

Regulatory Impact Statement – Rooming Houses

Submission to the
State Government of Victoria
Department of Human Services

October 2011



Peninsula Community
Legal Centre INC

1.0 INTRODUCTION

Peninsula Community Legal Centre (PCLC) welcomes the opportunity to make a submission to the State Government of Victoria Department of Human Services with regard to the Regulatory Impact Statement on the proposed Residential Tenancies (Rooming House Standards) Regulations (hereinafter referred to as 'RIS'). PCLC believes that the implementation of initiatives that will lead to safer, more secure and affordable housing for vulnerable Victorians is an important step forward in respect of rooming house accommodation.

The Regulations cannot, however, be static. It is imperative that they be reviewed and refined to ensure the best possible outcomes for Victorians residing in rooming house accommodation. Whilst PCLC supports the need for regulations, PCLC also believes that the legal protections entailed therein could be strengthened and therefore advocates for further amendments and initiatives to enhance the overall effectiveness of the Regulations. Consistent with this position, PCLC identifies, in accordance with the ten questions posed as points of reference for discussion of the RIS, the areas which PCLC believes should be considered in relation to the RIS.

2.0 PENINSULA COMMUNITY LEGAL CENTRE

PCLC is a not-for-profit organisation that has been providing free legal services to Melbourne's outer south east communities for over 30 years. Its mission is "To empower and support disadvantaged community members of the South East and Westernport Region to use the law and legal system to protect and advance their rights and broaden their awareness of their rights and responsibilities."

PCLC's staff and volunteers provide clients with free and accessible legal services, particularly the most disadvantaged and marginalised in our community who may otherwise fall through the gaps. Our client's life circumstances can be severely affected by their legal problems and they are often not able to access other legal services. Being able to obtain free legal assistance can often help our clients move on with their lives and become active participants in their local communities.

Underpinning all service delivery is a philosophy of client empowerment and recognition of the inherent dignity of all people. In casework services, this translates to a focus on informed decision-making by clients and supported self-help wherever appropriate, so that clients achieve the confidence and skills to navigate the legal system. Most of the Centre's clients could not afford a private lawyer and would not qualify for legal aid. Their right to equality before the law might be meaningless if not for the work of the Centre in resourcing and directly assisting them to uphold their rights.

The Centre also has a strong commitment to empowering the broader community through community development and community legal education activities, viewed as core functions of the Centre. The Centre is regarded by the local community as its key legal resource, organising and participating in forums about legal issues, providing customised workshops and reporting on policy issues that affect the community through local media. Across the community, the Centre endeavours to improve understanding of legal issues through its education activities, as well as supporting community groups and participating in relevant law reform activities.

Over the years, PCLC has campaigned for the protection and promotion of rights of those in rooming house accommodation through funding afforded by Consumer Affairs Victoria, which has resulted in PCLC employing a dedicated Caravan and Rooming House Outreach Worker. As PCLC provides a range of legal and related services to people residing in rooming houses, PCLC is well placed to provide comment and input to the RIS.



3.0 SPECIFIC RESPONSES TO RIS QUESTIONS

What are the likely benefits for rooming house residents if the proposed regulations are implemented?

PCLC considers that there are a number of benefits for rooming house residents if the proposed regulations are implemented. In particular PCLC identifies the following benefits:

- Decreased fire risk and decreased risk of loss of life;
- An overall healthier and safer environment for residents;
- Increased confidence in utilising private rooming house accommodation as Government funded emergency, transitional and other placement accommodation;
- Increased levels of quality assurance required to be met by owners/operators;
- Expansion of well run, quality rooming houses and commensurate contraction of dysfunctional and illegal rooming houses.

What are the likely costs or impacts for stakeholders if the proposed regulations are implemented?

PCLC believes that extra expenditure will be required over the 12 months grace period for owner/operators to meet the new standards. There is potentially a danger of these costs being passed on to residents, effectively increasing rental price levels for private rooming house accommodation and reducing access to affordable housing. If this is the result of the proposed regulations, PCLC believes there will be an increased need for alternative sources of affordable housing to cover any loss of private rooming house stock.

What is likely to be the impact on the supply of rooming house accommodation from the implementation of the proposed regulations?

PCLC believes that the likely impact on the supply of rooming house accommodation from the implementation of the proposed regulations may be:

- A potential loss of private rooming house stock, particularly related to sub-let rooming houses and to large inner city rooming houses;
- Potential shift by operators to share accommodation, leading to a shrinkage of available rooming house accommodation;
- Closure of rooming houses that do not meet statutory requirements, leading to a reduction in stock;
- A risk of an increase in regulatory avoidance by creating a greater differential of cost between complying and not complying;
- An increased need for alternative sources of housing assistance.

PCLC, in identifying these issues, believes that the regulations nevertheless form the basis of an important step forward in the regulation of rooming house conditions and these impacts need to be carefully and appropriately balanced in the regulatory framework.

Should any of the standards included in the proposed regulations be reconsidered and why? In particular:

Kitchen facilities

PCLC is generally supportive of reasonable standards for kitchens and kitchen facilities, however, recognises that there is a risk of costs increasing the likelihood of loss of stock. PCLC recommends that the relevant kitchen and cooking facilities be overtly included in electricity and gas checks.

Laundry facilities

Again, PCLC is supportive of reasonable standards, but there is a risk of a considerable operational costing increase to meet standards. Additional and overt cost increases are going to be factored into any decision by operators to enter, or continue in, the industry, which may impact on the availability of affordable housing.

Ventilation and lighting

PCLC considers that ventilation and lighting facilities are adequately covered in the *Public Health and Wellbeing Act 2008*.

Gas and electricity

PCLC believes that these facilities are a vital aspect of fire safety prevention. Given the number of documented deaths emanating from faulty wiring and gas - including the Coroner's report on the 2006 Sydney Rd rooming house fire which found the cause of the fire to be electrical wiring, and also the loss of at least six lives from carbon monoxide poisoning from faulty gas heaters (see Energy Safe Victoria, quoted in *The Age*, June 3 2010: Police probe boys' death in Vic town) – there is a powerful justification to introduce compulsory gas and electricity checks along with the requirements to keep records of checks as listed in the Regulations, across ALL rental properties, not just private rooming houses.

Are any of the proposed standards overly onerous or difficult to comply with?

PCLC believes that the proposed standards in relation to laundry and kitchen facilities may be seen to be difficult to comply with, particularly for larger rooming houses. However, PCLC is supportive of increased standards so long as these do not result in the reduction of legitimate, well-run rooming houses.

Are the proposed standards likely to impact on rents charged to rooming house residents?

PCLC believes that there is potential for an increase in rents across the private rooming house industry resulting from increased operating costs from extra regulation. However, there are other factors determining rental levels. For instance, to secure referrals from housing organisations where Housing Establishment Fund (HEF) support and Office of Housing bond loans are accessed by a resident, the rental must be below 55% of the resident's earnings. In PCLC's experience, most people looking to access this start up support will be on a Social Security payment, the maximum amount of rent charged for a room that will enable any prospective resident to access HEF and/or a bond loan, is between \$160 and \$170 per week. This factor may act as a rental ceiling if operators are reliant on housing agencies for resident referrals, which

many of them appear to be. PCLC contends that this may also be a continuing factor in the expansion of rooming houses, given that rooming house accommodation is virtually the only form of private accommodation that now fits the price criteria for HEF and bond loan support and therefore, is often the only form of accommodation available for Social Security recipients.

To what extent are any of the proposed standards likely to contribute to the closure of some rooming houses?

PCLC believes that one of the goals of the standards would and should be the closure of dangerous rooming houses. Further PCLC contends that concern about the reduction of rooming house stock is not a legitimate reason to allow illegal and dangerous rooming houses to continue operation. Part of the intent of the regulations, which relate directly to the Foley Report and the Sydney Rd fire Coroner's report, is to wean out the dysfunctional and exploitative elements of the industry. Closure should not be automatically looked upon as a negative. Closure could be seen as an exercise in increasing the safety of the more vulnerable members of the community. Replacement of lost stock with responsible well run rooming houses, or alternative affordable housing, then becomes the next challenge.

PCLC is aware, however, that over regulation and a lack of consistency in applying that regulation, may lead to the undesirable closure of well run, registered rooming house stock. This potential would need to be closely considered and monitored. The point made on p64 of the RIS that 'recent increased enforcement and inspection activity has coincided with ongoing growth of the sector', needs to take account of the increased enforcement and inspection activity not just correlating but leading to the registration of existing operating rooming houses, as opposed to new players entering the market because of its profitability. PCLC considers that it is inappropriate to assume that the rooming house sector will continue to grow.

Are the proposed parameters allowing rooming houses to be exempt from compliance with some standards in certain circumstances sufficient and appropriate? Should the parameters for exemption be reconsidered and, if so, how?

PCLC is concerned that the proposed parameters allowing rooming houses to be exempt from compliance with some standards in certain circumstances are too vague. For example, it is unclear who has jurisdiction over issuing the exemptions. In the event that Local Government is thus empowered, this opens up the possibility of different levels of compliance operating in different local government areas, possibly creating rapid expansion of rooming houses in some areas and the complete disappearance of rooming houses in other areas, through over regulation by a particular local Council.

PCLC believes that exemptions should be administered at a State level, such as operates in Queensland as a separate section of the Attorney-General's Department. This ensures that there are not discrete variations between local government areas and instead enables a uniform state wide approach.

Are the implementation timeframes reasonable?

PCLC considers that the timeframes for implementation are reasonable, although cautions that the 12 month period should not preclude robust action in identifying operators falling short of the regulations.

What additional measures will assist in the successful implementation of the proposed regulations?

PCLC believes that there are a number of measures that may assist in promoting a well run, safe, affordable private rooming house industry, that are lacking in the regulations. In particular, PCLC identifies three areas which it considers to be lacking from the RIS – 1. Department of Human Services Homelessness Assistance funding of the private rooming house sector; 2. A fit and proper person test in respect of rooming house operators; and 3. Adequate education of those in rooming house accommodation to be able to identify and exercise their legal rights and obligations.

Department of Human Services Homelessness Assistance funding of the Private Rooming House Sector

DHS expended \$165.1 million dollars in the last financial year on Homelessness Assistance (Annual Report, 2009-10, p 32). Anecdotally, it would appear that a significant percentage of this expenditure went into the placement of clients into private rooming houses. Homelessness Assistance appears to be a substantial funding source for the private rooming house industry.

Given that a significant portion of the rooming house market is reliant on Government funded placements via Homelessness Assistance, the DHS has considerable potential market leverage in the industry. PCLC believes that managed effectively, this leverage could ensure the reward of regular funded resident placements for operators complying with regulations, at the expense of operators not complying. This suggestion is supported by Recommendations 16 and 18 from the Rooming House Standards Taskforce Chairperson's Report accepted by the State Government in 2010, which state accordingly:

- **Recommendation 16.** State Government establish a State-wide register of registered rooming houses and provide this to agencies requiring this information to fulfil their accommodation and housing related responsibilities;
- **Recommendation 18.** State Government amend the Housing Establishment Fund (HEF) guidelines to require that funding for crisis housing can only be utilised in legally registered rooming houses.

A Fit and Proper Person Test

PCLC considers that the introduction of a fit and proper person test may preclude potential operators with dubious backgrounds from entering and/or remaining in the industry. The risk of withdrawal of registration under a fit and proper person test could also grant greater incentive for operators to comply with regulations. The rooming house registration and regulation procedure in Queensland includes a fit and proper person test for a person or persons establishing and operating a rooming house. This suitability test involves a bankruptcy check and a check of a 'disqualifying offence', which is:

- an offence punishable by 3 or more years imprisonment involving fraud or dishonesty an

- an offence against the Queensland criminal code, Part 4 or 5
- an act or omission committed outside Queensland that, if committed in Queensland, would be an offence mentioned above

Adequate Support for Residents to be Aware of and Exercise their Legal Rights

PCLC believes that it is necessary to provide education to all those living in rooming houses including access to affordable advice and advocacy support. Such education and assistance is crucial to assist rooming house residents in understanding their responsibilities and exercising their tenancy rights.

4.0 CONCLUSION

PCLC is fully supportive of regulations promoting safer and more habitable accommodation for residents in the private rooming house sector, while taking into account the requirement for the private rooming house industry to continue as a viable business proposition for rooming house owners and operators. These regulations are welcomed as a major step in ensuring that appropriate safety and security provisions for the private rooming house industry are in place which will in turn ensure substandard living conditions arising in the private rooming house industry are appropriately regulated and eradicated.

PCLC would welcome the opportunity to provide further comment and input into the further development of the RIS and to other initiatives to improve the private rooming house sector.