



Public Health and Wellbeing (Prescribed Accommodation) Regulations: Submission by Tenants Victoria

November 2020

Executive Summary

The Public Health and Wellbeing (Prescribed Accommodation) Regulations (PHWA Regulations) provide a very limited safety net for the residents who live in properties covered by these Regulations. The oversight of these rooming house properties is split between Consumer Affairs Victoria (CAV) and local councils. It is not clear that enforcement is a priority for either of these regulators, and therefore the protective aim of these regulations is not being fulfilled.

Concerted efforts should be made to unify enforcement efforts to maximise their effect. Adopting the rooming house definition from the Residential Tenancies Act is a step towards consolidation of regulation, however further work is needed to review and improve policing of rooming houses. In addition, improved standards should be applied to these properties.

Recommendations

- That CAV together with local councils develop a joint policy framework to address non-compliance with Public Health and Wellbeing Act (PHWA) regulations
- That CAV and local councils focus their enforcement plans and efforts on rooming houses, to maximise enforcement including efforts to
 - ensure regular and unannounced inspections
 - undertake joint inspections
 - prosecute all breaches of the PHWA Regulations (and Rooming House Act and Regulations)
 - publicise the prosecutions and changes resulting from their enforcement campaign
- That CAV and councils engage in an education campaign for landlords, rooming house managers and residents on the required standards and how residents can seek assistance to obtain enforcement of these.
- That CAV encourage councils to consider their own interdepartmental arrangements to improve collaboration between environmental health and community health departments to deliver better outcomes in rooming houses.
- That the draft regulation be altered to improve sanitary facilities ratio to at least a minimum of one sanitary facility to 8 people.

- That a wider consultation and review of the regulation of rooming houses and other accommodation occurs, with a view to creating a more robust regulatory framework for these properties.

About Tenants Victoria

Tenants Victoria was founded more than 45 years ago to promote and protect the rights of tenants. We educate tenants about their rights and work for social change to improve conditions for all tenants.

Since its inception, Tenants Victoria has provided advice to individual tenants while working towards long-term change for the benefit of all tenants. In recent years Tenants Victoria was a leader of the Make Renting Fair campaign in 2018 which resulted in landmark amendments to the Residential Tenancies Act including minimum standards for all rental properties. These have been delayed by the COVID-19 pandemic.

We work in partnership with other community legal centres and housing sector organisations, and strategically with government to inform policy development and enhance service delivery. We have assisted more than half a million tenants since our inception.

Tenants Victoria works to improve the rights of public and private tenants, rooming house and caravan park residents. We also provide advice and assistance to those at risk of homelessness or suffering housing insecurity. We advocate for improvements to tenancy law and practice to support the nearly one third of Victorians who are tenants at any one time. Our experience as a source of advice to tenants and to tenancy advocates puts Tenants Victoria in a position to see the effect of economic and policy changes over time on tenants in all types of residential accommodation. We seek to use this experience to establish a fair legal framework for tenancy in Victoria.

Background

Tenants Victoria appreciates the opportunity to provide input on these draft regulations. We consider that these regulations are important because of the premises they cover, the residents of those premises, the nature of the industry, and the regulators involved in enforcing standards in that industry. While these regulations extend beyond rooming houses, this submission will focus on rooming houses, as we have a long involvement in supporting rooming house residents and seeking to improve their living conditions.

Regulation coverage

These regulations have a wide coverage, including rooming houses, student accommodation and other premises. By providing the basic standards for rooming houses, which are the last-ditch accommodation of some of Victoria's most disadvantaged renters, they are vital to provide minimum standards of accommodation.

Regulation focus

The regulations' focus on minimum space requirements per occupant, and access to water for hygiene and hydration is directed at the prevention of the spread of infectious disease¹, rather than a broader

¹ See for example, the RIS explanation of rationale of regulations 17,19, 20 & 21 at page 49 of the RIS.

definition of health. These regulations do not consider a wholistic definition of health², that would include mental and social wellbeing as well. As they do not include other relevant measures, they do not operate to promote wellness, rather to ameliorate the worst effects of poor living conditions. This recognises that the accommodation provided will be poor quality, and a last resort for its residents.

Those intended to be protected by the regulations

The residents in rooming houses are counted as homeless, due to their insecure housing. They commonly receive a very low income, such as Youth Allowance, JobSeeker or the Disability Support Pension, and may have a range of health concerns or other disadvantages. These premises are also often the housing available to victim survivors of family violence, so residents may include children, or people who have been traumatised by their experiences. As often dealing with disadvantage, rooming house residents are entitled to special consideration, as they are frequently unable to advocate for themselves. They commonly have little by way of financial resources and may suffer social disadvantage due to ill-health (mental or physical) or lack of literacy. Underlying health issues and the fragility of many residents³ make the physical standards of this type of accommodation even more important, as the consequences for residents of poor hygiene may be more extreme than for healthier individuals.

The importance of these types of premises has been highlighted during the COVID-19-induced recession. Our homes have been clearly identified by public authorities as our first line of defence, as we have all been required to remain indoors.

In this recession many people have lost work and become reliant on benefits for income, and are unable to afford more secure housing, despite the rent-reduction process available under emergency COVID-19 measures. Once people move in to rooming houses it is often very difficult to leave for more appropriate housing, due to the expense. Our experience is that rooming house residents may pay as much as 80% of their benefit for their room each week, so they are unable to pay for groceries, medicines, phone credit or other necessities. This absence of resources means they are also unable to look for alternative accommodation. Their lack of economic and social capital also means they are unwilling to advocate for themselves and rely on community organisations to advocate for them.

Rooming house industry

Tenants Victoria's outreach service visits registered and unregistered rooming houses and aims to help residents exercise their rights under the Residential Tenancies and Rooming House Acts, and if possible, to obtain more secure housing. This longstanding outreach program has gathered intelligence on poor quality rooming houses, especially those in Melbourne's north and western suburbs.

Unregistered rooming houses are commonly established in suburban homes. These are rented to a middleman operator by the landlord, who may be unaware of the use of the property. The middleman arranges for residents to move into the property, and their interest is usually in rent collection and maximizing income, not maintaining the property to an appropriate standard. In some cases, managers

² WHO definition of health is "A state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity" Preamble to the Constitution of WHO as adopted by the International Health Conference, New York, 19 June-22 July 1946, entered into force on 7 April 1948.

³ The RIS refers to the likelihood that these populations will experience a higher rate of infectious diseases than the general population, (at p. 48) and notes that the evidence cited highlights "how physical conditions of the accommodation... can directly impact their health and lead to poor health outcomes"(p.49).

of these properties have intimidated residents by threatening them if they exercise their rights to complain about the poor standard of accommodation.

Regrettably, due to the dearth of affordable housing, some charities and aid organisations that are part of the “Housing Front Door” provision of housing in Victoria have been compelled to use unregistered rooming houses. The lack of affordable housing also means that the market forces that might otherwise empower residents and improve standards do not appear to affect rooming houses.

It is also regrettable that unfit living conditions are not confined to illegal or unregistered rooming houses, but are also found in rooming houses registered under the Rooming House Act by local councils and in properties run by rooming house operators registered by CAV and therefore regarded as “fit and proper persons”.

Enforcement – why regulate without enforcement?

As mentioned above, market forces do not seem to operate to help improve the standards of rooming houses. This makes formal regulatory enforcement the sole practical means of improving standards in the rooming house industry.

Maintaining minimum standards for rooming houses and ensuring that only appropriate individuals run these properties are two arms of the enforcement regime for rooming houses. A structural difficulty of the regulatory regime (including the PHWA and regulations) is the separation of responsibility for this enforcement. Enforcement of the PHWA regulations lies with local councils, while enforcement of operators — the “fit and proper person” test — and Rooming House Act measures are the responsibility of CAV.

The effect of this split enforcement responsibility is that neither local government nor state government fully enforces their own responsibilities. Our observation, over many years of visiting rooming houses and advocating for residents, is that the condition and management of these properties appear to be a low priority.

We have seen examples of local councils accepting residents are to blame for their living situations. For example, if a manager or operator alleges that disrepair is due to damage caused by a resident, no investigation or further action is likely. Our consistent experience is that councils do not adequately police rooming houses despite having been given evidence by social workers and community health workers of breach of regulations and substandard conditions. In one recent egregious example that has come to our attention, a registered rooming house had been reported to the local council multiple times, with pictures supplied of the offending breaches. This 4-bedroom property housed 10 residents, with one room divided by a tarpaulin and the garage used as a bedroom. The council environmental health officers did not attempt to enter the property to verify or inspect conditions. Instead they stood at the end of the drive, shouting questions at the residents. As a result of this attempted enforcement, a safety switch was repaired, but no other matters were attended to.

Where inspections do occur, frequently they are only undertaken with notice to the manager of the rooming house. Therefore, the enforcing officers rarely see the true nature of the property. Residents report that the only time any maintenance or cleaning occurs is immediately before an inspection. Our experience is that there is a consistent lack of follow up to remedy continued breaches. This attitude to enforcement occurs at the expense of the residents, and results in poor living conditions being the norm.

rather than the exception. We note that rooming house regulations allow the landlord to attend on any day between 8am and 6pm, so respect for a resident's quiet enjoyment is not a feature of this type of accommodation. Regrettably, giving notice to managers, and limitations on the ability of councils and CAV to inspect these properties, does not serve the interests of such residents.

In our view, best practice would be that CAV and councils undertake joint inspections, attended by officers from both sides, so that both regulators are aware of the condition of premises and could act together to fix any breach of rules they find. This method, together with a concerted effort to bring rooming houses up to standard, would significantly improve the living standards of residents.

Even within council administrations, it appears in many cases that opportunities to better manage these properties and support their residents are not taken. Inter-departmental cooperation between environmental health officers and community health officers is rare in our experience. Without collaboration, significant improvements in rooming house conditions cannot be achieved. In cases where rooming houses are closed, residents face homelessness, with few resources to assist them. In our experience, despite the encouragement of the Department of Health and Human Services, few councils have fully functional protocols for rooming-house closures.

Further, allegations have been made to our outreach service that suggest some councils "coach" rooming house operators in how not to be classified as a rooming house, thus falling outside the regulations — for example by stating that residents choose their living companions, rather than have them chosen by managers, and therefore being seen as a share house.

Our outreach service has also heard many comments from councils about their frustration with CAV. Councils find that despite multiple notifications to CAV of unregistered managers of rooming houses and apparent breaches of the Rooming House Act, no action is apparent. Council complain that their efforts are not even rewarded with a response from CAV. So even if councils do attempt to police these properties, and act proactively, they are stymied by the lack of priority accorded to enforcement by CAV.

There are other systemic issues preventing effective enforcement that stem from the structure of the industry. For example, enforcement actions in the Magistrates Court against rooming house operators can be stalled due to the "phoenixing" of holding companies or similar actions, making it challenging to collect compensation for residents or ensure that fines are paid.

Regulations without enforcement only serve to encourage breaches. If it is known that there will be no sanction for a breach, then there is no encouragement to meet even these very basic standards.

Draft regulations

Improving and clarifying standards

Tenants Victoria supports the adoption by the proposed Public Health and Wellbeing Regulations of the definition of a rooming house from the Residential Tenancies Act. This will help clarify enforcement and minimize confusion about the application of the regulations.

The limited effect of applying standards clarification without enforcement has also been recognised in the RIS, where it is stated: *"There could be an increase in benefits if more accommodation owners*

comply with the Regulations, due to increased clarity of coverage of the Regulations ... however this is not expected to have a material impact.”⁴

The specific standards prescribed by the proposed regulations are very low. They should be reviewed and improved. The building code for residential buildings, for example, is vague about what is required for sanitary facilities⁵. As a result, the practical application of the building code requirement is a matter of interpretation and will depend on the experience and community practice in the jurisdiction. Currently for example, in a residential building 1 toilet per 10 people is the standard applied. This provides a poor level of amenity and creates difficulty in keeping a property clean or sanitary. Further, during the COVID-19 pandemic it is almost impossible to self-isolate in these conditions. The consultation conducted before drafting the Regulatory Impact Statement included suggestions from the Registered Accommodation Association of Victoria (RAAV), representing the owners and operators of rooming house and other accommodation, that this ratio of sanitary appliances to people should be reduced to at least 1:8. However, even this small step has not been taken in the draft regulations. While we would not suggest that this step would be sufficient, it would at least represent progress in improving the living standards of many Victorians.

In other parts of the regulations⁶, general prescriptions put the onus on the proprietor of accommodation to maintain the property and keep it clean and in good repair. These general statements would be much more useful if enforcement occurred. Our visits to rooming houses find very few properties where a cleaner is employed. Rather, this obligation is not undertaken by rooming house proprietors and falls to residents. There is also confusion on responsibility for cleaning bedrooms. Many residents advise Tenants Victoria that their bedrooms are not cleaned. The absence of enforcement again undercuts the intent of the regulation to promote the health and wellbeing of residents.

Consultation and process issues

While we were not involved in discussing these regulations before the RIS was drafted, we look forward to greater involvement in the foreshadowed reviews by the Department of Justice and Community Safety of the definition of rooming houses and the review by the Department of Environment, Land, Water and Planning of the Residential Tenancies (Caravan Parks and Moveable Dwellings Registration and Standards) Regulations.

Recommendations:

- That CAV together with local councils develop a joint policy framework to address non-compliance with PHWA regulations

⁴ RIS, p54

⁵ Building Code of Australia Volume 2 – Residential P2.4.3 Personal hygiene and other facilities “(a) Suitable sanitary facilities for personal hygiene must be provided in a convenient location within or associated with a building, appropriate to its function or use”.

⁶ See Reg.13 – Maintenance of Prescribed Accommodation. “A proprietor of prescribed accommodation must maintain the prescribed accommodation and all bedrooms, toilets, bathrooms, laundries, kitchens, living rooms and any common areas provided with the accommodation—

(a) in good working order; and
(b) in a clean, sanitary and hygienic condition; and
(c) in a good state of repair.”

- That CAV and local councils focus their enforcement plans and efforts on rooming houses, to maximise enforcement including efforts to
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