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Introduction

The Council to Homeless Persons (CHP) welcomes the opportunity to provide a submission to the Alternative Forms of Tenure Issues Paper as part of the Review of the Residential Tenancies Act.

CHP has a long involvement in advocating for the conditions in rooming houses and the rights of residents. This submission focuses specifically on the experiences of rooming house residents and is informed by the work undertaken by our Homelessness Advocacy Service (HAS).

Rooming houses have long been used as an accommodation option for individuals experiencing homelessness. Residents of rooming houses are usually highly vulnerable and having poor rental histories, low incomes and complex personal issues, are often unable to secure rental in the mainstream private rental market.

An analysis of the Australian Institute of Health and Welfare (AIHW) data¹ shows that in 2014-15, nearly 2,000 people who were living in rooming houses, presented to Victoria Specialist Homelessness Services (SHS) for assistance. Victoria had the highest number of rooming house residents presenting at services, accounting for 36 per cent of the Australian total. Furthermore, almost 3,100 people were living in rooming houses following support from the SHS sector; highlighting the reliance services have on this form of tenure. These figures do not capture the number of people living in rooming houses who do not access the SHS.

As acknowledged in the Issues paper, the population of rooming houses is difficult to determine. While rooming houses are now required to be registered with their local council, the registration process only records the number of bedrooms in a property, not the number of residents. A further challenge to counting the population of rooming houses relates to the Public Health Regulations where a child under the age of three is not counted as a person, and two children under the age of three are counted as one person. In addition, the sector is aware that unregistered rooming houses continue to operate throughout the state.

Without having a clear idea of the exact number of people in rooming houses, it can be challenging to develop service responses for this population. As such, regulation including the RTA, provide an essential safety net for vulnerable individuals.

Defining rooming houses

The landscape of rooming houses has changed significantly over the years. CHP's 2014 report on *The State of Rooming Houses in Victoria* noted that as housing has become more unaffordable, and the demographics of the homeless population changed, and the face of residents of rooming houses also altered dramatically.

¹ Available at: <http://www.aihw.gov.au/shs/data-cubes/>

There has been a proliferation of smaller rooming houses (defined under Building Regulations as Class 1b dwellings) and CHP hears anecdotal evidence of people living in accommodation that is run as a rooming house, but with fewer than four residents. As these properties do not meet the current definition of a rooming house, residents are not offered the same protections under the Act.

CHP believes that the Act should be amended to more adequately reflect the changed face of rooming houses. This may include removing a reference to the number of residents (in line with all other states and territories), and focus on the operation of the properties including occupancy rights of residents.

Unregistered rooming houses

Despite the current registration system for rooming houses, CHP continually hears from the sector that unregistered rooming houses continue to operate. While a small number of operators may remain unaware of their compliance and registration requirements, in our experience most unregistered rooming houses are operated by individuals with other registered rooming houses. CHP has heard stories of consumers being referred to a registered rooming house by a service, only to be called by the operator on their way to the property and given an alternative address. Similarly, we frequently hear reports from consumers of the churning of rooming houses discussed in the Issues paper.

Councils have sole responsibility for the registration and deregistration of rooming houses. As discussed in CHP's 2014 rooming house report, compliance falls between the building and health departments of local council. In the event that an unregistered rooming house is identified, only a local council can inspect and require a rooming house operator or owner to register the premises. As such compliance is heavily dependent on the aptitude, willingness and resources required for councils to participate in this process. Through our research and advocacy, and through consultation with the sector, CHP continually hears stories of vastly differing council practices. Service providers have told us they have reported unregistered rooming houses to councils multiple times, and yet they remain operational.

Residency rights and agreements to live in rooming houses

Residents of rooming houses can enter into a residency agreement or into a tenancy agreement with an operator. Signing a tenancy agreement means residents are not offered the protections under Section 3 of the Act, created specifically for rooming houses. Considering the unique experience of rooming house tenure, where there is often significant resident churn, complex personal issues and strangers sharing common facilities, CHP believes that tenancy agreements in rooming houses should be abolished. We believe that the provision in Section 3 responds directly to the complexities of rooming houses, and that residency agreements are more appropriate for this form of tenure.

CHP has heard anecdotal reports of tenants being required to sign complex agreements with operators. In these situations, residents may not be aware of the legality of these forms, and may sign agreements that breach their rights, or that put onerous unnecessary responsibilities on them. Considering the vulnerable nature of most rooming house residents, CHP believes that all rooming house agreements should use a prescribed form.

Rooming house rights and responsibilities

House rules

Under the current Act, an operator can specify house rules for the 'use and enjoyment of facilities and rooms' (s. 126) which can be challenged by residents if they believe the rules are unreasonable. There is however no guidance in the Act around what rules would be reasonable. CHP is concerned that this lack of guidance can leave tenants vulnerable to rules and conditions which affect their quiet enjoyment. Reviewing RAAV's best practice guides for operators – which is, to the best of our knowledge, the only guidance available on house rules – suggests that rules may include approaches to 'keeping running costs down'.

CHP's HAS is frequently contacted by residents who have restrictions placed on when they are able to use heaters. While in some instances restrictions on heaters are in place due to fire hazards, more frequently, this rule is put into place to stop residents running up large power bills. HAS also reports that residents frequently have restrictions placed on the times they can use certain communal facilities such as bathrooms, kitchens and laundries.

CHP believes that in order to prevent unreasonable rules being placed on tenants, the Act should, at a minimum, provide guidance about what rules are reasonable, and what rules would impact on resident's quiet enjoyment of the property. Despite there being provisions for residents to access VCAT if they feel that rules are unreasonable, the vulnerable nature of residents in our experience, means they are less likely to pursue these channels for fear of retaliation and or eviction.

Pets in rooming houses

Through the review of the Residential Tenancies Act, CHP has advocated for the Act to be amended so that landlords and agents cannot unreasonably withhold consent for a tenant to have a pet. We believe this should also apply to rooming houses. In rooming houses, we recognise that this is somewhat more challenging due to frequent turnover of tenants, lack of existing relationships between occupants, and potential breaches of local council laws due to the high number of occupants. CHP however believes that in certain situations it may be appropriate for residents to have pets in rooming houses.

Duty to pay rent

In previous submissions, the Tenants Union of Victoria (TUV) has highlighted that a duty to pay rent can place tenancies at risk for vulnerable residents. As it stands, three breaches – or three late payments of rent can result in a tenant being issued with a

notice to vacate. This seems significantly less fair than agreements for tenants under Part 2 agreements. CHP agrees with TUV's 2015 submission that the duty for residents to pay rent should be removed, as the Act already allows notices to vacate to be issued if rent is not paid.

Quiet enjoyment of other residents

While acknowledging the complexities of rooming houses, provisions in the Act that require residents to take responsibility for their guests' behaviour when near a rooming house seems both unrealistic and unnecessary. CHP believes that that residents cannot be held responsible for incidents that occur near a rooming house (and that this reference should be removed). In addition, as with other sections of the act we think that reasonableness should be included in provisions of the Act.

Utilities

Rooming house residents pay a significant amount of their income for a shared room or exclusive occupancy of a room. Residents often have very little disposable income left with which to cover the costs of daily living. While the Act clearly spells out that residents cannot be charged for electricity and gas (unless their room is separately metered), there is no clear statement in relation to water charges. CHP recommends the Act be updated to specify that residents cannot be charged for water usage.

References

Council to Homeless Persons, 2014, *The state of rooming house reform in Victoria*, Council to Homeless Persons, Melbourne

Tenants Union of Victoria, (2015) *Response to Laying the Groundwork*, Tenants Union of Victoria, Melbourne