

21 September 2016

Residential Tenancies Act Review – Fairer Safer Housing
Alternate forms of tenure issues paper

By email: yoursay@fairersaferhousing.vic.gov.au

Dear Sir / Madam,

Submission of the Barwon Community Legal Service to the Fairer Safer Housing Review – Alternate forms of tenure issues paper

Barwon Community Legal Service (BCLS) provides free legal advice and specialist casework services to people who live in the Geelong, Bellarine Peninsula, Surfcoast and Colac Otway regions. BCLS also provides limited services to people who live in Corangamite, Moyne, Warrnambool, Glenelg and Southern Grampians shires. Our catchment region consists of over 360,000 people with many pockets of extreme disadvantage.

We also provide community education and training directly to the community and to other community sector staff and government. We run community awareness campaigns and provide education that gives people the knowledge to self manage their situation and assert their rights. We also contribute to policy and law reform work.

The below submission is compiled with reference to BCLS experience in assisting clients and personal experiences of these client, staff and volunteers.

Rooming houses

38 Should the definition of a rooming house be changed to include emerging accommodation models, and if so, how should it be changed?

The current definition describes, and thereby captures, the traditional model. Emerging accommodation models, particularly those targeted to students (including international students) won't be caught by a historical definition. The definition could be made more elastic by giving it a purposive or a functional focus. Rather than the quantitative focus that measures the number of tenants ('the total number of people who may occupy those rooms is not less than four') the threshold question could relate to the purpose of the accommodation provider – to charge people to live in the accommodation – or the function of the accommodation – to provide accommodation in exchange for economic consideration.

39 What alternative models of regulation may be appropriate for the rooming house sector and why?

The Fair Work Ombudsman (FWO) in prosecution of the Fair Work Act offers a model of regulation. Facing many similar problems, including the regulation of a large hidden sector relating to vulnerable people, including international students, the Ombudsman has recently moved beyond traditional regulation and compliance models in order to some success.

The FWO is also developing traditional legal concepts of liability, in particular third party liability, which has potential application to the rooming house sector. For example, building owners and agents might be made liable for unregistered, or unscrupulous, rooming houses, of which they knew or reasonably would have known.

40 What models of rooming houses are emerging, or from interstate or overseas experience are likely to emerge, in Victoria, and what issues arise in relation to these models?

Rooming house residents are often vulnerable. Historically their vulnerability was linked to socio-economic status. With the emergence in rooming houses targeting international students, the vulnerability is of a different kind: language, culture, visa status. This cohort may be unaware of their rights or reluctant to enforce those rights for a number of reasons: cultural attitudes to authority, concerns over the impact any action against the operator of the rooming house operator might have on their visa status. Problems with rooming houses are likely to go unreported, or unprosecuted (where this is dependant in the evidence of tenants), in this situation.

42 What issues arise with the monitoring and enforcement arrangements for the regulation of rooming houses, for example by local government, and how could these be strengthened?

We support the Tenants Union of Victoria submission to Laying the Groundwork, page 70, reported Issues Paper, page 36, that ‘the Act to be amended to allow VCAT to impose a civil penalty if it finds that the building owner or agent knew or ought to have known the building was not registered.’

43 What are the risks, if any, of limiting the type of agreement a resident can enter into with a rooming house operator?

There is always a regulatory risk that regulation will have unintended consequences at odds with the intention of regulation. However, we support the Victorian Civil and Administrative Tribunal submission to Laying the Groundwork, page 2, reported Issues Paper, page 39 that there ‘should be less flexibility surrounding the type of agreement rooming house residents and owners can enter into.’ This is due to the problem identified by Tenants Union of Victoria submission to Laying the Groundwork, page 70, reported Issues Paper, page 38, that ‘tenancy agreements are being used ‘to shoehorn residents into fixed-terms that will invariably be broken’, due to poor conditions of rooming houses, at which point the operator is then able to claim a large amount of compensation out of the bond.

44 What arrangements should apply where a rooming house resident and operator wish to enter into a fixed-term agreement?

If such practice is to be permitted, the agreement must be modified to reflect the difference in situation between a typical tenancy and a rooming house. For example, a bond in a typical tenancy is necessary to cover the risk of unpaid rent and lost income in the event of a lease break. As rooming house residents have a statutory duty to pay their rent on time, no bond backstop is required. Also, as an operator lets rooms, not the entire property, it is difficult to see how lease break costs for lost income can be calculated in the same way as they can for a tenancy agreement, where that agreement ensures exclusive possession and thereby represents the total income derived from that property by the landlord. As such, no bond or a lower bond amount should be payable for fixed-term agreements entered into in rooming house situations, furthermore, lease break costs should be defined for any form of fixed term agreement relating to a rooming house. Section 275 RTA caps the rent due when no notice is given and this is a good example. It is noted, there is a balancing act between the security of a fixed term lease for a resident and the risk of not being able to get a new resident in a lease break situation for a rooming house owner.

45 What reforms, if any, are necessary to strengthen the existing provisions in the Act in relation to the application and enforcement of rooming house rules?

We support the Tenants Union of Victoria submission to Laying the Groundwork, pages 67 and 69, reported in the Issues Paper, page 39, for 'a mandatory uniform set of house rules for all rooming houses, with variations only permitted with approval by the Director of CAV.' This might go some way to addressing the reported abuse of house rules that in some instances may stem from their potential arbitrary nature.

46 What is an appropriate frequency period for general inspections in rooming houses?

As rooming houses move more to the middle of the rental market as people are priced out of traditional tenancies, we feel rooming house regulations need to reflect this fact. Frequency of inspections, for example, should move closer to tenancy agreements. Currently, inspections in rooming houses may be conducted once a month whereas inspections in rented premises may be conducted once every six months. A frequency of once every three months is submitted as representing a move to a preferable middle position.

47 In respect of pets in rooming houses, what is the right balance between the interests of a resident who wants to keep a pet, the rooming house operator, and other residents?

Like tenancy agreements, there are many views about people's rights to have pets and the risk of that pet damaging a property or causing a nuisance to another resident. The current legislation requires the landlords consent – this condition could be lessened by imposing that rooming house owner must not unreasonably withhold this consent. Further considerations are that residents have obligations regarding interfering with the privacy and peace and quiet of the other residents and obligations relating to cleanliness and damage. This would allow a rooming house operate to take appropriate action if a pet was to become an issue.

50 How should the Act address damage caused by a rooming house resident?

The provisions of the Act dealing with damage in rooming houses should be brought more in line with those provisions covering damage by a tenant under Part 2 of the Act. For example, if damage is caused by a resident the operator should be required to serve a breach of duty notice specifying compensation owed to remedy the breach.

52 How should the Act regulate liability for utilities in rooming houses?

This is an area open to abuse by operators. We have seen clients who were paying a utility fee in addition to their rent that when summed with the bills of the other residents was far in excess of the possible total bill for that property. In effect, the owner was using this practice to generate a second stream of considerable income. While difficult to regulate, more needs to be done in this area. Increasing the sanctions for the abuse of the Acts prohibitions in this section, and a more focussed prosecution of this area, would be welcome.

Conclusion

All legislation should be subject to ongoing review. The submissions suggested above could be introduced gradually but any suggestion introduced would be a good step forward.

Barwon Community Legal Service
Phone 1300 430 599