

# OUR REGULATORY FRAMEWORK



Housing Registrar



Treasury  
and Finance

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# 1 Introduction

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

The 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 disadvantaged Victorians.

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

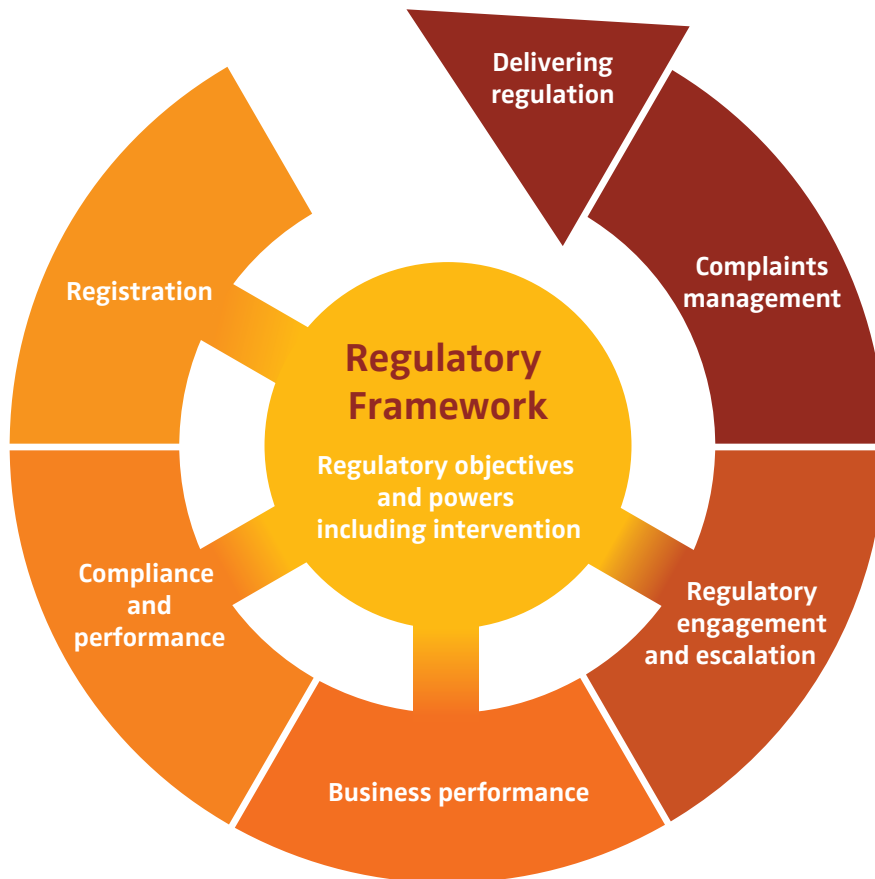
The Registrar's regulatory powers are underpinned by the Act, gazetted Performance Standards and Intervention Guidelines. Performance Standards detail our expectations for registered housing agency operations. Intervention Guidelines describe the Registrar's approach in cases such as severe financial difficulty, mismanagement or misconduct.

Part VIII of the Act provides a platform to support 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; and
- > a complaints process for tenants (or prospective tenants) affected by an agency's decision on a rental housing matter.

The regulatory framework described in this document came into effect in July 2007. It was developed in consultation with housing agencies and peak bodies. The most recent update to the framework was following the introduction of the National Regulatory System for Community Housing.

**Figure 1 Overview of the regulatory framework**



## 1.1 Regulatory objectives

Regulation holds organisations directly accountable for their use of public funds and private investment to provide housing for low-income Victorians. A well-designed regulatory framework supports and promotes best practice and identifies and addresses poor performance.

There are four key objectives underpinning regulation. These are to:

- > 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; and
- > 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. Some agencies have greater exposure to risk than others, particularly those who undertake housing development or manage ongoing maintenance and upgrade of housing properties. Our approach is therefore proportionate to risk, scale and performance, and focuses on the whole of an agency's business.

Registered housing agencies play a critical role in affordable housing reform. Key elements of this reform include recognising the need for choice through a diversity of 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.

### 1.1.1 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 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; and
- > Targeting – focused engagement on specific areas of concern with individual agencies.

### 1.1.2 Our code of practice

In our work with agencies, we act according to the following code of practice.

We are:

- > vigilant in maintaining the confidentiality of any commercial-in-confidence information;
- > 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; and
- > committed to promoting innovation and effective solutions, and encouraging continuous improvement and excellence for both individual agencies and the housing sector.

### 1.1.3 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 (using our reportable events process when necessary);
- > courteous in their contact with ourselves and other relevant stakeholders; and
- > open, honest and constructive when offering feedback on our regulatory approach.

### 1.1.4 Confidentiality

The registration and regulation of housing agencies requires agencies to provide a range of information to the Registrar. This information may include confidential and sensitive material such as:

- > commercial in-confidence information (such as business plans, financial plans and reports of internal operational reviews); and
- > personal information (relating to members of agency governing bodies or tenants and prospective tenants of an agency).

There is a [policy statement on confidentiality](#) that provides an overview of our management and handling of information provided to us under the Act.

## 1.2 Performance Standards

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The Performance Standards for rental housing agencies are based on best practice within a quality improvement environment. They aim to assist rental housing agencies to achieve quality outcomes for clients by establishing good governance and business practices.

It is mandatory that registered agencies comply with all standards and the measures that apply to them at all times.

The seven Performance Standards are:

- > **Tenant and housing services**  
The registered agency is fair, transparent and responsive in delivering housing assistance to tenants, residents and other clients.
- > **Housing assets**  
The registered agency manages its assets in a manner that ensures suitable properties are available now and into the future.
- > **Community engagement**  
The registered agency works in partnership with relevant organisations to promote community housing and to contribute to socially inclusive communities.
- > **Governance**  
The registered agency is well-governed to support the aims and intended outcomes of its business.
- > **Probity**  
The registered agency maintains high standards of probity relating to the business of the provider.
- > **Management**  
The registered agency manages its resources to achieve the intended outcomes of its business in a cost effective manner.
- > **Financial Viability**  
The registered agency is financially viable at all times.

## 1.3 Evidence guidelines

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The Evidence guidelines support the Performance Standards. They list the minimum documentation and performance data we expect to exist in all registered agencies. This documentation is reviewed as part of the assessment of a registered agency's compliance with Performance Standards. As a part of ongoing regulation, agencies are required to provide updated policies and procedures where there have been changes or revisions made.

## 1.4 Key stakeholders

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### 1.4.1 Director of Housing

The Director of Housing (DoH) in the Department of Health and Human Services has historically had responsibility for housing policy and funding. The Registrar and the DoH have a formal Information Sharing Protocol that governs their relationship.

### 1.4.2 Registrar's Advisory Panel

The Registrar's Advisory Panel (the Panel) advises the Registrar and makes recommendations for the registration of housing agencies, upgrades of housing category and the use of regulatory escalation and intervention action. The Panel consists of senior executives of the Department of Treasury and Finance and a representative of the DoH.

# 2 Registration

This section provides information for agencies seeking registration under the Housing Act 1983 (the Act), including details of the registration criteria and how applications are assessed.

## 2.1 Categories of registration

The legislation allows for two categories of registration: housing association and housing provider.

In practice, housing associations are larger, more complex businesses with the skills, expertise and resources to manage, maintain and grow a viable social housing portfolio. They expand new housing through construction, purchase or acquisition. An agency seeking registration as a housing association must demonstrate a capacity to grow affordable housing at scale and over time, by leveraging government funding and their existing property portfolio to borrow and build more housing.

Housing providers range in size and primarily manage rental housing portfolios for other parties, such as the Director of Housing (DoH). Some housing providers own properties, however their growth is small scale compared with housing associations. Housing providers often specialise on particular client groups which may include disability housing, aged tenants and youth housing.

Regardless of size or category, agencies seeking registration must meet registration criteria including the capacity to meet gazetted Performance Standards.

Most agencies are registered as housing providers and most of them remain as housing providers in the long-term. At a later stage, larger housing providers may apply for a change of category to housing association, but must demonstrate that they can meet growth and scale expectations through more strategic governance, management and financial capability.

## 2.2 Registration criteria

Schedule 7 of the Act outlines four registration criteria for rental housing agencies, covering the areas of:

1. General
2. Constitution – objects and powers
3. Constitution – additional provisions
4. Capacity to meet Performance Standards

### 2.2.1 Legal and constitutional requirements

The first three registration criteria specify the form and type of legal entity that can apply for registration. They also describe powers, restrictions and particular provisions that must be contained within the organisation's constitution or rules.

Agencies cannot be registered if they do not have Registrar of Housing Agencies (the Registrar) approval for being:

- > a subsidiary of a body that is not registered under the Act; or
- > a trustee of a trust.

To assist agencies seeking registration, guidance notes on the registration criteria, including legal and constitutional requirements and the winding up provisions, are available on our website.

### 2.2.2 Capacity to meet Performance Standards

The fourth registration criterion requires agencies to demonstrate a capacity to meet Performance Standards.

The Performance Standards for rental housing agencies are based on best practice within a quality improvement environment. They aim to assist rental housing agencies to achieve quality outcomes for clients by establishing good governance and business practices.



### 2.2.3 Legislative responsibilities of registered agencies

Agencies seeking to register under the Act must appraise themselves of the full requirements of the Act. This includes compliance, reporting and complaints management responsibilities of registered agencies, and the intervention powers of the Registrar.

Agencies should seek their own legal advice for all matters affecting the agency.

### 2.3 Pre-registration enquiry

Agencies considering registration should first make an enquiry using the Housing Registrar's online system, CHiMES, which may be accessed directly from our website. The online form allows the agency to upload supporting documentation. In particular we expect constitution and incorporation details to be uploaded.

Before an agency is able to submit an application in CHiMES, we complete an incorporation search and a pre-registration constitutional check with our legal advisors. Agencies are provided with advice that specifies whether or not their current constitution complies with the registration criteria.

Where agencies are considering constitutional amendments, we can also provide a further legal review of proposed amendments to advise whether these would be satisfactory. However, all agencies seeking registration must obtain their own independent legal advice when considering constitutional amendments.

If the agency meets the incorporation and constitutional requirements we provide login details for CHiMES so the agency can complete an application form.

As some time can elapse between the initial enquiry and the submission of a registration application, a current and compliant constitution is required with the application. Any proposed amendments must be fully adopted and approved by the agency, and any other regulatory body, prior to submission.

### 2.4 Registration checklist for agencies

Before submitting an application for registration agencies must ensure that they satisfy the registration criteria by assessing themselves against the following checklist:

- > non-profit body that meets the incorporation requirements of the Act;
- > provides affordable rental housing – long term, transitional or crisis – to people on low incomes;
- > not acting as a trustee for any person other than a registered agency (unless approved by the Registrar);
- > not being a subsidiary of a body other than a registered agency (unless approved by the Registrar);
- > relevant powers exist in the agency constitution, including the 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 the constitution only by special resolution;
  - > application of property and income solely for the purposes for which the agency is incorporated; and
  - > transfer of assets to another registered agency, in the event of winding up; and
- > demonstrated capacity to meet Performance Standards.

## 2.5 Assessing agencies for registration

Our registration process enables housing agencies to demonstrate compliance with the registration criteria and the capacity to meet Performance Standards. The Housing Registrar has developed Evidence guidelines for each Performance Standard. These guidelines must be adopted for both registration and ongoing compliance.

When applying for registration, agencies must 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;
- > agency policies and procedures; and
- > any other information that demonstrates agency capacity to meet Performance Standards.

Once agencies have submitted a completed application, we undertake an assessment against registration criteria and the Performance Standards and present our report to the Registrar's Advisory Panel (the Panel). The Panel comprises senior executives from the Department of Treasury and Finance and a representative from the DoH. The Panel considers the report and makes a recommendation to the Registrar.

The assessment of an agency's registration application comprises:

- > legal and constitutional requirements of the registration criteria of Schedule 7;
- > the capacity to meet Performance Standards; and
- > compliance with other legislative requirements of Part VIII of the Act.

### 2.5.1 Meeting the registration criteria

The constitution or rules of the agency is the key legal document concerning agency objects, aims, powers and responsibilities. It must comply with all the specific requirements of registration.

We use legal advice to assess an agency against the legal and constitutional requirements of registration criteria 1, 2 and 3 to ensure compliance with legislative requirements.

### 2.5.2 Demonstrating capacity to meet Performance Standards

An agency must be substantially compliant with Performance Standards in order to qualify for registration. Where we assess the agency as having the capacity to meet Performance Standards with only some minor activities required to demonstrate compliance, we may allow registration. However, these activities must be completed within a reasonable time.

We undertake our assessment on the basis of information and evidence supplied on the registration form. We may also seek advice from parties relevant to the agency, usually the Department of Health and Human Services (DHHS) lead region for the agency and program areas that fund or contract the agency to provide housing services.

### 2.5.3 Application of Performance Standards to all agencies

The introductory section of the gazetted Performance Standards states:

Registered agencies registering under the Act will range from small to large-scale operations. The performance standards apply regardless of the size of the registered agency. However, the standards are broad, and the measures of performance will be assessed with reference to the individual agency's scale and complexity of operation, the concomitant risks, and the extent to which it has achieved improvement over the previous years' performance against the business plan.

To this extent, we have identified throughout the application form and this guide the additional expectations and requirements of housing associations.

## 2.6 Assessment approach

We assess and determine an agency's capacity to meet Performance Standards using a two-layered approach of quality outcomes and business practices.

### 2.6.1 Quality outcomes

Evidence that an agency delivers satisfactory outcomes against the Performance Standards is a critical aspect of our assessment. Where applicable, quality outcomes will be assessed by performance measures and agency quality frameworks for each Performance Standard. It is essential an agency demonstrates an effective approach to achieving quality and improvement for meeting Performance Standards.

#### Performance measures

A number of key performance measures (KPMs) have been identified to help judge whether an agency is achieving quality outcomes in relation to certain Performance Standards. Agencies are required to provide specific data showing key results and trends, including comments from the agency on these results and trends.

Analysis of this data is critical in determining that operational processes and practices achieve required results.

#### Agency quality frameworks

The agency's approach, philosophy or practice adopted to ensure the achievement of quality outcomes in operations is sought at registration, generally through a question and answer approach.

To assess this element, the agency is asked to describe how it ensures quality outcomes for each Performance Standard. Key strategic questions are presented to address the issues of each Performance Standard.

### 2.6.2 Business practices

An agency must be well-governed, well-managed and financially viable.

Assessment of an agency's business practices is undertaken by considering evidence such as the documentation, processes and systems employed to manage agency activities, as well as typical outputs from such processes.

Documentation includes:

- > policies;
- > business systems procedures;
- > guidelines and plans; and
- > other relevant publications.

Processes and systems include:

- > registers;
- > databases;
- > initiatives; and
- > methods used to implement and inform policy and planning, including:
  - > evaluation and review;
  - > surveys and feedback;
  - > record keeping and recording; and
  - > monitoring and reporting.

### 2.6.3 Performance against Performance Standards

A key area of assessment of an agency's capacity to meet Performance Standards relates to its strategic and business activities. We have identified three Performance Standards for these activities - governance, financial viability and management.

We assess governance and management performance by assessing board and management policies and the evidence that these are being followed. For financial viability we use an integrated approach involving agency audited financial statements, financial performance reports, the business plan and other related information.

The business plan provides the strategic link between these three Performance Standards. Further discussion of the business assessment Performance Standards may be found in [Chapter 4](#) of this document.

Service related Performance Standards such as tenant and housing services, housing assets and community engagement are assessed in line with policies and procedures and demonstrated service deliverables. Tenant and housing services as well as maintenance are, in particular, considered in conjunction with performance against KPMs.

Community engagement is a new Performance Standard that can be evidenced by activities, plans and events. Better community engagement may be demonstrated by improved tenant satisfaction and fewer complaints from tenants and neighbours.

It is the agency's responsibility to demonstrate it has the capacity to comply with Performance Standards.

### 2.6.4 Rating

For each Performance Standard, assessment is made on both agency quality outcomes and business practices to determine capacity to meet the Performance Standard.

Assessment of an agency's quality outcomes and business practices ensures that:

- > Performance Standards are managed to a satisfactory level by agencies, and agencies evidence this through relevant information and data against each Performance Standard;
- > required documentation, processes and systems exist in agencies, or plans are in place to develop these where they do not currently exist;
- > board approval is obtained for key agency documents; and
- > the agency demonstrates a commitment to quality outcomes against each Performance Standard.

### 2.6.5 Assessment traffic lights

For assessment against each Performance Standard, we use a traffic light ranking against both the quality and performance measures:

<b>Green</b>	Meets all requirements of the Performance Standard
<b>Amber</b>	Demonstrates the capacity to meet the Performance Standard
<b>Red</b>	Does not meet the requirements of the Performance Standard and cannot demonstrate the capacity to meet the requirements

Where an agency's application for registration scores one or more amber lights, an assessment is made as to whether the agency has the capacity to address, over a reasonable time period, all the deficiencies identified in the assessment. If capacity exists, registration may still be supported.

In all cases where an application scores an amber light, outstanding requirements are communicated to the agency. A satisfactory plan and timescale to address these areas within reasonable timelines is expected from the agency.

Where an application scores one or more red lights, it has not demonstrated capacity to meet Performance Standards and may not be recommended for registration at that time.

### 2.7 Contact with agencies

The Housing Registrar will contact agencies during the assessment process to discuss the initial findings of the assessment. This will provide agencies with the opportunity to submit further information before the assessment is finalised.

At this time, Housing Registrar staff will also request a visit to the agency's office and a meeting with the agency's board (if this has not occurred recently).

### 2.8 Completing the assessment

During the assessment, comments are sought from the lead DHHS region and key housing programs which fund or contract the agency. Recommendations for registration are considered by the Panel before being submitted to the Registrar.

### 2.9 Achieving registration

Agencies approved for registration by the Registrar are advised in writing and sent a certificate of registration. A report on any issues arising from the assessment of their application, and the follow up actions required by the agency to address these, is also provided. This report forms the beginning of the ongoing regulatory engagement between the Housing Registrar and the registered agency.

Where the Registrar does not approve an application for registration, the agency will be advised in writing with a full explanation of the reasons for this decision.

A rental housing agency may apply to the Victorian Civil and Administrative Tribunal for a review of a decision by the Registrar to not register it, or to change its category of registration.

# 3 Compliance and performance

This section sets out the responsibilities of both agencies and the regulator and explains our approach to monitoring and assessment of compliance and performance of registered housing agencies.

## 3.1 Compliance requirements

Compliance requirements for registered agencies are specified in Part VIII of the Housing Act 1983 (the Act) as follows:

S91	changes to information recorded in the <u>Register of Housing Agencies</u>
S95	a registered agency must comply with relevant <u>Performance Standards</u>
S97 (1)	a registered agency must establish a complaints procedure
S97 (2)	a registered agency must take all reasonable steps to resolve a complaint within 30 days of it being made to the agency
S97 (3)	a registered agency must maintain a register of complaints, and make the register available for inspection by the Registrar of Housing Agencies (the Registrar)
S99 (2)	a registered agency must co-operate with an investigation conducted in relation to a complaint
S100 (3)	a registered agency must comply with a Registrar direction to remedy a complaint or take action to reduce the likelihood of future complaints
S109 (1)	a registered agency or former registered agency must not transfer, sell, lease, mortgage, charge or otherwise deal with land in which the Director of Housing (DOH) has an interest – unless the DOH consents in writing or the land is exempt from this section
S112 - 128	relate to the inspection powers of the Registrar
S130 - 131	relate to governing body appointments of an agency based on Registrar recommendation and requirements
S132 (8)	a registered agency must comply with an instruction from the Registrar relating to agency governance and management

In addition, compliance with Performance Standards requires agencies to demonstrate continuous improvement against measures recorded in their annual business plan to Registrar satisfaction.

## 3.2 Reporting requirements

A number of reporting requirements are created by the Act. Requirements may be data reports, documents or advice that an event has occurred. Other requirements, such as reporting of performance against Performance Standards, involve self-assessment by an agency.

To assist the assessment of compliance and performance we need to collect additional information on an annual basis. Section 104 of the Act provides us with powers to introduce additional reporting where appropriate.

Table 1 summarises agency reporting requirements.

**Table 1 Regulatory inputs from registered agencies**

	Legislative requirements	Registrar specified requirements
Annual (August)	-	Data on results against <u>key performance measures</u> (KPMs) Self-assessment of achievements against objectives and targets in the annual business plan Annual business plan
Annual (28 days after AGM)	Self-assessment of performance against Performance Standards Audited financial statements and accounts Declarations	Financial performance report showing historical and projected trends
Occasional (as required)	Register of Housing Agencies updates Notifications of changes to constitution or rules Any other reports or information that the Registrar may require on an agency's operations Notification of changes to land interests (s108) Notification of intention to wind up (s134)	New or updated versions of policies, procedures and other critical agency business documents New or updated key documents and reports that inform us about changes in agency business practice or strategic direction Reports or other evidence of implementation of relevant processes and systems within agency <u>Reportable events</u> Half yearly financial reporting (housing associations)

Appendix 1 shows a typical calendar year of regulatory events and a summary of the reporting requirements.

### 3.3 Key performance measures

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We use annual data on results achieved against KPMs as part of our assessment of compliance with Performance Standards and overall agency performance. The results provide an indication to us of whether current business practices are achieving quality outcomes in administrative operations and service provision.

We compare performance with similar sized agencies, separated into three groups comprising:

- > housing associations;
- > larger housing providers; and
- > smaller housing providers.

KPMs are effective in measuring performance against service delivery Performance Standards, especially the tenant and housing services and housing assets Performance Standards.

Current KPMs are set out in [Appendix 2](#).

Typically, measures identify where:

- > high performance has been achieved;
- > performance is satisfactory however, potential risks may exist; and
- > issues exist which may require further discussion and resolution.

If risks are apparent and material, we explore with the agency how it intends to address them.

Schedule 8 of the Act includes the requirement for registered agencies to maintain their asset list.

Therefore in July each year the Housing Registrar requires agencies to reconcile their asset data in [CHIMES](#) with the agency's own asset register. This data is then used to validate related KPMs data.

### 3.4 Business practices

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To remain well-managed, well-governed and financially viable, and continue to meet Performance Standards, it is critical for an agency to demonstrate that appropriate business practices are in place.

#### 3.4.1 Formal documentation

Formal documentation includes policies, procedures, guidelines, plans and other relevant publications.

This documentation enables board members, management, staff and other stakeholders to collectively understand the intended approach taken by an agency to all matters concerned with running an organisation and providing services.

#### 3.4.2 Processes and systems

Processes and systems are used by an agency to manage functions and provide feedback on different aspects of its operations. These typically include:

- > information, collection and storage tools; and
- > initiatives and methods used to implement and inform policy and planning.

The [Evidence guidelines](#) publication summarises the documentation the Registrar expects to exist in any registered agency, and that we will review as part of the assessment of an agency's compliance with Performance Standards.



### 3.5 Our assessment focus

Agency performance is recognised as a combination of compliance and continuous improvement. These are expected to translate into positive outcomes for tenants, agencies and other stakeholders.

Agency compliance is established by:

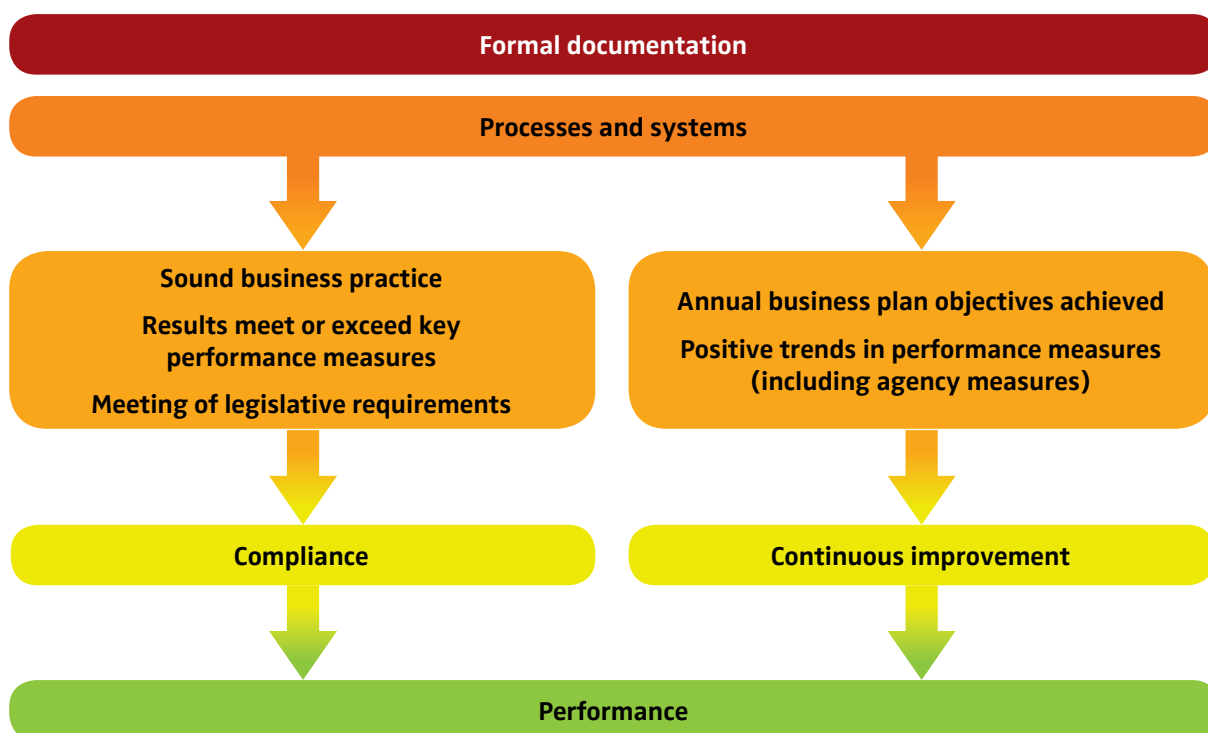
- > meeting specified legislative requirements/timeframes;
- > meeting or exceeding minimum levels of performance for KPMs; and
- > demonstrating sound business practice.

Continuous improvement is demonstrated by:

- > positive trends in results against KPMs; and
- > achievement of a significant proportion of business plan objectives and targets.

Within this framework we apply principles of risk-based regulation through differing levels of regulatory information we require from agencies, which is dependent on a risk assessment and potential impacts. To differentiate between information requirements we start with a combination of size and complexity measures. We further analyse the previous year's performance including reference to the regulatory engagement tool (RET), which will be discussed in the next section.

Figure 2 Agency compliance and performance assessment



### 3.6 Our regulatory assessment

The annual regulatory review is the major regulatory activity we undertake with registered housing agencies. The review focuses on the previous financial year ended 30 June.

During the annual regulatory review, agencies must demonstrate the following:

- > compliance with Performance Standards;
- > compliance with other legislative and regulatory requirements; and
- > achievement and continuous improvement, in particular against our KPMs and other measures contained in the agency's annual business plan.

Assessment criteria are set out in Table 2.

**Table 2 Compliance and assessment criteria**

Agency performance	Our assessment criteria
Compliance with Performance Standards	<p>Have sound agency business practices been demonstrated via:</p> <ul style="list-style-type: none"> <li>- existence/development/revision of relevant documentation, and</li> <li>- evidence that relevant processes and practices are in place?</li> </ul> <p>Have minimum levels of performance been met as demonstrated via:</p> <ul style="list-style-type: none"> <li>- data submitted for results against KPMs, and</li> <li>- the financial performance report?</li> </ul> <p>Has agency self-assessment submitted as part of annual reporting requirements confirmed compliance?</p> <p>Have any significant issues been identified in information received from an agency during the past year (and in some cases acted upon) as part of regulatory engagement?</p> <p>Have any issues been identified in information received from the Department of Health and Human Services (DHHS)?</p>
Compliance with other legislative and regulatory requirements	<p>Have annual reporting documents, declarations, and other regulatory inputs from an agency been submitted, in required formats, within specified timeframes?</p> <p>Have updates to the Register of Housing Agencies, and notifications of changes to constitutions, rules or functions of the agency, been submitted within specified timeframes?</p> <p>Has the agency kept its Register of Housing Agencies details current, as identified in any periodic audit conducted by us?</p> <p>In relation to complaints procedures:</p> <ul style="list-style-type: none"> <li>- has a copy of an agency's complaints procedure been provided, and</li> <li>- is there evidence that a complaints register is in place?</li> </ul> <p>Has any direction, instruction, or recommendation from us been implemented?</p>
Achievement and continuous improvement	<p>Have results for KPMs shown positive trends from previous years' data and do they compare favourably with the sector as a whole?</p> <p>Has the self-assessment report of achievements against objectives and targets in the previous year business plan indicated that a majority have been met, and provided sound explanations?</p> <p>Have any major issues or concerns from the past financial year been addressed in the targets and objectives in the current year business plan?</p>

### 3.6.1 Continuous improvement

The annual regulatory review includes our judgement on whether an agency has achieved continuous improvement in its operations. We analyse performance against the business plan and the agency's identification of continuous improvement activities.

### 3.6.2 Other related regulatory activity

#### Register of Housing Agencies

Schedule 8 of the Act requires that agencies must ensure all information contained in the Register of Housing Agencies is updated in a timely and responsive manner. Agencies use CHIMES to update the Register. We audit the Register periodically to ensure it is properly maintained. These results also inform the annual regulatory review.

#### Regulatory engagement tool

We have developed a RET that guides the frequency and scope of regulatory engagement throughout the year. The tool is based on an assessment of the risk of non-compliance with performance requirements, and considers impact on both the agency and the sector. The output of the RET is that an agency falls into one of four engagement types - very high, high, moderate or low. The frequency of meetings and other engagement is guided by these levels.

### Data quality

As the regulatory framework largely relies on self-assessment, we need to ensure that we are provided with high quality information. Periodic data validation reviews are conducted, assessing the quality of agency systems, processes and reporting that affects data provision to the Housing Registrar.

Reports are provided to the audited agencies to improve the collection and reporting of data. The annual regulatory review will assess the actions that the agency has taken, which should be reflected in improved data provision.

In addition to validating agency performance, the data provided by registered agencies is used in various Housing Registrar publications, such as our annual report and sector performance dashboards, to report on the size and quality of the sector.

### 3.6.3 Balancing regulatory requirements

We regularly review and streamline our regulatory activities, reports and outputs produced to ensure:

- > we can make relevant and perceptive regulatory judgements;
- > an appropriate balance between receipt of material and unwarranted, onerous reporting is achieved; and
- > agencies are not burdened unnecessarily.

### 3.7 Addressing issues from assessment

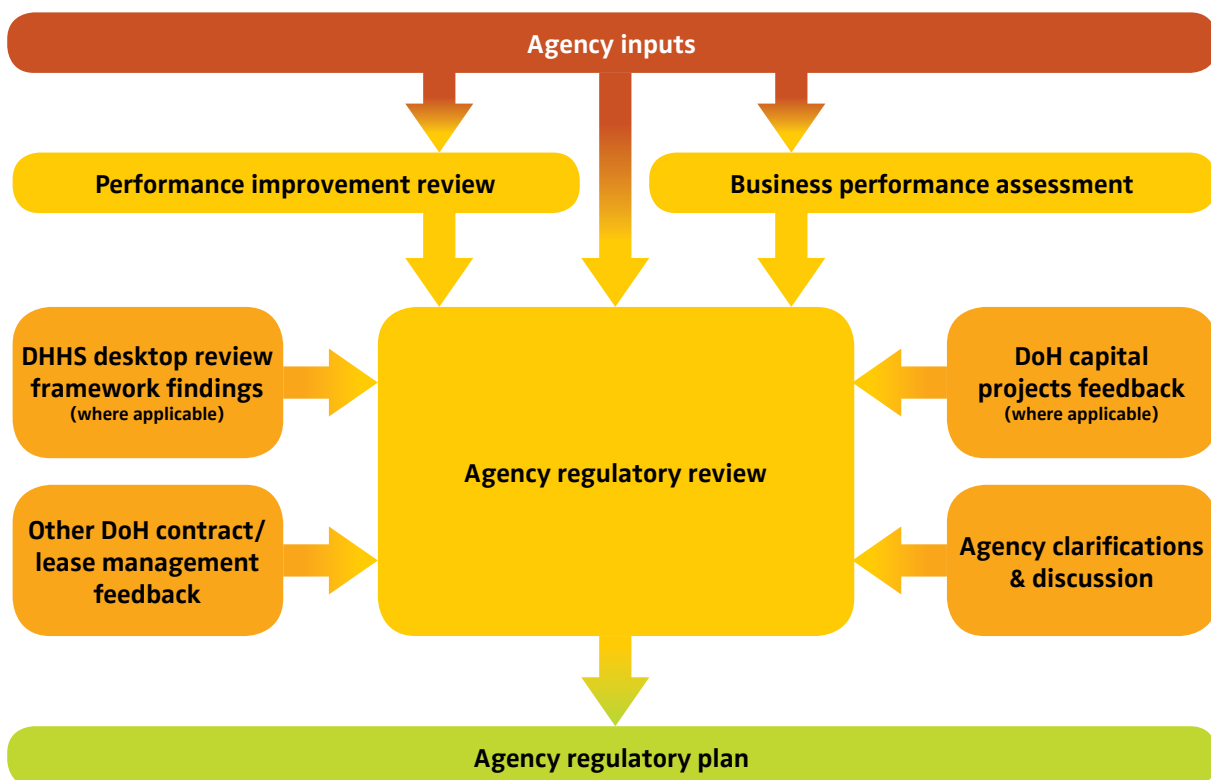
#### 3.7.1 Agency regulatory plan

An agency regulatory plan is developed annually with each registered agency, where required.

We consider outcomes from the agency regulatory plan in the annual regulatory review undertaken at the end of the year to which the plan applies.

Figure 3 provides a summary of how our key regulatory assessment activities flow into the agency regulatory plan.

**Figure 3 Assessment of a registered agency**



The outcomes of the annual regulatory review provide the foundation for developing an agency's regulatory plan.

The plan is a shared agreement between the Housing Registrar and registered agency regarding the actions required in areas that an agency needs to improve. Its content is closely associated with findings contained in the annual regulatory review report.

Developed on a calendar year basis, the agency regulatory plan is not available for an agency until the annual review report is completed. Items can be added to the regulatory plan as a result of normal regulatory engagement. For example, a reportable event may result in new information and a regulatory plan action item.

We seek a collaborative approach to resolving the issue in a timely and logical manner, taking account of an agency's ability and willingness to remedy an issue. Resolution is expected to be achieved quickly and effectively. We document our joint agreement with the issue resolution in the annual regulatory plan.

When dissatisfied with agency progress in resolving an issue, we inform the agency and clarify expectations. We may use intervention powers under the Act where we believe an agency is unwilling or unable to deal with significant issues in a satisfactory way. Further information on intervention powers is detailed in [Chapter 5](#) of this publication.

# 4 Business performance

This section outlines how we monitor and assess business performance in line with the Housing Registrar's mission of regulating well-governed, well-managed and financially viable registered housing agencies.

## 4.1 What is business performance assessment?

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From our experience in regulating we have found that a skilled board, strong organisational leaders and core financial sustainability are fundamental in facilitating quality services that continuously improve and adapt to meet the needs of tenants. Therefore, we place a special emphasis on the three business assessment Performance Standards of governance, management and financial viability.

### 4.1.1 Business regulation defined

We use the term business regulation to encompass the range of activities involved in monitoring the three key business assessment Performance Standards.

Agencies are required to evidence compliance with Performance Standards through providing copies of relevant policies and procedures, planning documents and reports of significant reviews, developments and projects undertaken to improve or expand the agency. In addition, data is submitted showing results achieved against key performance measures.

Our business regulation approach includes ongoing analysis of agency business, with a particular focus on housing associations and large housing providers. This approach requires an understanding of the business of housing agencies to fully assess performance.

Agencies vary in business structure, activities, risk appetite and a number of other ways. However, we expect all agencies to operate, and be assessed as, social businesses.

### 4.1.2 Understanding the business

We need to know the normal business cycle at a high level to understand the business of our agencies. For example, when business plans and budgets are completed, how often the board meets, and how the agency considers risks.

We should understand the agency's:

- > operational business, including the range of activities/ operations (e.g. how important is rental housing provision) as well as the organisational relationships (e.g. parents, subsidiaries, large service providers, support agencies with nomination rights);
- > business cycles and legislative framework (e.g. what is the normal business cycle for business planning, financial reporting, rent reviews, asset planning and management);
- > the pressures and issues faced, and what goes into the business cycle in terms of preparation, participants, governance and implementation;
- > policies and procedures for board and staff, including delegations, conflict of interest, treasury management and other business processes; and
- > financial health and viability, considering issues such as capital structure (including loan structure), profitability and short term cash availability.

## 4.2 Governance

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The board of management is ultimately accountable for the performance and compliance of the agency. Board members make significant decisions that can affect the performance and viability of the agency, and have considerable responsibilities under Corporations Law. These include acting in the best interests of the company and being adequately informed of company activities.

### 4.2.1 Assessing governance

The Evidence guidelines inform the assessment of compliance and performance of an agency against the governance Performance Standard. We look at the skills and experience of board members, how the board makes decisions, board policies and strategic focus.

We take account of the size and complexity of the agency and its plans and risks in assessing compliance and performance. For housing associations and large housing providers, we expect more highly skilled board members than we require for a smaller housing provider.

Boards must demonstrate continuous improvement through regular internal and external board performance reviews. Where such reviews are undertaken we may ask for a copy of the review report to the board.

### 4.2.2 Group structures

In some cases our assessment of business performance may focus on more than one entity.

Registered housing agencies are not a homogenous group. Agencies may be a subsidiary of a larger parent company, have subsidiaries themselves, act as trustees, or be standalone entities.

We require agencies to submit financial and other information reports at an individual agency level. However, on a case by case basis, we may request further information about a group structure (other entities within a group structure and the service agreements that govern interactions across the group structure) if there are implications for the registered agency.

Our primary concern is the registered agency and we seek to gain an understanding if there are risks to the agency from a group structure.

A guidance document is available to assist agencies wanting to operate in Victoria through a corporate group structure.

## 4.3 Management

The agency's business plan forms a critical component of our monitoring of business performance.

The Performance Standards as updated in July 2014 state:

One of the principal mechanisms for measuring performance and improvement will be the registered agency's annual business plan and the measures of performance contained in that document.

The business plan will not be static, and the registered agency will be required to demonstrate continuous improvement against its measures to the satisfaction of the Registrar.

The Performance Standards instruct that the business plan identifies:

- > strategies to sustain, expand and develop the agency's housing portfolio, including leverage on its portfolio through avenues such as private investment, philanthropic agencies, and local government participation;
- > strategies to optimise rent collection and recovery; and
- > a plan for continuous improvement of its functions and services.

The annual business plan may be a separate stand-alone document, or a component of a longer-term strategic plan (generally 3-5 years) that the registered agency has in place.

### 4.3.1 Importance of a business plan

The business plan provides the link between governance and viability. In the business plan the agency sets out its vision for the future, describing how it will work toward achieving that vision. The board guides the vision and strategic direction, while management and staff are charged with the responsibility of making it happen. The business plan must be achievable and take account of resource requirements and availability. We look for evidence that the agency is aware of its environment, adopts a risk posture in line with its capabilities, seeks to provide the best outcome for tenants and remains financially viable.

### 4.3.2 Content of a business plan

We would expect a business plan to contain, relative to the size and risk level of the agency, a range of information addressing the criteria outlined in the checklist below.

Overall:

- > Does the business plan set out the agency's vision and objectives?
- > Is the business plan coherent and robust?
- > Does it have measurable objectives for the agency to achieve during the year?

Does the business plan:

- > Focus on key organisational objectives?
- > Assess the key risks to achieving objectives?
- > Assess the impact of the environment in which the agency works?
- > Demonstrate that it has the financial resources available?
- > Demonstrate linkages to key strategies such as asset management and treasury management?
- > Demonstrate a commitment to tenants and continuous improvement?

The business planning process:

- > How does the development and review of the business plan fit with the agency's overall business cycle?
- > How have key strategies been properly considered and subsequently built into the business planning process?

Governance:

- > How does the board effectively provide leadership and ownership of the business plan?
- > How does the board regularly review and monitor the overall achievement/effectiveness of its business plan?
- > What additional skills, resources and governance arrangements does an agency require to achieve the business plan strategy?

In assessing agency business plans we look for clarity and demonstration that the agency:

- > understands the business environment in which it operates;
- > identifies the main priorities of the registered agency; and
- > integrates the business plan with the financial performance report (FPR).

### 4.4 Financial viability

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Financial viability is in essence about being able to generate sufficient income to meet operating payments, debt commitments (if any) and allow for growth or service improvements, while maintaining service levels.

While it is imperative to ensure agencies do not operate with extreme levels of risk, we also need to assess the capacity of agencies to grow and develop. For housing associations, this means increasing the supply of affordable housing. Therefore, in assessing financial viability, one of our roles is to take a view of the extent to which agencies are maximising the resources available, including leveraging government grants.

The onus is on housing agencies to ensure they provide relevant information that allows the Housing Registrar to assess financial viability.

The FPR is the primary tool used to assess financial viability. It reviews agency performance using a comprehensive suite of performance indicators. When considered in conjunction with an agency's business plan, the report is a powerful tool for regulators to make judgements of financial viability and agency performance.

Housing associations can have extensive housing property portfolios along with significant commercial borrowings. They must undertake a long-term financial evaluation of capital programs and their impact on agency operations.

Housing providers represent a diverse range of housing agencies, many catering for a specific tenant group or locality. Typically, housing providers manage government owned rental housing stock; however some providers have relatively small numbers of their own stock. Increasingly they are taking more responsibility for maintenance and asset condition under new leasing arrangements.



#### 4.4.1 Incorporating risk

Organisations are influenced by their history, operating environment and planned future activities. We consider risks to be associated with increased responsibility, innovation and obligation, for example: the responsibility of asset ownership, obligations of debt, and new business opportunities. FPRs support our risk based approach and we have developed the following tiered reporting requirements for registered agencies:

##### Low level agencies (smaller housing providers)

Housing providers whose businesses are predominately small scale tenancy management focused, or the numbers of properties managed are very small, are classified as low level agencies. To be considered low level, the probability of operational risk should be low due to a stable operating environment and satisfactory governance.

We conduct a health check on low level agencies based on financial performance reports comprising two historical and three forecast years and audited financial statements.

##### Medium level agencies (larger housing providers)

These agencies typically have more diverse operations and may own a portfolio of properties.

Medium level agencies are required to disclose supplementary financial information to demonstrate their depth of analysis. The FPR shows three years historical and five years of forecasts. This may include supporting workings, forecast assumptions, models and other planning tools used to derive the FPR.

##### High level agencies (housing associations)

High level agencies have expectations of significant growth; financing of a proportion of this growth is expected through external sources including private debt. All housing associations fall into this category, as do the larger and more complex housing providers.

These agencies have the highest reporting requirements. The FPR consists of four years of historical and fifteen years of forecast information.

For these agencies the potential impact of failure is higher due to size, complexity or the level of development (or the amount of development funding).

This is demonstrated by:

- > obligations arising from capital projects;
- > loan covenants and development timelines;
- > complexity from loan arrangements and structures; and
- > consideration given to organisational capacity and risk management.

We expect these agencies to implement a comprehensive asset strategy that extends to whole of life asset management, including asset acquisition and disposal strategies.

This risk based approach to regulatory assessment should not be confused with the results of the regulatory engagement tool, which determines the frequency and subject matter of ongoing regulatory engagement between the regulator and the agency.

## 4.4.2 Collecting information

### Information collected at registration

At registration we collect copies of audited statements for the past three financial years and a FPR. We may also collect information about:

- > financial management and financial policies;
- > detailed budget for the current year;
- > tracking against current budget;
- > approach to growth and funding; and
- > non-housing activities undertaken by an agency.

For agencies seeking to be registered as housing associations, we also require a financial plan setting out a planned development program that includes impact analysis of the program (25 years or more).

### Annual information requirements

Once an agency achieves registration, its business and financial performance is assessed in the annual review process.

Housing associations are also required to submit financial reports every six months to supplement the annual review process. This information provides more timely information with comparisons of actual performance against expectations. This interim information allows us to monitor ongoing business and financial performance.

## 4.4.3 Assessing viability

We are concerned with both short term and longer term viability. We largely assess the financial viability of housing agencies from information generated by the FPR. The key aspects we consider are outlined below.

### Profitability

Longer term financial viability is the ability of housing agencies to meet future financial obligations as they fall due. This ability is closely linked to the agency's adequate profitability and cash generation over the asset cycle, together with the management of long term debt.

Although registered agencies are not-for-profit entities, the profitability of an agency is important from a number of perspectives, including to:

- > provide a buffer against future adverse circumstances;
- > allow for the long term replacement/refurbishment of housing stock; and
- > fund growth.

We also review the trends before and after the removal of capital grants and non-recurring items.

### Short term liquidity

Our assessment of agency short-term financial viability is based on data submitted in the FPR. The focus is on whether the agency is able to meet short-term commitments as they fall due.

We also consider whether organisational problems foreshadow financial concerns or might lead to loan covenants being breached.

### Capital structure

Capital structure refers to an agency's asset structure and financing of these assets. We analyse the sources of funds the agency has utilised to acquire fixed assets.

Increased levels of external borrowings result in an increased level of agency financial risk, as it becomes contractually obligated to pay interest and repay debt. The optimal level of agency external borrowings is dependent upon the ability of an agency to service borrowings and the assets available as security to borrowers.

## 4.5 Overall business assessment

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In assessing overall business viability we consider:

- > history and management - the traditional and future clients of the agency, financial and management policies adopted by the agency and the agency's business risks and mitigation strategies;
- > operating environment - the strategic response of management to factors operating within that environment, and the impact of those strategies on the scale of operation;
- > financial performance including profitability, cash flow dynamics, capital structure and debt management; and
- > governance, skills and capabilities of the board and internal reporting arrangements.

## 4.6 Informing our assessment – other considerations

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We balance our initial assessment of business performance through examining an agency's current strategic approach to its operating environment. When reviewing aspects of the external environment, we focus on actual or anticipated changes, whether from external forces or internal policy decisions.

Changes should be reflected in the business plan. If the environment is expected to change but measures of performance stay constant, there are prima facie grounds for questioning business plan assumptions and projections.

# 5 Regulatory engagement and escalation

This section describes the continuum of regulatory engagement from ongoing regulatory engagement to the highest levels of escalation. Regulatory escalation is applied if an agency is underperforming or fails to comply with regulatory requirements.

We apply a proportionate and tailored approach to the regulation of housing agencies, based upon an assessment of the probability and impact of significant risks to which individual agencies are exposed. This risk-based approach results in various levels of regulatory engagement with registered agencies. Similarly, in deciding on the appropriate regulatory action to take, we give regard to the nature and impact of issues raised and the action of agencies to mitigate or resolve risks.

While agencies must comply with regulatory responsibilities and demonstrate performance against Performance Standards, the level and extent of agency reporting and engagement will differ for smaller, more static agencies compared to larger organisations.

## 5.1 Statutory framework for regulatory engagement and escalation

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The Housing Act 1983 (the Act) specifies annual reporting and other responsibilities required of agencies to demonstrate compliance and performance. In addition to specified annual reporting, the Registrar of Housing Agencies (the Registrar) can request reports on the operations of an agency at any time in response to specific non-compliance or issues arising from regulatory engagement.

Agency reporting responsibilities include the following:

- > provide compliance and performance reporting as part of the normal regulatory process;
- > advise us when circumstances change, e.g. legislative requirements (such as Register of Housing Agencies) and financial information;
- > advise us of significant events via the reportable events and incident reporting frameworks;
- > provide open and timely communication; and
- > give detailed explanations for clear understanding.

This chapter covers instances where an agency has not complied with the requirements of the Act or demonstrates poor performance against Performance Standards. In these circumstances, the Registrar has a number of formal powers of investigation and intervention that are used to deal with major performance and compliance concerns.

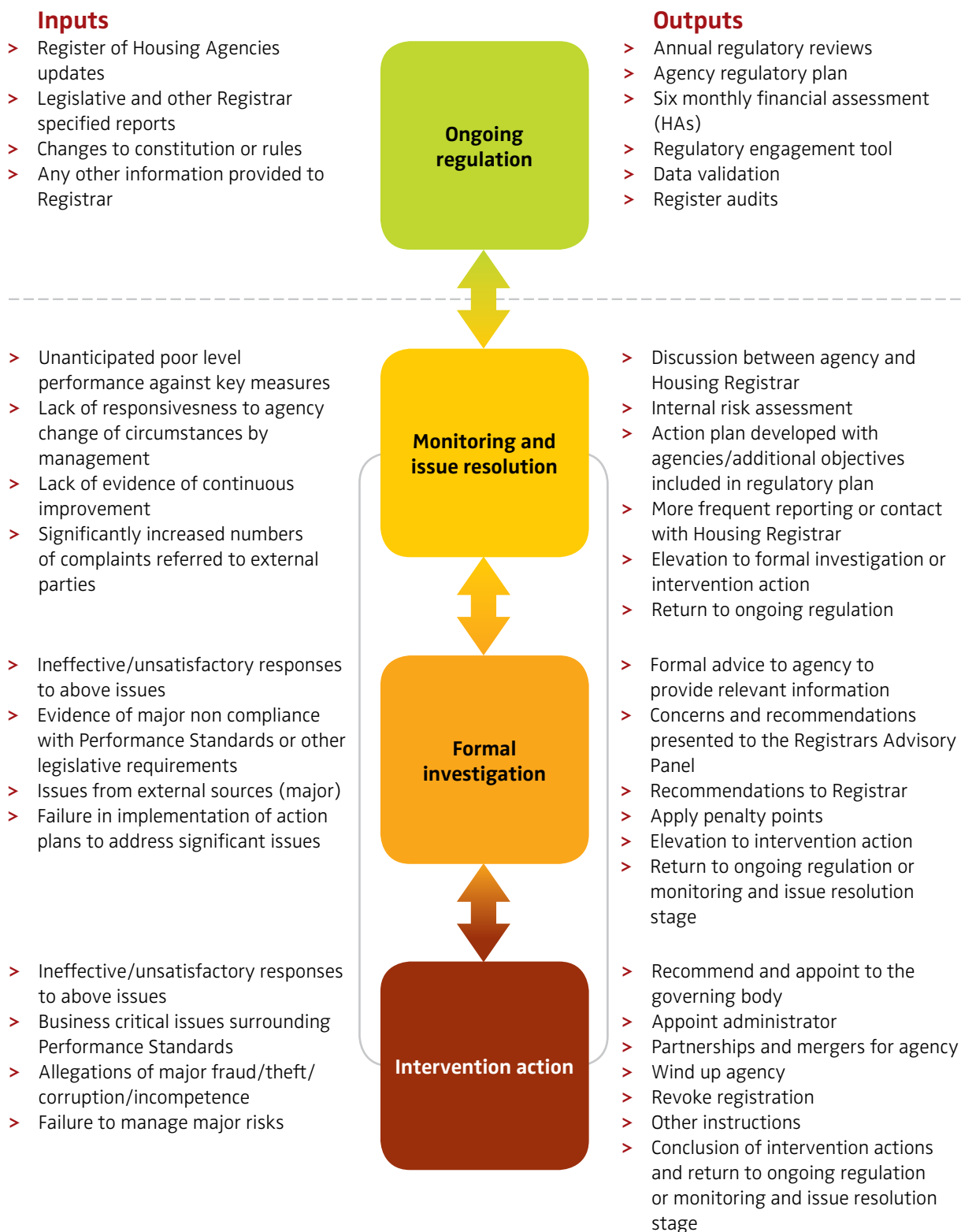
## 5.2 Ongoing regulation

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For most agencies, regulatory engagement is limited to the annual regulatory review process, including the scheduled regulatory engagement meetings, described earlier in this publication. However, in the course of engagement, non-compliance or performance issues may be identified which registered agencies are required to address.

These issues may initially be addressed in the annual regulatory plan for the agency. Where these issues require further action to remedy the problem, the Registrar escalates the regulatory engagement to monitor, investigate or, as a last resort, intervene in agency operations. This continuum of regulatory escalation is shown in the following diagram.

**Figure 4 Regulatory engagement and escalation model**



### 5.3 Monitoring and issue resolution

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Concerns about an agency's performance can arise from any number of regulatory activities, including the agency's annual regulatory review or a complaints review or investigation. If the issues do not represent a high risk to the agency and the agency has a good history of regulatory compliance and performance, we would expect the agency to resolve the issues.

In such cases we require the agency to provide us with an action plan to fix the problem, and we would monitor progress against the plan. During the development of the action plan we would ensure that the governing members are aware of the issues and endorse the plan.

Once the agency has resolved the issues to our satisfaction, engagement returns to normal ongoing regulation. However, if the agency is slow in resolving the issues and does not demonstrate commitment, we may escalate engagement with the agency to include a formal investigation. In serious cases, the Registrar may move directly into intervention action.

### 5.4 Formal investigation

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Where an agency is unable or unwilling to improve its compliance or performance, we may escalate our regulatory engagement further to undertake an investigation. In such instances, the overall objective of the investigation is to determine whether any changes are required to remedy performance issues.

These issues are assessed as having greater associated risk and impact to an agency or the sector, or indicating wider concerns about an agency. This may include, for example, major systemic breakdowns or an inability to address reoccurring issues, affecting the capacity to meet Performance Standards.

To assist the Registrar in making a decision, concerns and recommendations are presented to the Registrars Advisory Panel (the Panel) outlining the issues of non-compliance and poor performance. The Panel considers the agency's ability to independently deal with the issues satisfactorily, and any key matters to be considered and addressed if an investigation is conducted.

The outcomes of the Panel meeting are documented and any recommendations from the meeting are presented to the Registrar.

Under Sections 113 and 117 of the Act, the Registrar has powers to appoint suitably qualified and experienced inspectors. Inspectors may require agencies to produce specific documents and provide certain persons to attend interviews conducted by inspectors.

An investigation potentially leads to three key outcomes:

- > the inspectors determine that no issues exists - no further action is required and the agency would return to ongoing regulation;
- > the issues are substantiated and the agency is willing to resolve them - an action plan would be required from the agency and we would monitor progress and achievement of improvements. These may be reported in the agency's annual regulatory plan to assist in monitoring progress over a longer time period. Effectively this would return the escalation activity to monitoring and issue resolution in the diagram above. Once the Registrar is satisfied that the issues are resolved the agency returns to ongoing regulation; or
- > the issues are substantiated but the agency is unwilling or unable to resolve them – the investigation report may recommend escalating regulatory engagement to intervention action.

Investigations are undertaken in extraordinary circumstances, where concerns raised about a registered agency are particularly serious and significant.

## 5.5 Intervention action

We follow the Intervention Guidelines which state that intervention is a means of last resort. The Guidelines, which relate to the exercise of intervention powers by the Registrar, were gazetted in 2005 pursuant to section 130, Part VIII of the Act.

Under legislation, the ability of the Registrar to intervene in the affairs of a registered agency is strictly limited. The Registrar's decision to move to this stage is governed by legislated 'intervention triggers' which the Registrar must be satisfied of before any intervention action is undertaken.

The following grounds for intervention set out in subsection 130 (1) of the Act are the only permissible intervention triggers:

- > a failure to meet the registration criteria or Performance Standards;
- > a failure to comply with a requirement or direction under any of sections 91 (updating of Register of Housing Agencies), 100 (direction regarding complaints), 104 and 105 (provision and timing of agency reports), 106 (annual declarations), 108 (acquisition of land) or 109 (consent to transfer interest in land);
- > an adverse effect (or potential adverse effect) on an agency's capacity to comply with registration criteria or Performance Standards, or capacity to provide affordable housing, arising from either a change to the agency's governing instrument or business activities; or
- > a failure to comply with a recommendation of the Registrar concerning an appointment(s) to the agency's governing body.

### 5.5.1 Recommendations for appointments to governing bodies

Under Section 131 of the Act, the Registrar may recommend appointments to the governing body of a registered agency. In particular the Registrar, after consulting with an agency's governing body, may recommend the appointment of one or more persons whom the Registrar considers to be appropriately qualified.

### 5.5.2 Instructions

Section 132 of the Act provides for the Registrar to give instructions to a registered agency or governing body members of a registered agency. Instructions cover specific actions, from working with another agency to resolve the issues to winding up and deregistering the agency.

The Intervention Guidelines contain a full description of the intervention actions available to the Registrar.

Sub-sections 132 (8) and (9) provide that a registered agency or members of the governing body of a registered agency must comply with an instruction under this section.

When the Registrar intervenes the overriding intention is to protect tenants' interests and preserve housing stock within the registered housing sector. In some cases, intervention might result in the transfer of agency's assets and liabilities to another registered agency. Before issuing an instruction, the Registrar will endeavour to consult with tenants, creditors and other stakeholders on preferred outcomes.

Appendix 3 provides examples of circumstances or issues that may lead to regulatory escalation, arranged by Performance Standard. The examples cited are indicative only and are not exhaustive.

### 5.5.3 What intervention means to an agency

Once a decision to intervene has been made, the chairperson of the registered agency is informed in writing. The reasons for, and implications of, the actions being taken are set out along with the requirements for addressing the identified concerns.

Once an agency is subject to intervention, the Director of Housing (DoH) is informed under the Information Sharing Protocol between the DoH and the Registrar. The DoH may seek additional information from the agency to inform his contractual and funding arrangements with the agency.

### 5.5.4 Addressing regulatory intervention

Under intervention, the registered agency's board will be required to agree to a detailed plan that specifies the actions or activities needed to address the concerns raised. The plan determines the level, nature and anticipated timeframe of the registered agency's regulatory escalation, with progress closely monitored against an agreed set of milestones.

If the agency does not meet the milestones for resolution of the issues, the Registrar may apply more stringent intervention actions.

In relation to any decisions the Registrar undertakes around intervention, the registered agency's board and senior management team is held accountable and directly responsible for the problems that have arisen. As a result, we require a response from the agency's board that shows commitment to working with us in a constructive and positive way.

Our fundamental aim is to resolve the matters causing the intervention action as quickly as possible. However, the time this may take depends on the nature of the concerns and the agency's response. In agreeing to an action plan, the agency's board must firstly recognise and accept the problems and how and why they have arisen. The board is required to be clear about the actions needed and to set realistic timeframes for delivery.

### 5.5.5 Finalising intervention action

Before intervention is concluded with a registered agency, we need to be satisfied appropriate remedial action has been taken, that it has had the desired outcomes, and necessary evidence is available to support this.

The nature of remedial action and the time it takes for us to be satisfied it has been delivered effectively depends on the issues to be addressed. But whatever these are, the solutions implemented have to be long term and the improvements made sustainable.

In most cases, whatever the nature of the presenting problems, it is usually necessary for registered agencies to address matters relating to governance and management.

When intervention actions are concluded the Registrar formally advises an agency in writing, generally after meeting with an agency's governing body and senior management team, and the agency returns to normal ongoing regulatory activities.



### 5.5.6 Agency rights of appeal

A decision to take intervention action against a registered agency is made after careful consideration of all possible options. Any use of our statutory powers involves careful scrutiny by the Panel before action is taken by the Registrar.

However if a registered agency disagrees with judgements made or the conclusions reached it has the right to apply to the Victorian Civil and Administrative Tribunal for a review of the intervention actions implemented within 28 days of these occurring.

Conversely, if an agency fails to comply with an instruction given under intervention, the Registrar has a reciprocal right to apply to the Supreme Court to enforce compliance.

# 6 Complaints management

This section defines the complaints that fall within the jurisdiction of the Registrar of Housing Agencies (the Registrar). It also describes the requirements for registered housing agencies, and responsibilities for the Housing Registrar, in complaints handling.

## 6.1 What is a complaint?

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The Housing Registrar has adopted the following general definition of a complaint, which is consistent with the Department of Health and Human Services (DHHS):

A complaint is a registered expression of dissatisfaction with any service delivered or action taken by a regulated service. It can be lodged either in writing (hard copy or electronic), by telephone, or in person by a tenant or prospective tenant or via a complainant's representative or advocate.

Sometimes however a tenant or prospective tenant may wish to raise an issue without placing it within a formalised complaints management process. It is important that the distinction between a formal complaint and an informal issue is made clear in the information made available to tenants. Such information should explicitly indicate that advancing an issue or concern to the status of a formal complaint is at the tenant's discretion.

In adopting our definition of complaints for our regulatory purposes, the Housing Registrar acknowledges that a broader definition may exist within agencies for effective tenancy management, and may include expressions of concern as outlined in the next section.

## 6.2 What is not a complaint?

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### 6.2.1 Enquiries and expressions of concern

In its regulatory role, the Housing Registrar is an important point of contact for many parties other than tenants or prospective tenants who are also dealing with registered housing agencies.

Enquiries may be about an agency's operations or any other concerns that a party may have about an agency.

In responding to enquiries or expressions of concern relating to a registered agency, the Housing Registrar may direct the party back to the agency involved, particularly where the matter has not been raised with the agency previously.

Where a concern has already been directed to the agency and not satisfactorily resolved, the Housing Registrar may seek advice from the registered agency to clarify the concern or to understand action taken to date – particularly where the concern raises any questions about an agency's compliance with Performance Standards. However this is not done as part of our complaints process.

### 6.2.2 Grievance

Grievance is another term sometimes used to describe a complaint. We use this term as applying to a broader policy issue, such as 'There is not enough affordable housing!'

Such issues are not dealt with within a complaints management context. They are not specific to an individual agency, but rather relate more to government policy.

## 6.3 Which complaints do we follow up?

Some complaints relating to registered housing agencies come under the Registrar's jurisdiction, whilst others do not.

### 6.3.1 Our jurisdiction

Complaints that fall under the Housing Registrar's jurisdiction are those where:

- > the complainant is a tenant or prospective tenant (or someone authorised to act on their behalf) and the complaint is about a rental housing matter; and
- > the complaint is about a service delivered or decision made by the complainant's landlord or prospective landlord (a registered agency) about a rental housing matter; and
- > the complaint has already been directed formally to the registered agency, and after at least 30 days the agency has not resolved the complaint to the complainant's satisfaction, and the complainant has referred it back to the Registrar for resolution.

### 6.3.2 Other jurisdictions

Contact falling outside the Registrar's jurisdiction includes the following:

- > complaints made by tenants or prospective tenants of a registered agency that do not relate to a rental housing matter;
- > complaints made by people who are not tenants or prospective tenants of a rental housing agency (e.g. neighbours);
- > grievances relating to the broader housing sector; and
- > enquiries and issues of concerns.

These will be directed to the relevant authority where appropriate.

## 6.4 Complaints Responsibilities

### 6.4.1 Registrar responsibilities

The Registrar's role in complaints management is provided for in Subdivision 2 (Dispute Resolution) within Division 5 (Duties and Functions of Registered Agencies) of Part VIII of the Housing Act 1983 (the Act):

This Subdivision applies to complaints by **tenants or prospective tenants** of a registered agency **who are affected by decisions** of the registered agency **on matters relating to rental housing** - s.96 (1)

The Act identifies the Registrar as the external party to whom a tenant or prospective tenant of a registered agency can refer a complaint that is not resolved by an agency within 30 days of it being made.

If an investigation upholds a complaint against a registered agency, the Registrar may in writing direct the registered agency to:

- > remedy the matter complained of; or
- > take other action to reduce the likelihood of future complaints.

A registered agency can apply to the Victorian Civil and Administrative Tribunal (VCAT) for review of a direction given by the Registrar within 28 days of the direction being given.

### 6.4.2 Agency responsibilities

Complaints management requirements for all registered agencies are also identified in the Act, namely to:

- > establish a complaints procedure – s.97(1);
- > take all reasonable steps to resolve a complaint within 30 days – s.97 (2); and
- > maintain a register of complaints, and make this register available for inspection by the Registrar – s.97(3).

## Performance Standards

The tenant and housing services Performance Standard identifies the following indicators of good complaints and appeals handling practice:

- > information is readily available and promoted to tenants on complaints and appeals;
- > the registered agency manages complaints and appeals promptly and fairly; and
- > the registered agency regularly monitors the effectiveness of the complaints and appeals system.

Only complaints from tenants and prospective tenants are specified in the Act as within the scope of the Registrar's powers. However, the Act also requires that a registered agency must comply with Performance Standards at all times.

Consequently the Registrar may have an interest in concerns raised by other parties about registered agencies from the perspective of whether there is any potential breach of Performance Standards – either due to the subject of the concern or the manner in which a registered agency has dealt with the concern.

Such concerns are dealt with on a case by case basis and managed differently to complaints falling directly under the Registrar's jurisdiction. These issues may be reviewed using regulatory escalation as described in [Chapter 5](#).

## Complaints procedures and registers

Complaints procedures and registers are fundamental requirements for an agency's complaints management approach.

Under the Act, a registered housing agency is required to have a complaints procedure in place. The procedure needs to be documented and accessible to both employees and tenants/clients.

The Housing Registrar requires that an agency nominate a key contact for complaints as its first point of contact for following up any complaint received.

## Complaints policy and procedures

Complaints policy and procedures are expected to contain:

- > operating principles detailing the key values and principles underpinning an agency's approach to its complaints management; and
- > a complaints handling process that meets Performance Standards.

## Maintaining a complaints register

The Act requires registered agencies to maintain a complaints register.

The Housing Registrar requires agencies to keep a register, as an electronic record, of all details and significant correspondence for every individual complaint handled by a registered agency. Agencies need to ensure that a complaints register has been created, captures relevant information, and is updated as any new complaint is received.

The register is also a useful tool to identify whether a complaint is an isolated incident, or of a similar nature to other complaints, indicating a pattern or trend.

## 6.5 How are complaints handled?

The Housing Registrar has key principles guiding the handling of complaints under its jurisdiction as well as investigations undertaken on its behalf.

### 6.5.1 Principles

A number of key principles drawn from the Act and Performance Standards, as well as the Australian Standard on complaints handling (AS-ISO 10002), guide the Housing Registrar's approach including the right to be heard and prompt attention.

### 6.5.2 What we do with complaints

Complaints, issues or grievances to registered housing agencies and the Housing Registrar can come from a number of sources, for instance:

- > a tenant or prospective tenant;
- > a neighbour of a property managed by a registered agency;
- > Members of Parliament;
- > a member of the public who has been involved in some way with the agency; or
- > a housing advocate authorised to act on behalf of a tenant or prospective tenant.

Issues raised from the above sources are assessed to determine whether they fall within the Registrar's jurisdiction and the definition of a complaint. If an issue falls outside this jurisdiction and definition, the person will be advised of the appropriate body to which they can take their complaint.

Where a complaint normally would have been within the Registrar's jurisdiction, but has not progressed through the formal complaints process of a registered housing agency, it falls outside the jurisdiction of the Registrar. The complainant will be advised to take their complaint to the registered housing agency and allow the agency an opportunity to resolve the complaint. If not resolved satisfactorily after 30 days the complainant may return to the Registrar with the complaint.

Once it has been determined that the complaint falls within the Registrar's jurisdiction, a decision is made as to whether to proceed to an investigation of the complaint.

Under s.98(2) of the Act, the Registrar may refuse to investigate a complaint unless the complaint is referred to the Registrar within a reasonable time following the end of the 30 day period identified in the Act as the timeline for an agency to resolve a complaint.

### 6.5.3 Complaints investigation

The Registrar may investigate the complaint internally by appointing Housing Registrar staff. However, under s.99(1) of the Act, the Registrar can also appoint a nominated employee of DHHS to investigate complaints. If a complaint is to be investigated by a nominated investigator, the Registrar develops terms of reference to initiate the investigation.

The investigator aims to complete investigations within 30 days. However more complex complaints may take considerably more than 30 days to investigate. Where this happens, the complainant will be advised.

An investigation typically involves the following stages:

- > contact with a complainant;
- > contact with other relevant parties;
- > resolution of the complaint where possible and conclusion of the investigation; or
- > if no resolution - advise Registrar, providing findings and recommendations.

### 6.5.4 Action by the Registrar

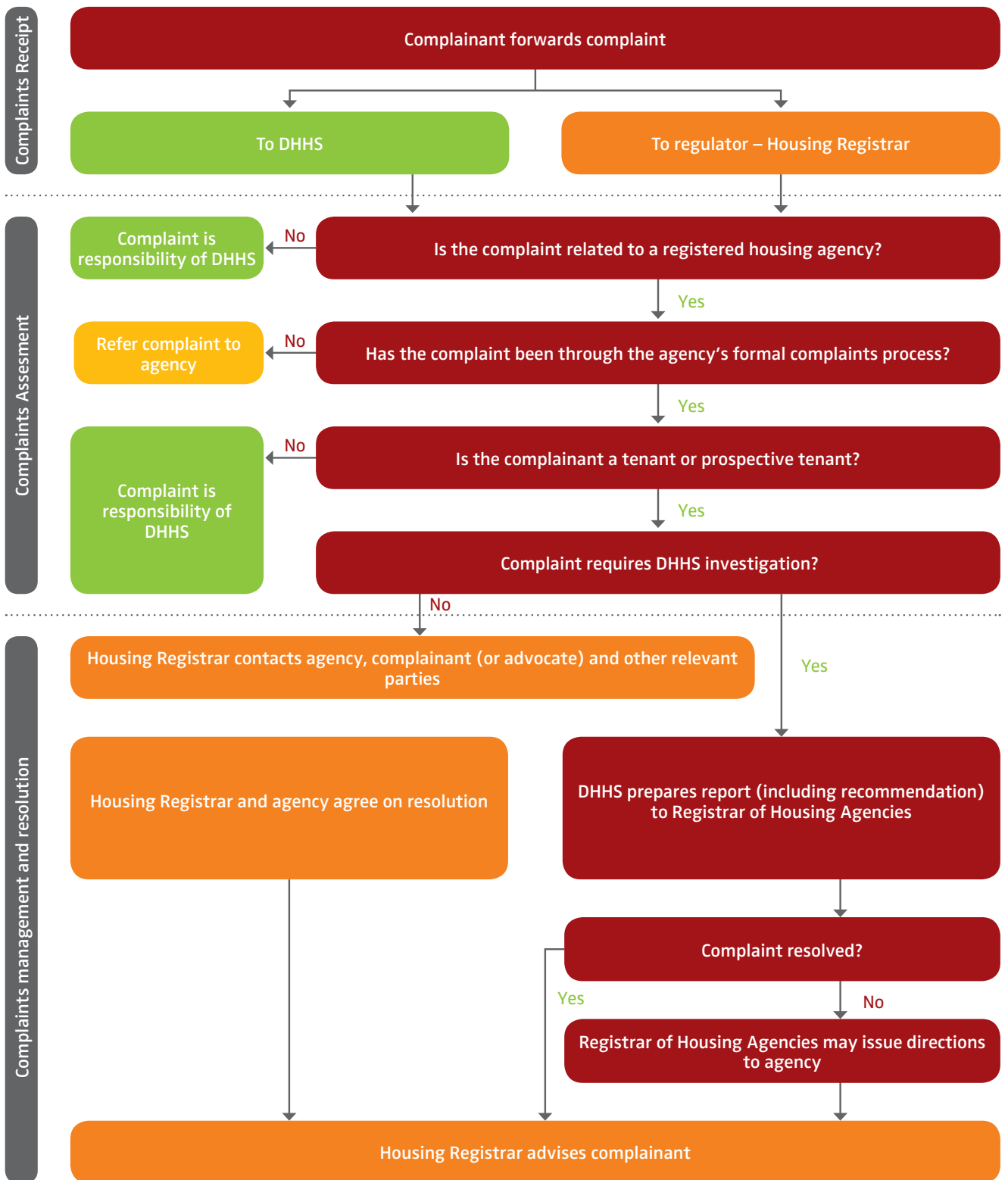
We may engage in further discussion with an agency about an unresolved complaint following receipt of the investigation findings and recommendations.

The Registrar has three formal options available under s.100 and s.132 of the Act to take further action in regard to an unresolved complaint. These are to:

- > direct an agency to remedy the complaint;
- > direct an agency to take specific action to reduce the likelihood of future complaints; and
- > instruct an agency to take any other action that the Registrar considers appropriate.

Unless the agency has chosen to apply to VCAT for a review, the Act requires the agency to implement the direction/instruction. The Housing Registrar will follow up with the agency to ensure action has been taken. This may occur through the regulatory plan.

**Figure 5 Complaints process**



# Appendix 1 Regulatory calendar

Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
<b>Agency regulatory inputs</b>											
	6 monthly reporting (HAs)		Prescribed annual reporting (28 days after AGM)				6 monthly reporting (HAs)				
	Annual business plan & review report		Annual declarations (28 days after AGM)								
	Key performance measures data		Financial performance report								
<b>Register updates</b>											
Changes to constitution or rules											
Relevant formal documentation											
Other reporting as required by Housing Registrar											
<b>Housing Registrar regulatory activities and outputs</b>											
			Annual regulatory review, including business performance assessment								
	6 monthly financial assessment (HAs)							6 monthly financial assessment (HAs)		Data validation	
										Register audits	
<b>Register audits continued</b>											
Complaints, management, review and investigation											
Meetings as scheduled by the regulatory engagement tool											
Regulatory escalation											

## Appendix 2 Key performance measures

Performance Standard	Key performance measure	Definition
Governance	Date of board approval of business plan	Date on which the annual business plan was signed off by the board
	Date of board approval of budget	Date on which the annual budget was signed off by the board
Management	Staff turnover	Staff who left for reasons other than contract term ending during the year as a percentage of the average number of staff employed over the year
Tenant and housing services	Turnaround time (vacant tenatable)	Total number of days all tenancy units were vacant tenatable during the year averaged across the total number of vacancies during the year
	Turnaround time (vacant untenatable) (long term housing)	Total number of days all long term housing tenancy units were vacant untenatable during the year averaged across the total number of long term housing vacancies during the year
	Rent outstanding from current tenants	Total rent outstanding from current tenants as a percentage of total rent charged to tenants during the year
	Tenancies maintained (long term housing)	Tenancies maintained from July to June as a percentage of total tenancies as at 1 July (year start)
	Tenant/prospective tenant complaints	Number of tenant/prospective tenant complaints resolved within 30 days as a percentage of all tenant/prospective tenant complaints received
	Average occupancy rate (long term housing)	Total days vacant as a percentage of the average number of tenancies during the year
	Evictions	Evictions over the 12 month period as a percentage of total tenancy exits
	Tenant satisfaction - housing services	Tenants expressing overall satisfaction in a tenancy survey with housing services as a percentage of total number of respondents
	Tenant satisfaction – consideration of views	Tenants expressing overall satisfaction in a tenancy survey that their views are being taken into account as a percentage of total number of respondents
Housing assets	Urgent requested repairs	Urgent requested repairs completed within 24 hours as a percentage of the total number of urgent requested repairs
	Non-urgent requested repairs	Non-urgent requested repairs completed within 14 days as a percentage of the total number of non-urgent requested repairs
	Tenant satisfaction – maintenance	Tenants expressing overall satisfaction in a tenancy survey with the quality of maintenance conducted as a percentage of total number of respondents



Performance Standard	Key performance measure	Definition
Financial viability	Net Profit	The excess of revenues over outlays (including depreciation and other non-cash expenses)
	EBITDA	Earnings before interest, tax, depreciation and amortisation
	Return on assets	EBITDA as a proportion of total assets (net of capital grants and one-off items)
	Rental revenue per property	Rental income as a proportion of average affordable houses managed
	Quick ratio	Liquid current assets (cash and cash equivalent) as a proportion of current liabilities
	Amended quick ratio	Liquid current assets plus available overdraft and loan facilities as a proportion of current liabilities
	Leverage	Interest bearing debt less cash as a proportion of interest bearing debt plus equity less cash
	Interest coverage	Operating EBITDA plus net interest expense as a proportion of net interest expense

## Appendix 3 Regulatory engagement model – examples

Monitoring and issue resolution	
Governance	<p>Agency size or complexity changes without consideration of the need for changes to board/sub-committee structure or management team structure</p> <p>Unanticipated poor levels of performance against all key performance measures (KPMs) for any particular Performance Standard</p> <p>Unanticipated significantly lower level of performance against KPMs in any given year contrasting with a previous trend of satisfactory performance</p> <p>Lack of adequate implementation of board self-appraisal, development and support</p>
Management	<p>Negative feedback or public statements about an agency made by external stakeholders, including the general public or Department of Health and Human Services (DHHS) regions</p> <p>No evidence of continuous improvement by agency within any financial year</p> <p>Failure to meet objectives within agency regulatory plan</p> <p>Contracts/funding agreements not renewed</p> <p>Agency does not appoint auditor via vote at Annual General Meeting</p> <p>Failure to follow incident reporting procedures to DHHS and other relevant parties</p>
Housing assets	<p>Agency advises key maintenance contractor going out of business</p>
Formal investigation	
Governance	<p>Demonstrable lack of due process in recruitment of board members or staff</p> <p>Conflict of interest or potential conflict of interest not being managed at board level, either preventative or after the fact</p> <p>Board decisions taken without required quorum</p> <p>No minutes or lack of/misrepresentation of detail in minutes of decisions or actions taken at board or committee level</p> <p>Non-achievement of major business plan objectives and targets not satisfactorily explained by mitigating factors</p>
Management	<p>Relevant accounting standards not applied by agency to enable a true and fair view of agency's financial position and operational results</p> <p>Agency not complying with adequate privacy policies to ensure tenants' privacy maintained</p> <p>Agency not complying with all laws regulating any aspect of its business or operations</p> <p>Regulatory reporting requirements not being met, without any adequate explanation</p> <p>Failure to implement action plans against agency regulatory plan objectives</p>
Probity	<p>Privacy Commissioner action due to agency breaches in privacy</p> <p>Lack of proper adherence to code of conduct that observes confidentiality of agency's business transactions</p>
Financial viability	<p>Loan defaults (agency fails to make payment on time)</p> <p>Financial reporting inadequate or not timely in containing relevant detail or information (e.g. balance sheets, cash flow, income and expenditure statements, explanations of variances) or indicates serious issues (e.g. insufficient cash flow, high gearing, unplanned deficit)</p> <p>Significant aspects of financial statements qualified or queried by auditors</p>

## Formal investigation (continued)

Tenant and housing services	Agency not adhering to policies regarding delivery of housing services to tenants in a fair and equitable manner (e.g. cherry-picking of higher income or better behaved tenants) Agency failing to consult with tenants on issues that affect their housing and their ability to make informed choices Non-compliance by agency with a direction to take action to resolve/reduce likelihood of future complaints Relevant support services not being provided/coordinated for vulnerable, high need tenants Agency failing to respond promptly and appropriately to manage overt risk situations Lack of contingency planning by agency for major disasters, serious incidents or health risks (e.g. asbestos)
Housing assets	Stock not maintained to a community standard (e.g. does not meet building, environmental or health standards) Service schedule standards (e.g. gas, fire and other safety appliances) not in place Agency failing to adequately protect assets (e.g. insurance)

## Intervention action

Governance	Board fails to take responsibility to rectify issues identified by us or other regulatory bodies Formal allegations of corruption, theft, fraud or incompetence from a reputable source Demonstrated favouritism or nepotism in appointments of senior staff or board members
Probity	Board members making decisions knowingly involving a clear conflict of interest Evidence of inappropriateness in contracting out activities (procurement) without due process
Financial viability	Short-term agency liabilities cannot be met Agency is financing operations using capital funds Breach of loan covenants Unanticipated major development project cost overruns, delays or non-completion Failure to manage real major risks facing the agency
Tenant and housing services	Evidence of unsafe or sub-standard properties Evidence of breach of Residential Tenancy Act 1997 Non-compliance with direction to remedy a complaint with tenant or prospective tenant
Management	Major OH&S breach resulting in serious injuries to staff or tenants, or major accidents Failure to implement, or a major departure from, business plan
Housing assets	Failure to deliver high standard stock as per asset strategy Major stock damage to agency stock (e.g. fire, water, major tenant damage, pests) Inadequate planning for future asset replacement and maintenance over asset life

