

13 November 2008

Ms Margaret Crawford  
Director of Housing  
GPO Box 4057  
Melbourne VIC 3001

**By email:** [housing.policy@dhs.vic.gov.au](mailto:housing.policy@dhs.vic.gov.au)

Dear Ms Crawford,

### **Response to 2008 Regulatory Impact Statement – Rooming Houses**

The PILCH Homeless Persons' Legal Clinic (**HPLC**) welcomes the opportunity to respond to the Proposed Health (Prescribed Accommodation) Regulations 2008 Regulatory Impact Statement (**RIS**), which proposes legislative amendment to improve regulation of rooming houses in Victoria. Our response to the RIS is set out below.

#### ***Law reform is necessary to address substandard conditions in the rooming house sector***

The HPLC is concerned about the manifestly inadequate standard of living conditions and safety that exists in the rooming house sector, particularly in respect of small rooming houses. In our view, these substandard conditions are largely due to inadequate and ineffective regulation of the rooming house sector. The current regulatory framework lacks accountability and transparency, inadequately protects the rights of rooming house residents and includes ineffective enforcement mechanisms that enable rooming house owners/operators to evade regulation. The HPLC therefore strongly recommends immediate law reform to address the deficiencies in the current regulatory framework in order to provide improved living conditions and safety standards in the rooming house sector.

#### ***The HPLC supports Option 2: Amending the HPA Regulations threshold from 6 people to 4 people***

The HPLC supports in-principle the proposal in Option 2 of the RIS to align the definition of "prescribed accommodation" under the *Health (Prescribed Accommodation) Regulations 2001 (HPA Regulations)* with the definition of "rooming house" in the *Residential Tenancies Act 1997 (RTA)*.

Currently, many rooming houses defined as such under the RTA escape regulation under the HPA Regulations. Alignment of the definition of prescribed accommodation in the HPA Regulations with the definition of rooming houses in the RTA should:

- clarify the standards and obligations that apply to rooming houses and their owners/operators; and
- ensure the consistent application of regulations across the rooming house sector in order to capture all rooming houses and provide better protection for all rooming house residents.

Accordingly, any amendment to the regulations must be clear and unambiguous so as to ensure their broad application to all forms of relevant accommodation and to directly address the inconsistencies and loopholes in the current legislation which enable rooming house owners/operators to evade regulation.

***Suggested amendment to the proposed regulations***

The Appendix to the RIS provides an exposure draft of the proposed *Health (Prescribed Accommodation) Amendment Regulations*, which incorporates the proposal contained in Option 2. The exposure draft proposes amendment to the HPA Regulations to include:

- the term “rooming house”, which will have the same meaning as “rooming house” under the RTA; and
- rooming houses as a form of prescribed accommodation under regulation 5.<sup>1</sup>

The HPLC supports the two abovementioned proposals.

The regulatory proposal also suggests amendment to regulation 5(h), which provides an exemption from the regulations. The proposed change maintains the exemption for ‘other accommodation categories’ that house five or less people, but which are not rooming houses. In our view, this proposal insufficiently addresses concerns with the current legislation and presents a number of additional problems, for example:

- the proposed change to regulation 5(h) applies health and safety policy inconsistently to similar forms of accommodation. The effect of the provision is that small and large rooming houses that accommodate four or more people will be required to comply with the HPA Regulations and the *Health Act 1958 (Health Act)* but similar accommodation such as a family run boarding house that accommodates four to five people will not be subject to *any* health regulations. In our view, health and safety policy should be applied consistently to all categories of accommodation that houses four or more people where those people pay rent/consideration to an owner/operator;
- the proposal will not clarify the confusion that currently exists in the sector regarding which forms of accommodation are actually required to register under the HPA Regulations;<sup>2</sup>
- the proposal may result in arbitrary distinctions being made between rooming houses and boarding houses (that essentially operate as rooming houses), creating further confusion as to which regulations are applicable to similar forms of accommodation; and
- the change to regulation 5(h) may create another legislative “loophole” enabling accommodation providers, that essentially operate as small rooming houses, to claim that they fall in the category of ‘other accommodation’ and therefore are not required to comply with the HPA Regulations or the Health Act. Given that larger rooming houses are currently avoiding ‘registration by claiming, spuriously, that they only accommodate 5 residents’<sup>3</sup> it is not far-fetched to envisage the scenario where, under the proposed regulations, small rooming house operators attempt to avoid the HPA Regulations by claiming that they operate as a family boarding house under regulation 5(h). The proposed regulations must address any such possible loophole.

In order to address these issues and concerns with the current regulations, **we strongly recommend that clause 6 of the exposure draft be redrafted to read as follows:**

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<sup>1</sup> We note that contrary to the regulatory proposal on page 51 of the RIS, the exposure draft suggests that the definition of “residential accommodation” will *not* include rooming houses under the proposed regulations. Rather, the exposure draft includes rooming houses as a separate and specific class of accommodation under the definition of “prescribed accommodation”. The HPLC supports the definitions of “residential accommodation” and “prescribed accommodation” contained in the exposure draft.

<sup>2</sup> *Proposed Health (Prescribed Accommodation) Regulations 2008 Regulatory Impact Statement*, 7.

<sup>3</sup> *Ibid.*

"In regulation 5(h) of the Principal Regulations, for "not more than five persons are accommodated." **substitute** "not more than three persons are accommodated, and which is not a rooming house".

Amendment to regulation 5 of the HPA Regulations so as to exclude from the definition of 'prescribed accommodation' only those premises that accommodate three residents or less is consistent with our submission to Consumer Affairs Victoria (**CAV**) regarding the Residential Accommodation Issues Paper.<sup>4</sup> For further information, we refer you to that submission which is available at [www.pilch.org.au](http://www.pilch.org.au).

While we understand that our suggestion will have a broad impact, the effect of that impact is supported by the cost benefit analysis undertaken in part 5 of the RIS, which notes that 'ongoing costs to affected rooming house owners would be, on average, \$160 per year in registration, as well as some ongoing costs to local government associated with inspections. These costs are not deemed to be excessive.'<sup>5</sup> In addition, the 'registration costs are generally scaleable and therefore smaller rooming houses pay lower registration costs.'<sup>6</sup> The likely additional costs that would be incurred by family run boarding houses having to comply with HPA Regulations or the Health Act would be negligible in comparison to the significant benefits that would be achieved, including improved protections for a greater number of residents and consistent health and safety standards that apply across the rooming/boarding house sector.

### ***The regulatory system relating to rooming houses requires broader review and reform***

The HPLC commends the Department of Human Services (**the Department**) for producing this RIS, which is the first step towards better regulation of the rooming house sector. However, much more work is needed to improve living conditions and safety standards for rooming house residents. In this regard, the HPLC supports the submission to the RIS by the Tenants Union of Victoria and reiterates its recommendation for further review and reform of the regulatory framework that governs the rooming house sector. In particular, we note that a further review should consider:

1. Amending relevant legislation to improve safety and accountability provisions, including ensuring that:
  - the rights and obligations of rooming house owners, operators and residents are easily accessible/available (i.e. under one Act); and
  - fire safety standards are clearly set out.
2. Improving the current system that provides for registration of buildings that are rooming houses. It is our view that the register should be a public document to allow rooming house residents and housing workers a more informed choice regarding the available rooming houses and it may also assist consumers and advocates to identify unregistered rooming houses.
3. Introducing a compulsory licensing scheme for owner/operators, enshrined in legislation, that:
  - requires minimum safety standards for rooming houses in accordance with requirements for building registration;
  - includes a fit and proper person test;
  - requires annual licensing by owners/operators;

<sup>4</sup> PILCH Homeless Persons Legal Clinic, *Less Room to Move: Better Room to Move In*, Submission to Consumer Affairs Victoria regarding the Residential Accommodation Issues Paper (August 2007).

<sup>5</sup> *Proposed Health (Prescribed Accommodation) Regulations 2008 Regulatory Impact Statement*, 46.

<sup>6</sup> *Ibid.*

- incorporates auditing, inspection and enforcement mechanisms (including powers of investigation, search and random checks for relevant authorities such as local government or CAV); and
- encompasses the registration of buildings system so that, for example, a licence would need to list the buildings that are owned/operated by the licensee and a licence would need to be amended if a building was registered or de-registered, etc .

***Consideration of human rights impact***

On a final note, we emphasise the importance of considering the proposed regulatory change, and the need for further legislative reform in the rooming house sector, in light of the Department's human rights obligations under the *Charter of Human Rights and Responsibilities Act 2006*. A number of human rights are relevant to this discussion including; the right to life (section 9), protection from torture and cruel, inhuman or degrading treatment (section 10), protection of privacy and reputation (section 13), protection of families and children (section 17) and the right to liberty and security of person (section 21). In this regard, we refer you back to our recommended change to clause 6 of the exposure draft, which will provide improved human rights protection for a greater number of marginalised and vulnerable members of the Victorian community.

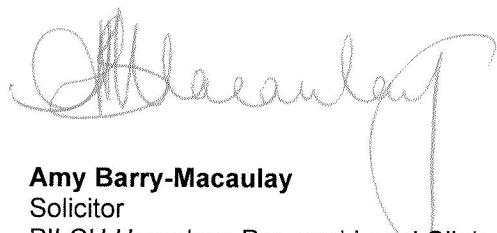
The HPLC strongly encourages the Department to align the definitions in the HPA Regulations and the RTA and to continue to reform the regulatory framework that governs the rooming house sector in order to ensure improved living conditions and safety standards in Victorian rooming houses.

We would welcome the opportunity to meet with you to discuss this correspondence. We look forward to hearing from you.

Yours faithfully,



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