional or longer term housing, we will accept complaints from tenants but only about housing related matters which have been through an agency’s complaints process are been unable to be resolved satisfactorily.

**Performance reporting to the Registrar**

Registered agencies need to comply with prescribed Performance Standards at all times. The Registrar has established key performance measures (KPMs) for two of these Performance Standards and collects annual data to evaluate registered agency performance against these measures, namely:
- tenant and housing services; and
- housing assets.

The Registrar has determined that where housing assets are subjected to the agency register and complaints provisions of the Act, then performance data on this housing will be included in the annual KPM data collection except for crisis housing.

For further information or advice contact your regulator.
### Summary table – requirements at a glance

<table>
<thead>
<tr>
<th>Housing assets</th>
<th>Agency Register – asset list</th>
<th>Complaints</th>
<th>Other reporting to Registrar e.g. KPMs</th>
<th>Outside jurisdiction for all requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long term affordable rental housing properties owned by registered agency in Victoria</td>
<td>✅</td>
<td>✅</td>
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<tr>
<td>Long term affordable rental housing properties owned by registered agency outside Victoria</td>
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<tr>
<td>Long term affordable rental housing properties managed (but not owned) by registered agency in Victoria</td>
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<td>Public housing managed by registered agency in Victoria</td>
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<td>Public housing managed by registered agency outside Victoria</td>
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<td>Transitional housing properties owned or managed by registered agency in Victoria</td>
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<td>Crisis housing properties owned or managed by registered agency in Victoria</td>
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<td>Short term rental housing properties owned by registered agency outside Victoria</td>
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<td>Rental housing properties managed by a registered agency for private owners under a real estate agent arrangement and leased to tenants at a discounted market rent rate (where the arrangement is for 12 months or more)</td>
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<td>Rental housing properties owned by a registered agency and leased to tenants at full market rent rate</td>
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<td>NRAS properties owned by a registered housing agency in Victoria</td>
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<td>Accommodation for people with disabilities owned or managed by a registered agency where a tenancy is subject to the Residential Tenancies Act 1997</td>
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<td>Retirement Village units managed by a registered agency</td>
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<td>Retirement Village units owned by a registered agency</td>
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<td>Properties owned or managed by a special purpose vehicle in which a registered agency is involved but where neither property ownership nor tenancy management lies directly with the registered agency</td>
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* Not applicable if ownership lies with a private landlord