



CITY OF MELBOURNE

23 September 2016

Residential Tenancies Act Review
Consumer Affairs Victoria
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Dear Sir/Madam,

Subject FAIRER SAFER HOUSING

Thank you for providing the City of Melbourne with the opportunity to make a submission to the *Alternate forms of tenure: parks, rooming houses and other shared living arrangements* Issues Paper. Our comments and submission have been confined to the issues surrounding rooming houses and new housing models and emerging trends.

As noted in the Issues Paper, there are various pieces of legislation that regulate the provision of accommodation. As such, we believe it is critical that the whole regulatory framework be reviewed to ensure a consistent and cohesive approach, and to achieve effective reform.

Councils play an important role in the regulation of rooming houses and other forms of accommodation that are *prescribed accommodation* pursuant to the *Public Health and Wellbeing Regulations 2009*. We believe it is necessary that the residential and transient accommodation regulatory framework provided by the *Public Health and Wellbeing Act 2008* and the *Public Health and Wellbeing Regulations 2009* be reviewed in conjunction with this current review of the *Residential Tenancies Act 1997*. It is respectfully submitted that neither can be properly reviewed in isolation as there are critical areas of overlap.

In the light of our submission above, comments and suggestions will be provided for changes to both the *Residential Tenancies Act 1997* and the *Public Health and Wellbeing Act 2008* and the *Public Health and Wellbeing Regulations 2009*.

Rooming house definition

The rooming house definition - shared by both the *Residential Tenancies Act 1997* and the *Public Health and Wellbeing Regulations 2009* - needs to be amended so that there is clarity as to the criteria of accommodation that meets the definition. At present, the definition is too broad and can capture various share-house arrangements that are presumably not intended to be classified as a rooming house.

In addition to clarifying the rooming house definition, other classes of prescribed accommodation as defined in the *Public Health and Wellbeing Regulations 2009* should also be reviewed to ensure that these reflect the current accommodation industry. Furthermore, the exemptions provided for by regulation 14 of the *Public Health and Wellbeing Regulations 2009* also need to be reviewed to clarify what scenarios are intended to be exempt.

As part of the review, we recommend that all residential and accommodation models are accurately identified and that the regulatory framework that applies to each be identified and its effectiveness assessed. Any living arrangements or accommodation scenarios that are not intended to be regulated through either the *Residential Tenancies Act 1997*, the *Public Health and Wellbeing Act 2008*, or the *Public Health and Wellbeing Regulations 2009*, should be accurately described and clear exemptions provided for these.

Tenancy agreements in rooming houses

The relationship between the *Residential Tenancies Act 1997*, the *Public Health and Wellbeing Act 2008*, and the *Public Health and Wellbeing Regulations 2009* with respect to tenancy agreements, both for entire premises and individual rooms, needs to be clearly expressed. At present the relationship is vague with some rooming house operators avoiding regulation through the use of sham lease or tenancy agreements. This practice is employed to give councils the impression that rooming house residents enjoy exclusive occupation of the property, whereby the reality is that the rooming house operator dictates the make-up and movement of the residents (eg. when one resident moves out, it is the operator who determines who will be the new resident). Operators in this scenario often flout property access restrictions that apply to valid tenancy agreements.

New Housing Models and Emerging Issues

In the City of Melbourne, we have seen an increase in 'rooming houses' being operated out of apartments, usually in high-rise apartment towers. These are difficult to detect or investigate through surveillance as these properties are generally not accessible eg. they have good security measures such as elevators restricting access to levels without a swipe card.

The use of residential apartments as rooming houses also creates issues for other residents within these buildings, with an increase in the population of the building placing pressure on the physical property, existing amenities and common property that were developed with a smaller intended residential population.

Serviced Apartments

Serviced apartments present in several forms which include a single owner or lessee operating a business of many apartments for a combination of short-term, medium-term and long-term stays. These apartments may range from one night stays through to twelve month (or longer) residential tenancy lease agreements. Another example of a serviced apartment business is that where a collection of apartments are strata-titled with the apartments either managed by the various owners themselves or by a managing agent on their behalf.

Whilst in some circumstances it may seem clear that serviced apartments fall within the definition of a 'hotel' under the *Public Health and Wellbeing Regulations 2009*, the exemption provided at r 14(b), which utilises the expression 'under the exclusive occupation of the occupier', may in some cases apply. This exclusive occupation expression is ambiguous. The application of the exemption in relation to serviced apartments is therefore unclear and it is considered that the definitions and the associated exemptions do not adequately address serviced apartments with sufficient specificity. Serviced apartment businesses are increasing in both quantity and popularity and they operate throughout the state across different municipalities. As such, it is important that the Regulations be applied in a consistent manner, necessitating clarification of the definitions.

The City of Melbourne welcomes the review of the legislative framework of accommodation in Victoria. Should you require any further information or assistance in us providing information of our local experience in this area, please contact Brendan Garrett on 9658 8803.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'R. Webster', with a horizontal line extending to the right.

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