VICTORIA

ESSENDON RENTAL HOUSING CO-OPERATIVE

Report of Ombudsman Victoria

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REPORT
OF
THE OMBUDSMAN VICTORIA

Essendon Rental Housing Co-operative (ERHC)

TO

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

I have the honour to present a Report on the Essendon Rental Housing Co-operative (ERHC). The Report is made pursuant to section 25AA(3) of the Ombudsman Act 1973.
1 EXECUTIVE SUMMARY

In 2003-2004 my office conducted an investigation pursuant to the provisions of the Whistleblowers Protection Act 2001, in relation to allegations against the Essendon Rental Housing Co-operative (ERHC).

The ERHC is a non-profit body, established to provide low-cost rental housing for eligible persons. It was established on 1 October 1985 under a lease agreement with the Department of Human Services (DHS), and registered with Consumer Affairs Victoria (CAV), pursuant to the Co-operatives Act 1996.

The initial allegations against the ERHC concerned benefits provided to a former worker and her family that went beyond the entitlements applicable to the position. Further allegations included improper conduct, mismanagement, dishonesty; and harassment by some of the Directors of the Co-operative.

Due to the nature of the complaints, an accountant reviewed the financial records and administrative procedures of the ERHC. This review indicated serious mismanagement by the ERHC. My Investigation Officers then considered written material and interviewed relevant witnesses, including: whistleblowers, current and former ERHC workers and Directors, and officers of DHS and CAV.

A draft report was completed in March 2004 and provided to relevant departmental secretaries and individual respondents for comment. The responses received were considered and minor changes to three recommendations were made.

As a result of the investigation, I have made 29 recommendations, including that:

**Essendon Rental Housing Co-operative:**

- Repay $15,206.88 to the Office of Housing, DHS, for rental rebate underpayments and incorrect percentage calculations to statements during 1998-2003.
- Consider seeking the recovery of three months long service leave and the overpayment of time in lieu paid to the former ERHC worker.
• Cease applying to the Moonee Valley City Council for pensioner rental rebates.

• Develop and implement a range of policies and processes to improve the general and financial management of the Co-operative.

**Consumer Affairs Victoria (CAV):**

• Administer and direct the operations of the Essendon Rental Housing Co-operative for a two-year period.

• Ensure that co-operatives provide and participate in suitable training.

**Office of Housing (OoH), Department of Human Services:**

• Review the rebate waiver system, examine recording procedures, and implement staff training.

**Moonee Valley City Council:**

• Decline any future applications for pensioner rental rebates made by the ERHC.

The departments concerned generally accepted my recommendations.
2 INTRODUCTION

This is a report on an investigation conducted pursuant to the provisions of the *Whistleblowers Protection Act* 2001 (WPA), in relation to certain allegations against the ERHC and the ERHC worker, Ms A. The initial allegations related to the Directors of the Co-operative extending considerable benefits to Ms A and her family that were above the entitlements applicable to her position. Further allegations included improper conduct, mismanagement, dishonesty, and harassment by some of the Directors.

The provisions of the WPA prohibit me from identifying the person(s) who brought this matter to the attention of my office in the first instance. I am satisfied relevant witnesses have been identified and interviewed.

2.1 Background

2.1.1 Essendon Rental Housing Co-operative Limited

The ERHC was established on 1 October 1985 when a lease agreement, the Head Lease, was signed between the Director of Housing, DHS and the ERHC. The Head Lease contains requirements the ERHC must comply with in order to satisfy the terms of the lease. These include maintenance of the premises and payment of rates. Surplus monies can only be spent on improvement to the properties.

Co-operatives like ERHC are registered pursuant to the Co-operatives Act, which contains controls and guidelines applicable to all non-profit co-operatives. These include a requirement to have Directors and to lodge annual returns. Directors replaced the committees that previously ran the Co-operative, and the Directors gained complete control of the Co-operative’s finances, future directions and selection of tenants.

2.1.2 Registrar of Co-operatives, Consumer Affairs Victoria, Department of Justice

The Co-operatives Act allows for a Registrar of Co-operatives, situated within CAV, Department of Justice (DOJ). The Registrar receives
annual reports and maintains a register in relation to each co-operative that includes a list of directors and the current rules of the co-operative. The Registrar also has investigative responsibilities to ensure the proper management of co-operatives.

2.1.3 Office of Housing, Department of Human Services

The Head Lease Agreement enables the Director of Housing to lease houses to the Co-operative, and gives the Co-operative the right to sub-lease the houses to eligible persons. The Head Lease also provides for the maintenance of the houses, security of tenure for tenants and participation in decision-making. Following a dispute in 1997-1998 in relation to the ERHC, it was determined that the Head Lease was renewable at the discretion of the individual co-operative. The DHS could only intervene or alter the Head Lease if it was breached. The OoH receives rent remitted by co-operatives and manages the rental rebate system. With regard to the maintenance of houses, co-operatives are responsible for minor works and cyclical maintenance, while the OoH, through Community Managed Accommodation (COMAC), is responsible for major works and secondary upgrades.

2.2 The complaint

Following the receipt of statements and considerable documentation in 2003, it was determined that the current disclosures regarding the ERHC amounted to ‘public interest disclosures’ in accordance with the WPA. Accordingly, the Acting Ombudsman wrote to the Minister for Housing and the Minister for Consumer Affairs, formally notifying them of the intention to conduct an investigation into the matters raised. They were informed that the allegations to be investigated included alleged improper conduct on the part of the Directors of the ERHC, and alleged improper conduct of Ms A, employee of the ERHC. It was later determined that the actions of CAV, and the OoH, should also be included in the investigation.
3 INVESTIGATION

3.1 Financial audit

Due to the financial nature of the complaints, an accountant reviewed the accounts and administrative procedures at the ERHC. The review covered the period three years immediately prior to the allegations being made in 2003. In summary, the investigation indicated serious mismanagement by the ERHC, which included:

a) Incorrect and unsubstantiated Long Service Leave (LSL) entitlements being paid to Ms A;

b) Inappropriate practices being used by ERHC in relation to the running of the Co-operative and the election of office bearers; and

c) Inappropriate accounting practices being used by ERHC, which included:

- Insufficient details in relation to tenancy occupation of premises;
- Lack of loans and investment registers as required;
- Blank cheques being signed by one Director then left with the worker so that only one signature was needed when required;
- Use of incorrect financial figures in Cost Pool Statements and Rebate Statements submitted to the Office of Housing;
- ERHC claiming pensioner rebates from the Moonee Valley City Council in relation to property rates, when the payment of rates was the responsibility of the ERHC not the individual pensioner;
- An indication that favouritism was being shown to Directors and those in favour to the detriment of other tenants’ properties; and
- Directors not being trained in their duties and relying almost entirely on the worker in relation to financial matters.
A substantial number of witnesses were interviewed, including whistleblowers, current and former ERHC workers and Directors, and officers of DHS and CAV.

In addition to written material, a large quantity of computer disks, said to be copies of tape recordings of ERHC Directors’ meetings, were supplied to this office. The meetings covered by these recordings varied in time and were not a complete record of the total meetings held over the period under investigation. The disks were monitored and some extracts were put to relevant Directors and workers.
4 DISCUSSION OF EVIDENCE

4.1 The alleged improper conduct on the part of the directors of the ERHC and Ms A

4.1.1 General duties and obligations

There is evidence that Directors were not aware of their duties and obligations under the Co-operatives Act. For example, most Directors were unaware of the existence of the Act. Of those that were aware of the Act, most Directors had not read it. In addition, no training was provided to Directors by ERHC, as required by the Act.

Monitoring of the meeting tapes revealed that on many occasions, no formal motions were put or seconded. Motions seemed to be passed only by general agreement or lack of opposing views. Whilst Ms A was the worker this system seemed to work well. However, when Ms B replaced Ms A as the worker and attempted to have issues formally moved and seconded, no decisions were made. This resulted in confusion for Ms B and many Directors about what had or had not been approved.

There is also evidence that election procedures were not followed at Annual General Meetings (AGMs) prior to 2002. However, at Ms C’s request, Mr D (an officer from CAV) attended and addressed Directors early in 2002 on this and other issues. The 2002 AGM complied with all requirements.

The ERHC’s Tenancy Agreement contains a clause that clearly states a tenant is not permitted to conduct a business from a Co-operative-managed property. The investigation established that Ms E was conducting a dog-grooming business from her premises and Ms E confirmed this. It was also established that Ms A and at least some Directors were aware of the business, however, no action was taken by ERHC to enforce this condition of the Tenancy Agreement.

4.1.2 Financial management

Directors admitted that financial statements were not sent out to members. Although the statements were made available for
examination at the ERHC office, they could not be removed. Directors claimed this practice was based on the advice of Mr D. He was reported to have said it was not a requirement under the Act for the statements to be sent to all members.

The terms and conditions of the workers’ employment and payments to Ms A for her LSL, recreation leave and time in lieu were also not minuted or sent out to members. Some Directors and Ms A claimed this was due to confidentiality requirements. Other Directors claimed no knowledge of the financial aspects of the Co-operative because they were not educated enough or did not understand financial matters.

It was also established that some Directors and Ms A were aware that it was a common practice for authorised signatories to put one signature on a number of blank cheques so that the worker would only have to obtain one extra signature.

**Rental rebates**

It was admitted by a majority of Directors, and Ms A, that the Directors were totally reliant on the worker for all information and management of the Cost Pool and Rebate Statements, as well as most financial matters relating to the Co-operative. An allegation that rental rebates had been manipulated was raised by Ms B with the ERHC in late 2002 - early 2003. Following discussion of the allegation at a Board meeting in January 2003, a cheque for over $2,000 was sent to the OoH.

There was evidence, in the financial analysis and the comments made to Directors by Ms A, which indicated a willingness to manipulate situations and figures to the benefit of both Ms A and the ERHC. A lack of specific data in relation to the exact dates tenants moved to and from some premises made more detailed examination difficult, but the financial audit clearly revealed the OoH was disadvantaged by a net amount of approximately $15,206.88 over a three-year period.

**Rental arrears**

Ms A, Ms B and most Directors were able to state the ERHC policy and procedures in relation to the recovery of rental arrears from tenants and ex-tenants and there was evidence of the processes being used in the past. There was also evidence that leniency was shown to those that fell behind in rent payments. One ex-tenant at the time of this investigation was being pursued for non-payment of rent.
Pensioner rebates

It was established the ERHC was claiming rebates from the Moonee Valley City Council in respect of council rates payable on properties in the care and responsibility of the ERHC. This was despite the fact that the individual pensioner was not required to pay council rates. These rates were the responsibility of the Co-operative, as per the provisions of the Head Lease.

Income declaration

There was a clear division in relation to whose responsibility it was to ensure tenants were correctly declaring income to the ERHC for rent assessment. Directors claimed tenants were asked to complete income declarations twice a year. Directors stated this was solely the responsibility of the tenant, as all income and rental payments were confidential matters that Directors were not entitled to know. The Privacy Act was frequently referred to in defending this position.

Ms A stated she could not do anything about it, apart from requesting an additional income declaration, unless she had specific evidence to prove a breach. She stated that in seven years she did not detect a breach. However, there was clear evidence she was aware or should have been aware of at least two potential breaches. She also agreed the worker was the only one with access to, and knowledge of, income declarations and rental assessment.

False insurance claims

Claims were made that Directors had made false reports relating to property damage to the premises they occupied, such as intentionally flooding existing carpet coverings in order to obtain new carpet. Examination of all insurance claims submitted to the OoH by ERHC, relevant police reports and a comparison made with claims made by other co-operatives under the same program, did not disclose any apparent unlawful conduct by ERHC. While the incident of flooding carpets was clearly documented and identifiable, no insurance claim was made.

Surplus funds

It was established that the ERHC had over $200,000 in bank deposits and investments. Some Directors claimed the funds were being accumulated for maintenance costs. However, they failed to consider
this when it was found the COMAC budget provisions were insufficient to meet the demand for upgrade works. Other Directors did not know what the funds were being accumulated for.

4.1.3 Housing allocation

The allegations made regarding housing allocation centred on two issues. The first was the decision to put caretaker tenants in a property at Vine Street. The second issue concerned houses being allocated to certain tenants where the size of the house was far larger than required by the tenant.

Vine Street

‘Caretaker’ tenants, one of whom was Ms A’s son, were placed in the Vine Street property after it had been declared uninhabitable by the ERHC. These tenants paid only a nominal rent of $18.75 per week as a rate contribution. It was established that members were not informed of the circumstances and decision to put in caretaker tenants into the Vine Street residence.

Most Directors agreed they were aware from the outset that Ms A’s son was one of the caretakers. However, when members of the Co-operative challenged the occupation, the Directors chose to inform the membership the caretaker tenant was a Ms X, and that who she was ‘sleeping with’ at the time was irrelevant. This was the first time the membership had become aware of the Vine Street arrangement.

House size

It was established that a number of tenants, including Directors, occupied premises that had a greater number of habitable bedrooms than occupants. Although clause 3(d) of the Head Lease Agreement states that premises shall not be allocated in such a way, this clause also states:

Nothing herein shall oblige the Co-operative to discontinue or terminate a sub-lease to a sub-tenant who, prior to a change in the said Department’s eligibility and allocation criteria, satisfied those criteria observed by the Department prior to the change.

It would, therefore, appear that the Co-operative could not force a tenant to downsize. In some cases, single tenants continued to occupy premises with multiple bedrooms following the departure of other
family members. At interview, one tenant expressed the view that she wished to downsize but could not, as she had not been offered a smaller house.

**Maintenance**

There is evidence the work priorities advised to COMAC never included the property at Vine Street to be upgraded as a high priority, even though it was claimed to have been uninhabitable. There is clear evidence Ms A advised that two occupied properties, Lawson Street and Francis Street, were considered a higher priority for upgrade works.

Prior to this, it had been contended by the ERHC that the property was a low priority for upgrade. Yet, on the tenant moving to another property, it became uninhabitable. It appears that there had been a significant lack of inspections and maintenance for this to occur. It does not appear that Clause 3(o) of the Head Lease Agreement, allowing inspection of premises by the Director of Housing, were used to ensure the property was kept in good order and repair.

After the ERHC decided the premises were uninhabitable it requested COMAC fix a partially collapsed sewer. The Co-operative then initiated work to build a concealed doorway in a wall to be opened up at a later time. In the process, it is alleged the presence of asbestos was ignored and the cost of upgrading the kitchen area made more expensive, due to a need to accommodate alterations to the available cupboard space. At a later date the Co-operative authorised the replacement of the external roof of the premises, without notifying COMAC of any concerns with the roof. COMAC is normally responsible for this work.

Delaying works required to the Vine Street property resulted in foregone revenue over an extensive period, but provided an opportunity for the caretaker residents to be provided with cheap housing for a longer period. There is evidence to support the possible orchestration of this event in that Ms A, whilst on LSL, contacted Ms B to see what could be done to enable her son and partner to stay in the Vine Street residence until upgrade works were to be carried out.
4.1.4 Favouritism

Ms A stated that when she commenced employment with the ERHC in 1996, she observed there had been favouritism shown to some members, and a lack of attention to those not like-minded. She claims she made a concerted effort to ensure this did not continue. Whilst it appears that all requests relayed to the Board were dealt with in an appropriate manner, there was evidence some maintenance was declined or delayed by Ms A to suit the annual budget she was working to.

There was also reluctance by some tenants to request maintenance or upgrades, because they did not know what they were entitled to, did not want to draw attention to themselves, or were just prepared to put up with what they had. This led to some premises missing out on maintenance, and some tenants volunteering to paint the premises if the Co-operative paid for the paint. Such offers appear to have been accepted, even when cyclic maintenance was due.

4.1.5 Intimidation and harassment

There was no evidence to support the allegation that Directors used intimidation tactics during meetings whilst Ms A was the worker. A monitoring of the tapes of meetings tended to show orderly meetings. However, once Ms B became the sole worker and raised suggestions of manipulation and favouritism and members sought explanations, the harassment was clearly evident both towards Ms B and other tenants who tried to raise matters or support Ms B.

There is some evidence that members and Ms B were subjected to behaviours and actions the average person would describe as harassment, when they tried to raise matters or sought explanations from the Directors. There is no evidence to suggest Ms A was part of that harassment.

Ms C was a founding member of the Co-operative and there is no doubt she has a major influence on the running of the ERHC. The evidence suggests that Ms C displayed a forceful and authoritative presence and many saw her as an authority on matters pertaining to the operations of the Co-operative. Unfortunately, it would appear that Ms C displayed a hostile view of Government agencies, in particular the OoH, and this view was transferred to Directors and Co-operative members who had little understanding of process.
4.2 The alleged overpayment of Long Service Leave (LSL) and salary-related payments to Ms A

The ERHC initially employed Ms A in late 1995 on a temporary basis, and in 1996 as a full-time worker. Her initial contract, signed in 1996, made no special provision for LSL other than to say that other entitlements were as per the Social and Community Services (SACs) Award. Ms A claims LSL was discussed, that she requested continuity of service and LSL after seven years, and that these requirements were agreed to. She agreed there was no mention of this in the employment contract but stated she believed it was discussed in the offer of employment letter. If the document existed, neither it nor a copy of it could be located.

Members of the ERHC who were involved in the initial interviews with Ms A in relation to employment agreed there was some discussion in relation to continuity of service. They believe this was agreed to, but there was no documentation to support this nor any evidence to conclude a period of seven years had been agreed to for the granting of LSL. The first indication LSL was to be granted after seven years appeared in Ms A’s 2001 employment contract, however the contract did not specify what period of time would be granted. It has been assumed that three months, normally available after fifteen years under the SACs award, would be the period. It is accepted that the Co-operatives Act gives the Directors the authority to negotiate and enter into contracts. The payment of three months LSL may therefore have been lawful, even if it was not good business practise.

Examination of the practices and procedures adopted by Ms A during her employment with the ERHC clearly indicated that the Directors, prior to payment, did not carry out the relevant necessary verifications. There appears to have been no checks or validations in relation to hours worked, time taken in lieu or credited, and travel costs claimed or paid. For example, there were no unpaid meal breaks taken, and no meal allowances paid for overtime worked, as required by the SACs Award, and no records were made to validate travel expenses. It is noted that costs for travel to and from Ms A’s home were claimed on occasion. It would appear that whatever Ms A claimed or calculated was paid without question.

In relation to the payment made in advance for Ms A’s LSL, recreational leave, time in lieu and leave without pay, there was considerable disagreement amongst Directors as to who checked the
figures and authorised the payment. Not one Director claimed to have authorised the calculations for payment. Those who signed the cheque claimed they did not authorise it, they just signed what had been authorised. The only person who tried to check anything was Ms F, who is legally blind. Whilst Ms F has some financial advisory training she denied she had been responsible for authorising the payments. Subsequent checks by Ms F resulted in the disallowance of payment made for some public holidays claimed whilst on LSL, coupled with some alteration to time in lieu. This resulted in a repayment of some monies to the ERHC by Ms A.

4.3 The appropriateness of the actions of the Office of Housing (OoH)

The OoH had difficulty in providing waiver information to enable the verification of information returned by the ERHC in the period under investigation. It appears no formal approval schedule was maintained. Waiver information has a bearing on the outcome of the monthly amounts payable to either the ERHC or the OoH, and a formal register should have been maintained to enable verification of this process.

It is clear that great difficulty and delay was experienced in obtaining such information relative to the ERHC. The Co-operative maintained no register or listing of such approvals from the OoH. There was every indication the ERHC merely adjusted the Rental Rebate Return and such adjustments were routinely accepted by the OoH.

4.4 The alleged failure to take appropriate action by staff at the Registrar of Co-operatives, Consumer Affairs Victoria (CAV)

CAV received two items of correspondence in late 2002 regarding problems in the ERHC. The concerns raised included training for four new members, and conflict the ERHC was experiencing with the OoH regarding the liability of Board members. Other issues raised concerned many of the allegations that were the subject of this investigation. The three members of CAV who had contact with the complainant(s) all stated CAV could only investigate matters that were a breach of the Co-operatives Act and none of the matters raised met these criteria. The allegations were judged to have resulted from internal squabbles, sloppy bookwork and some minor breaches of
election procedures. Mr D intended to address the ERHC Directors on these matters.

CAV’s deliberations were perhaps further complicated by a request from Ms C for assistance with new members and problems within the membership. Mr D visited and addressed the ERHC Directors in relation to election procedures and their responsibilities. He was unable to recall whether his visit was due to Ms C’s request or as a result of the information obtained from the complainant(s).
5 CONCLUSIONS

1. The actions of staff at the Registrar of Co-operatives, Consumer Affairs Victoria, Department of Justice

The issues raised by the complainant(s) included possible criminal offences, such as theft and false accounting, and should have been the subject of some further investigations by CAV prior to the matters being dismissed. However, I accept that the decision made not to investigate further and to conduct a random audit on the ongoing ERHC problems when circumstances permitted, was a decision reasonably open to CAV in the circumstances. I therefore do not make any adverse findings as to the actions of CAV relating to lack of action on the complainant(s) allegations. There is, however, a demonstrated need to critically examine and change some procedures, such as the Rules of Co-operatives.

2. The appropriateness of the actions of the Office of Housing in granting waivers and receiving and processing rebates in relation to the ERHC

The investigation revealed shortcomings in procedures and accountabilities within the OoH, Department of Human Services. ERHC and OoH staff considered the format of the Cost Pool and Rebate Statement forms confusing and difficult to comprehend and manage. The current system relating to the granting of waivers for rental properties undergoing major maintenance or upgrade should be examined and modified.

3. That the Directors of ERHC and Ms A falsely claimed rental rebates from the Office of Housing

For the three financial years examined, rebates paid by OoH to ERHC decreased substantially in the year Ms A left and Ms B raised allegations of rebate fraud. Whilst there were some minor discrepancies in figures that favoured the OoH the majority and largest manipulation of figures were in favour of ERHC. It is clear from the available evidence that the manipulation was deliberate.
4. That two Directors committed fraud against Centrelink and the Office of Housing by not disclosing salary payments they received from employment

There was clear evidence that at least three members of ERHC, including two Directors, were not declaring all income for the purposes of determining rent payable to the ERHC. It is not within my area of responsibility to investigate whether they are declaring the additional income to Centrelink or to the Australian Taxation Office. On the evidence available, one was making full declarations for that purpose, but without access to Centrelink and taxation records I was unable to take the matter further. The relevant information has been passed to the appropriate authorities.

5. That the Directors and Ms A did not keep proper financial records, inform members of certain ERHC matters, or inform other Directors of their duties and obligations under the Co-operatives Act

There is evidence that the Directors purposely withheld information from the members, failed to furnish all relevant financial information, and failed to comply with the provisions of the Co-operatives Act for the training of new board members.

6. That Ms A was inappropriately paid Long Service Leave and severance entitlements

It is clear that the granting of the additional three months LSL, making a total of six months, was neither authorised by the 2001 employment contract, nor authorised by any other law or principle, and in that regard the Directors did not act appropriately. Directors are also required, under s. 221 of the Co-operatives Act, to “at all times act honestly in the exercise of his or her powers and the discharge of his or her office.” It is doubtful the Directors met this obligation.

7. That Ms A calculated her own salary and other benefits with no accountability to the Board, the Co-operative or to the Office of Housing

There is clear evidence, admitted by ERHC and Ms A, that Ms A was responsible for the calculation of her own salary and other benefits during her employment for the total period of almost seven years. This was also the case with Ms B, despite her raising concerns about the
practice, and her requests to the Directors to have a Credit Co-operative undertake all employment-related calculations.

The situation where a person has total control over calculations and acquaintance of their own salary and entitlements is most unsatisfactory and against all accounting conventions. This practice should cease immediately and arrangements made for an independent body to manage employment-related payments and records.

8. That the Directors and Ms A intimidated and harassed members, leading to undemocratic decision-making processes

Without interviewing every member of the Co-operative it was difficult to determine if members stayed away due to fear of the alleged harassment. One deterrent could have been because the meetings were held in a room accessed by a steep, winding staircase. I conclude the members of the ERHC were subjected to some harassment, but I am unable to determine this is the sole reason why many of the members chose not to participate in meetings.

9. That on many occasions, the Directors and Ms A refused or neglected to properly maintain premises occupied by members who were not on good terms with members of the ERHC Board

It is apparent maintenance was neglected on some properties and deliberately delayed on others awaiting a COMAC upgrade. It is likely the full inspection now being carried out by an architect will identify the maintenance to be undertaken.

10. That the Directors and Ms A gave preferential treatment in the allocation of premises to tenants

Although some houses appear under-utilised, the investigation did not determine that the use of premises was outside the provisions of the Head Lease Agreement, nor that tenants failed to go through the normal selection process or that tenants did not meet the relevant criteria for occupation. It appears that the main reason for conflict on this issue, evident since 1996, may well have been due to a lack of communication and information dissemination to members by Directors.
11. That a Director and Ms A placed Ms A’s son in the Vine Street property as a caretaker, causing financial disadvantage to the Co-operative and the Office of Housing

The actions of the Co-operative in relation to the Vine Street property were improper. It is clear that Ms A manipulated the situation to deliberately prolong a benefit to her son and his partner, to the detriment of the ERHC and the OoH. A further issue was the non-disclosure of the ‘rate contribution’ on the Rebate Statement to the OoH. This should have been declared. I am unable to determine if the Directors were involved in the manipulation; however, they should have been aware of a potential conflict of the arrangement and taken appropriate action. There was also a deliberate attempt to bypass the normal process of evaluating premises for an upgrade and to deceive the OoH in considering the economic life of premises.

12. That the ERHC had a large amount of money in savings, yet Ms A refused maintenance requests, stating that there were no available funds

I find the allegation substantiated. It appears the Co-operative delayed cyclic maintenance to obtain everything they could out of COMAC. As a last resort, they would use ERHC money to repair a property so it was not lost back to the OoH for sale or disposal. Ms A clearly stated the Co-operative had limped along with a property until an upgrade was done, or the OoH replaced it, rather than spend any of the Co-operative’s money on repairing or upgrading it. It is clear that the ERHC lost sight of the fact that money held by it are public monies, and surplus funds are to be used by the Co-operative in accordance with Clause 9 of the Head Lease Agreement.

13. That the Directors were given preference in maintenance, upgrades and choice of house, to the detriment of other Co-operative members

Whilst there was some evidence that requests for maintenance were being refused by Ms A, there was insufficient evidence to show the Directors were getting maintenance they were not entitled to.

14. That administrative procedures within the Co-operative were deficient

There was evidence that administrative procedures within the ERHC were inadequate and that a more formal approach to meetings is
required. This approach would include decisions being formally moved and seconded, and then voted on, so that the worker and Directors are fully aware of what is being proposed and what is being approved. This would then be reflected in minutes sent to members.

15. That dishonest practices and manipulation of quotes were used to gain maximum benefit from upgrades

There is clear evidence the ERHC deliberately arranged some works on premises so that the cost of the impending upgrade would be kept below what they believed to be a ceiling of $25,000. There is also evidence that Ms A, with the knowledge of the Directors, manipulated the assessments by dropping some items, or assuming some extra items as the Co-operative’s responsibility, to keep costs down and gain the upgrade under what they believed to be the ceiling. The main reason for this appeared to be to prevent OoH from declaring the property as not being viable and disposing of it.

Of particular concern was that the maintenance of the Vine Street property appears to be a deliberate attempt to go outside the established practice for upgrade works, carried out to enable an advantage to the Co-operative. In the event all the work had been considered as a whole, the premises might well have been classified as one that should be reclaimed by the OoH for sale or redevelopment. Such a situation is clearly one the ERHC feared, as they believed they would not be given a replacement property by the OoH.

16. That proper procedures were not followed in the selection of new tenants, with favouritism being shown to friends and relatives of Directors

I have not been able to find any evidence that favouritism was shown or given to new tenants. Prospective tenants were declined interviews for premises where they had more people than rooms, due to the ERHC’s one person per room policy. However, this is not DHS policy, (e.g. it is not considered inappropriate for same-sex children under the age of sixteen years to share a room). I consider that the ERHC should immediately accept this approach and adopt it as policy when considering prospective applicants.
17. That Directors did not have knowledge of accounting and reporting procedures and relied totally on the advice of the worker in making decisions

With the exception of Ms F, all other Directors claimed they did not take part in the financial management of the Co-operative, or lacked the knowledge to properly participate. All Directors stated they also took no part in the preparation of the Cost Pool Statements or Rebate Statements, principally on the grounds that personal details relating to tenants’ income and rent payments should not have been available to them due to privacy legislation. If this view is accepted, then the Directors cannot carry out their responsibilities under the Co-operatives Act. Personal details, such as income, are required to properly assess information forwarded to OoH, and are required when legal action is necessary against ex-tenants.

I consider that the Directors have an incorrect view of the privacy legislation and how this affects their ability to perform their functions as Directors under the Co-operatives Act. In my view, all Directors and ERHC members need to receive training in relation to the responsibilities of Directors under the Co-operatives Act and the Information Privacy Act 2000. The Directors have also not received training in relation to the operation of the Head Lease Agreement.

18. That incorrect entries were made in rebate statements in relation to rent details, waivers and undisclosed payments, in order to gain an advantage in rebate payments from the Office of Housing

Incorrect figures were used in the Cost Pool and Rental Rebate Statements, disadvantaging the OoH by a net amount of approximately $15,206.88 over a three-year period. It is my opinion that Ms A placed the inaccurate amounts into the documents with the knowledge of many of the Directors of the ERHC.

19. That surplus funds were not applied to maintenance as required by the terms of the Head Lease agreement

The ERHC had accumulated funds of over $250,000 at the commencement of this investigation. It is clear under Clause 8 of the Head Lease that the Co-operative could only use these funds for the improvement of premises. The ERHC clearly failed to do this. I therefore consider that the ERHC breached the provisions of the Head
Lease Agreement in its application of accumulated funds to meet appropriate property maintenance.

20. That pensioner rebates were inappropriately claimed from the Moonee Valley City Council

The ERHC was not entitled to claim a rebate under Section 171(4)(ba)(i) of the Local Government Act 1989 (as amended). However, I do not consider that a criminal investigation in relation to this matter is warranted, as the form provided to tenants does not require a declaration that they are responsible for the payment of rates.

21. That many tenants occupied premises far larger than required

Some tenants, including Directors, were living in premises with more bedrooms than occupants. However, there was also evidence that when they first occupied the premises, most tenants’ occupancy appears to have met the requirements.

22. That the ERHC did not aggressively seek to recover rental arrears from tenants and ex-tenants

I found no evidence to show the ERHC were not actively seeking to recover rental arrears. However, in one case, they were delayed by an erroneous view of privacy legislation.

23. That the ERHC deliberately used an auditor trained by the Co-operative to accept their processes and give unqualified audits

Discrepancies were uncovered in payments to Ms A and in the adjustments relating to base rent and rebate amounts. In view of the discrepancies identified in the accounting records, the allegations that Ms A trained Mr H to audit ERHC books (denied by Mr H), and that Mr H believed Ms A was entitled to 13/15ths of three months LSL, but did not qualify his annual audit, raises serious concerns as to the competency of the audits being conducted.
24. That there was no training for ERHC Directors or tenants in relation to duties and responsibilities within the Co-operative

No training was given to current or new Directors, and new Directors were being asked to learn by experience on the Board. This experience was influenced by biased views on the Board concerning the attitude and role of the OoH.

25. That Co-operative principles were not followed in the management of the ERHC

The ERHC was influenced by three of the more experienced Directors. While several of the Directors were prepared to question advice and decisions, and actively participate at meetings, their lack of knowledge in relation to the Co-operative’s activities and responsibilities under the Head Lease Agreement and the Co-operatives Act significantly reduced their effectiveness.
6 RECOMMENDATIONS

6.1 Consumer Affairs Victoria (CAV), Department of Justice

1. That Consumer Affairs Victoria institute procedures to ensure that co-operatives are providing, and participating in, training of a suitable standard.

Agency Response

The Secretary, DOJ stated in response to the draft recommendation that co-operatives are responsible for training. It was further submitted that CAV already publishes four handbooks that provide Model Rules applicable to four types of co-operatives, as well as the publication, Guide to Forming & Running a Co-operative. CAV also funded the Co-operatives Federation of Victoria to develop and publish the Co-operatives Development Program/Kit, with further information on their website.

2. That the Registrar review the Rules of Co-operatives lodged at that office, with a view to eliminating rules restricting and penalising members if they seek independent advice outside the co-operative, including the Registrar and any ‘responsible organisation’ such as the Office of Housing.

Agency Response

The Secretary stated CAV would respond appropriately to similar conduct in the future.
3. That the Registrar examine operating procedures and implement dispute resolution processes so that he can intervene in internal disputes or power struggles within co-operatives and resolve them by conciliation and/or training where appropriate.

**Agency Response**

The Secretary submitted that dispute resolution is a matter for the Co-operative, as required by the Act. The Secretary accepted that it would be desirable for CAV to implement dispute resolution processes to intervene in internal disputes or power struggles within co-operatives, and resolve them by conciliation and/or training where appropriate. However, such a process would have to apply to other areas regulated by CAV and would be subject to budgetary considerations.

4. That the Registrar appoint a member of his staff to administer and direct the operations of the Essendon Rental Housing Co-operative, under the provisions of s. 324 of the Co-operatives Act, for a two-year period, to ensure properties are brought up to an acceptable standard and to provide a break to the current control exercised by several influential persons. This recommendation is in no way an adverse reflection on the integrity of the current two workers employed by ERHC.

**Agency Response**

The recommendation was accepted.
6.2 Office of Housing, Department of Human Services

5. That the Director of Housing urgently consider the development and implementation of a recording system that provides for the integration of information contained in Form 3s (change of income or rent), the current ACCRIS System and Rebate Return. This system should replace the current ACCRIS system.

6. That a review be undertaken of the Cost Pool Statement with a view to making it more user-friendly for staff at regional DHS offices and for housing co-operatives. The Statement must enable all information contained in the document to be verified against information disclosed in Annual Audited Returns from co-operatives.

7. That a staff training program be implemented, relative to the financial information provided in the Cost Pool Statement, the Rebate Statement and the Annual Audited Report from Co-operatives, placing greater emphasis on financial analysis of management information contained in them.

8. That a system be implemented in relation to the request for, and the granting of, rebate waivers for both the Co-operative and the regional OoH staff member responsible for processing the Rebate Statements. This will provide an audit that can be referenced to individual properties.

Agency Response

Agreed.

9. That a working party be formed to examine the feasibility of amending the current Head Lease Agreement with housing co-operatives to enable greater accountability and control of maintenance, both cyclic and secondary upgrades, and the expenditure of accumulated funds.
Agency Response

The Secretary advised that the OoH had examined the issue of more effective management of the Head Lease in 2003, and explained that a range of actions were initiated arising from that review.

10. That consideration be given to requesting that the Minister for Housing introduce legislation to enable DHS to regain control over co-operative properties at a regional level. There is a need to provide better financial control over public monies and more equitable maintenance to valuable properties.

Agency Response

Agreed.

6.3 Essendon Rental Housing Co-operative

A number of general submissions were made by the ERHC in response to the draft report. None of the submissions persuaded me that the draft conclusions were inappropriate or required alteration.


Agency Response

The ERHC stated that these issues had been addressed in the conclusions and that if [the original calculation] $14,677 remained in the final report, the Board proposed to reimburse that amount to the OoH.

Note: In response to Ms A’s submission, the Cost Pool underpayment was recalculated to $11,329.76. The rebate adjustment was unchanged
at $3,877.12, making a revised total of $15,206.88. The recommendation was amended accordingly.

12. That consideration be given to taking action to recover three months LSL payment to Ms A that was paid in excess of the 2001 contract, and the overpayment of time in lieu to Ms A.

Agency Response

The ERHC Board stated that it would take advice on this point prior to considering proceedings.

13. That all employee-related matters be calculated and controlled by a third party and signed off at a Directors’ meeting, ensuring proper records are kept in relation to contracts of employment, recreational leave, sick leave, time in lieu and LSL entitlements.

Agency Response

The ERHC Board endorsed this recommendation.
14. That the ERHC seek a more accessible venue for all General and Annual General Meetings.

15. That AGMs, including the nomination and election of Directors, be conducted as required under the Co-operatives Act.

16. That consideration be given to appointing a Chairperson for the ensuing twelve-month period.

17. That proper minutes be maintained, recording full details of proposers and seconders of motions, and issues, at all meetings.

18. That ERHC worker(s) be required to provide written activities and financial reports to each Directors’ meeting. This would include the Annual Cost Pool Statement prior to its submission.

19. That Maintenance and Finance Committees be re-established, and reports tabled at Directors’ meetings.

20. That urgent attention be given to the development and implementation of an integrated recording system, incorporating tenancy rental and rental rebate information as required by the Office of Housing.

21. That tenancy, maintenance, investment and loans registers be established.

Agency Response

The ERHC stated that the Board had already acted on all of these recommendations, including new premises being found for permanent use.
22. That the requirement for two Director signatories to sign cheques be maintained. That no blank cheques be signed, and that signing only take place on the production of supporting vouched information. Payment voucher sheets should also carry the full signatures of both signatories.

Agency Response

The ERHC stated that procedures were currently in place, and advised that the practice of signing blank cheques had been stopped.

23. That a face sheet be introduced, supporting details of attached invoices or accounts, similar to those used in government departments.

Agency Response

The ERHC stated it had already acted on the recommendation.

24. That a clear travel policy be established in respect of the worker(s) being reimbursed for the use of a private motor vehicle, with any reimbursement approved by a nominated Director. The travel policy would pay particular attention to the needs of the worker’s motor vehicle insurance policy, to ensure it covers the worker and the vehicle during business use.

Agency Response

The ERHC stated that steps were being taken to establish and adopt such a policy.

25. That a more detailed audit be requested from the chosen auditor each year, in order to comply with the requirements of the Head Lease Agreement.
**Agency Response**

The ERHC stated the recommendation had been acted on in part, but would be fully acted upon when the Board was notified of the findings in the final report.

26. That an explanation be sought from the Auditors as to the reason why the Annual Audit Report on the ERHC for the year ended 30 June 2003 did not contain a qualification in respect of Ms A’s LSL.

**Agency Response**

The ERHC stated it had already acted upon the recommendation.

27. That no further requests be made to the Moonee Valley City Council, or other organisation, for pensioner rate rebates.

**Agency Response**

The Board denied the claims were in any way inappropriate and submitted a letter received from the Moonee Valley City Council as support for this view. On this basis, the Board declined to comply with the recommendation.

### 6.4 Moonee Valley City Council

28. That any further application for pensioner rate rebates claimed in relation to the ERHC properties be declined.

**Agency Response**

The Council stated that it granted the rebate to ERHC as a result of the applicant providing a declaration that they were liable to pay the rates. This declaration had been supported by a covering letter from the ERHC advising that the occupier was responsible for payment of the rates and charges.
More recently, the Council advised that it has implemented procedures in the Revenue Office to ensure situations like this, involving similar or like housing co-operatives, do not occur in the future.

29. That the application form for pensioner rate rebates be altered to include a requirement for the applicant to declare that they are personally responsible for the payment of rates.

**Agency response**

The Council advised that it will write to the Department of Human Services – Concessions Unit, requesting that the declaration on the rebate application form be more clearly defined to show that it relates to the wording under the heading “name of applicant liable for payment of rates”.

6.5 **Response from Mr H, Auditor**

Mr H responded verbally that he accepted there might have been a need to qualify the payment of LSL to Ms A. No written response was received.

6.6 **Response from Ms A, ex-locum worker**

Ms A responded with a detailed submission in relation to the draft report’s conclusions and recommendations. Ms A’s submissions were noted.

6.7 **Individual submissions from Directors**

Individual submissions were also received from three ERHC Directors - Ms E, Ms G and Ms C.